

The Rt Hon Philip Hammond MP
Secretary of State for Defence
The Ministerial Correspondence Unit
Floor 5, Zone A
Main Building, Whitehall
London, SW1A 2HB

Our Ref: PS/SJ/KH/Long/20509

**BY POST AND FAX
(020 7218 7140)**

13 January 2012

Dear Mr Hammond,

**PRE-ACTION PROTOCOL LETTER: CLAIM REGARDING THE DEATH OF SIX ROYAL
MILITARY POLICE IN MAJAR-AL-KABIR, IRAQ ON 24 JUNE 2003**

This is a pre-action protocol letter for the purpose of judicial review. It demands serious and prompt consideration. A response is required by 10 February 2012.

The Claimant

1. We act on behalf of Mrs. Pat Long, mother of Corporal Paul Long.

The Defendant

2. The Secretary of State for Defence, The Ministerial Correspondence Unit, Floor 5, Zone A, Main Building, Whitehall, London SW1A 2HB.

The matter being challenged

3. On 24 June 2003, Corporal Paul Long of the Royal Military Police and five of his colleagues were unlawfully killed in Majar-al-Kabir, Maysan Province, Iraq by Iraqi civilians. Mrs. Long feels, with considerable and obvious justification, that her son's death was not the result of inevitable risk faced during the course of life as a serviceman, but was the result of her son being placed in avoidable and unnecessary danger.

4. The claim that she seeks to bring, and is outlined in this pre-action protocol letter, can be summarised as follows.
 - (1) The death of Corporal Long and his colleagues occurred within the jurisdiction of the UK for the purposes of Article 1 of the European Convention on Human Rights.
 - (2) The State's obligations under Article 2 of that Convention, including the positive obligation to take steps to protect life, are therefore engaged.
 - (3) There is strong, if not overwhelming, cause for concern that the UK failed in its obligations to take appropriate steps to protect the life of Corporal Long and his colleagues. That is a matter which requires investigation.
 - (4) The investigations conducted thus far do not meet the minimum standards required by Article 2. There must now be an investigation which does.
5. It is recognised that this pre-action letter is lengthy. Most of the length is in setting out the facts and the history of the case, and it is hoped that it assists.

The deaths of Corporal Paul Long and five of his colleagues on 24 June 2003

6. As is explained below, Mrs Long does not accept that there has been adequate investigation into the circumstances of her son's death. She takes the view, therefore, that a full and proper understanding of her son's death has not been realised. For the purpose of this letter, a summary of events derived from investigations conducted thus far is provided.

Context

7. At the material time, Maysan province was the responsibility of a battle group, under the command of 1 (UK) Armoured Division, consisting of 1200 men, comprising primarily of 1st Battalion the Parachute Regiment ("1 PARA"). The main battle group headquarter were at Camp Abu Naji ("CAN").
8. The battle group included 1 Platoon, 156 Provost Company RMP. The RMP Platoon was split into three individual sections, of which C section was one. C section consisted of six soldiers, including Corporal Paul Long, and was led by Sgt Hamilton-Jewell. The other men were Corporal Aston, Corporal Miller, Lance Corporal Hyde, and Lance Corporal Keys. C section was tasked with performing the RMP's duties in the southern area of Maysan province. The entirety of Maysan Province is roughly the size of Wales and the southern area includes the town of Majar-al-Kabir.
9. The RMP mission was to provide specialist Provost input in order to help restore and maintain law and order within the Iraqi community. The particular mission of 1 Platoon, 156 Provost Company RMP was "to provide Close Support (CS) to 1 PARA [battle group] and continue to support and monitor the development of the Iraqi Police Service within Maysan Province where possible in order to facilitate a smooth transition between

1 (UK) Armd Div and 3 (UK) Armd Div.”¹ That included seeking to ensure local Police shift systems were adopted, that the Iraqi police were diplomatically introduced to effective policing, and the refurbishment of police stations. To that end, C section liaised on a relatively frequent basis with the local police force.

10. The climate in which the British army operated in Maysan Province was later described by the commanding officer of 1 PARA as “benign but fragile.” The local population of Maysan province suffered under the Baath party regime and were generally welcoming of British forces. A subsequent British Army Board of Inquiry (“BoI”) which examined the deaths said the following:

*Relationships between the Coalition and the public in Maysan province were good...There was however dissent, particularly over searches, and it was not uncommon for patrols to be stoned and spat at, almost always by children. Also, whenever patrols did appear, they generated large crowds. The majority of the population had access to weapons and whilst not generally carried openly it was not unusual to see members of the crowd carrying weapons and taking part in celebratory gunfire. There was always scope for large scale public unrest at very short notice. In Majarr Al Kabir, however, up until 24 Jun 03, this public unrest had never gone beyond stone throwing.*²

And further that:

*The threat to Coalition Forces (CF) operating in Maysan Province was dictated by a combination of Capability and Intent. There was widespread availability of weapons and clearly the Capability was extensive, however all the indications gleaned...indicated that the Intent to carry out a major attack on the CF operating in Maysan province was not there....Sensible precautions were taken, 2 vehicle moves, a minimum of two forms of communications and the carrying of helmets and Enhanced Combat Body Armour (ECBA), but beyond that there were no additional security arrangements in place.*³

11. As will be evident, it is not at all accepted as correct that “sensible precautions were taken.”
12. Maintenance of security in Maysan province was reliant upon good cooperation with local militia - an organisation named the Fawj Ad Dwaara (“Fawj”). The Fawj commanded the respect of the local population and it was agreed by 1 PARA that the Fawj would be registered and established in each urban area and were to conduct patrols jointly with UK forces.

Events leading up to 24 June 2003

¹ Board of Inquiry (BoI) report, page 6 para 23

² BoI page 3, para 12

³ BoI, page 4, para 14

13. There are a number of events which had a particular bearing on what was to transpire on 24 June 2003. As above, the local population possessed a considerable number of weapons. Most of the population had 2 or 3 small arms and there were also a considerable number of heavier weapons. In order to reduce the number of weapons a weapons amnesty was introduced. It was hugely unsuccessful and virtually no weapons were surrendered. As a result, it was decided that 1 PARA would commence house searches to remove heavier weaponry. Seven searches were conducted in Maysan province in the period 15 to 25 June 2003, none of which were in Majar-al-Kabir. The conduct of the searches caused considerable discontent amongst the local population, including in Majar-al-Kabir.
14. The stoning of patrols by the local population became more intense. On 21 June 2003 it was decided to place soldiers from 1 PARA in the Police station in Majar-al-Kabir for a few days in order to gain a better understanding of what was happening in the town and to better integrate British forces with the local community.
15. On 22 June 2003, a section of 12 soldiers from 1 PARA, referred to as "call-sign 20A," went to take up residence at the Majar-al-Kabir police station. Once call-sign 20A had been at the police station for 3 hours or so, a hostile crowd appeared which grew to approximately 300 people. The crowd began to stone the call-sign's vehicles and to break the windows of the police station. The call-sign fired warning shots above the crowd with little effect, although the soldier who did so was later rebuked on the basis that the crowd would not distinguish between lethal and non-lethal force. A soldier on the roof of the police station used an Iridium satellite phone to contact headquarters at CAN and request assistance from the "Quick Reaction Force." After a period, a Fawj leader was instrumental in dispersing the crowd. By the time the "Quick Reaction Force" arrived, the disturbance had ended.
16. The appropriate response to the incident was considered to be a meeting with the local Town Council to establish why the incident had occurred. On 23 June 2003, officers of 1 PARA met with the Town Council. The meeting did not progress well but it was clear that it was the searches that were the source of contention. It was decided to abandon the searches in order to compromise and reach an agreement. An agreement was reached with the Town Council but the content of that agreement transpired to be a matter of confusion. The British officers intended to agree that searches would cease but that patrols would continue. The reaction of the local population when patrols continued the following day tends to suggest that the Town Council and/or the local population may have believed that searches and patrols would cease. The agreement was reduced to writing but not without ambiguity. The version of the agreement viewed by the Bol refers only to searches and does not state that patrols would cease. However, it also states "...and there is no necessity that the Coalition and its different people be there..." which could clearly be construed as making reference to both patrols and searches.
17. Concurrent to the Town Council meeting, call-sign 20B patrolled Majar-al-Kabir and reported no unrest.

The events of 24 June 2003

18. On 24 June 2003, two call-signs of 1 PARA, call-signs 20A and 20B, left CAN at approximately 8:40am to patrol Majar-al-Kabir. Each call-sign consisted of 12 men. The call-signs carried a number of pieces of communication equipment which included the "Clansmen" radio. The Clansmen is an old radio system which was at the time in the process of being replaced. It was basically reliable but had severe limitations. In particular, buildings blocked the signal and it was useless in a residential area such as Majar-al-Kabir to the extent that it could not be used at all. The principle alternative means of communication was the Iridium satellite phone. This too had limitations in that it needed to be outside in order to gain contact with a satellite and, if the receiving Iridium phone was in use, the caller would be directed to a voice message system. It was, however, reasonably reliable and was able to be used in built-up areas such as Majar-al-Kabir. It was therefore a vital piece of communication equipment. Call-signs 20A and 20B carried the Iridium phone.
19. Call-sign 20A travelled in a large DAF 4 Tonne (akin to a small lorry) and call-sign 20B travelled in two Pinzgauers (a vehicle a little larger than a Land Rover). As for ammunition, each soldier carried a personal weapon which was an SA 80 A2 with approximately 150 rounds, a Minimi with 400 rounds, or a GPMG with 400 rounds. Two soldiers carried Federal Riot Guns with the capability of firing rubber bullets.
20. Approximately 30 minutes later, at 9:10am, Sergeant Hamilton-Jewell led C section, including Corporal Paul Long, out of CAN to Majar-al-Kabir with the intention of visiting the Police station to discuss the disturbance that had occurred two days previously. C section may have been aware that call-signs 20A and 20B had already left for Majar-al-Kabir to conduct patrols, but call-signs 20A and 20B were not aware that they were to be followed into Majar-al-Kabir by C section.
21. C section was equipped with the vehicle mounted version of the Clansmen radio. The section was not equipped with an Iridium satellite phone. Thus, once inside Majar-al-Kabir, they would have no means of contacting headquarters. Each soldier was armed but with less ammunition than call-signs 20A and 20B. Each carried the SA 80 A2 with approximately 50 rounds. Half of that amount could be fired by the weapons being carried in no more than a few seconds.
22. Call-signs 20A and 20B went directly to the Fawj building. From there, call-sign 20A proceeded on joint foot patrol with the Fawj. Call-sign 20B were to remain in the Fawj building to act as a "Quick Reaction Force." A short way into the patrol, call-sign 20A were approached by the Fawj leader in a 4x4 vehicle who warned the patrol that if it continued they would be shot at. It was decided that call-sign 20A would return to the Fawj building and a mounted patrol would be conducted by call-sign 20B in the Pinzgauers. No contact was made with the operating base at CAN to convey the warning. Accordingly, neither headquarters at CAN or C section were aware of the warning. Indeed, even if the warning had been relayed to headquarters, it would not have been possible to pass the information on to C section, who were equipped only with the Clansmen Radio.
23. A joint vehicle patrol with call-sign 20B and the Fawj left the Fawj building at approximately 10:10am. On entering the market area in the centre of Majar-al-Kabir a

crowd developed which closed in on the patrol. Stones were thrown at the patrol and one of the Pinzgauers' windows was broken. It was decided to dismount and walk the vehicles through the crowded streets. One of the crowd attacked a member of the Fawj and unsuccessfully attempted to remove his weapon. Soon after this, the Fawj extracted from the area. The stoning got heavier with members of call-sign 20B being hit. A soldier covering the rear of the patrol fired a baton round from his Federal Riot Gun with little effect. A second soldier went to the rear of the patrol and the two soldiers fired 6 or 7 baton rounds with limited effect.

24. A number of call-sign 20B decided to fire warning shots. Just after warning shots were fired, a gunman engaged call-sign 20B from a first floor window. Call-sign 20B returned fire and the contact escalated with a number of gunmen engaging call-sign 20B. A number of identified gunmen were hit. Call-sign 20B mounted their Pinzgauers and by driving aggressively were able to escape the market area. At 10:37, call-sign 20B sent a contact report to CAN. The call-sign could not extract at this stage and they continued to come under fire from small arms and Rocket Propelled Grenade launchers. At this stage, the two Pinzgauers were destroyed.
25. By this point, C section had reached the police station and were in discussion with the local police. It is likely that they would have been able to hear the sound of gunfire but, equipped only with the Clansmen radio, would have had no means of contacting operations headquarters at CAN to be informed as to what was happening.
26. At around 10:25am, call-sign 20A, who were waiting in the Fawj building, had heard the sound of gunfire and decided to enter the town in the DAF 4 Tonne to provide support. As they moved towards the gunfire, they saw call-sign 20B, by then extracting from the market area, speed across a crossroads. Call-sign 20A decided to follow. As they reached the crossroads call-sign 20A turned north but they came under fire and alighted from the vehicle. From here, call-sign 20A had direct sight at a distance of approximately 200 metres of the Police station perimeter at which C section were located. At the time, call-sign 20A were not aware of C section's presence at the police station and later gave evidence that they did not see any vehicles outside the police station.
27. The DAF 4 Tonne being used by call-sign 20A invariably failed to start with the type of fuel available. Members of call-sign 20A push started the vehicle, all of the call-sign mounted, and they were able to safely extract. Having extracted themselves, call-sign 20A spoke on the Iridium phone to both call-sign 20B and headquarters at CAN.
28. Commanders in charge of operations at the CAN headquarters deployed an "Air Reaction Force" to assist with the extraction of call-sign 20B. It was reported to commanders that there could be an RMP section based at the police station but that it could not be confirmed because the section may have travelled on to a different police station, as the section had intended to do. Attempts were made to contact C section without any success (as was inevitable given that they were equipped only with the Clansmen). The "Air Reaction Force" flew to Majar-al-Kabir in a Chinook helicopter. As the Chinook flew over Majar-al-Kabir, it sustained damage and 7 casualties from small

arms fire. The casualties included two serious head injuries and the pilot decided to return to CAN without landing.

29. At approximately 10:50am, a "Gazelle" helicopter was tasked to fly to Majar-al-Kabir to establish communications with call-sign 20B and relay communications back to CAN. Subsequently, a commander suggested that he also tasked the Gazelle to "have a look at the police station" or words to that effect but the Gazelle crew all stated that they were not tasked to look for RMP vehicles. After a period, and to allow the Gazelle to refuel, it was replaced by a second Gazelle at 12:40. All Gazelle crews stated subsequently that at no point were the RMP mentioned.
30. A further "Quick Reaction Force" in land vehicles was deployed from CAN at 10:58am and it arrived in Majar-al-Kabir at 11:38am. It set up an "Incident Control Point" on the outskirts of Majar-al-Kabir and was able to facilitate, under fire, the extraction of call-sign 20A.
31. Evidence as to what was happening throughout this time at the police station is primarily limited to evidence given by Iraqi witnesses to the subsequent Coroner's Inquest and Special Investigations Branch investigation. It appears that half an hour or so after C section arrived at the police station, the firing in the market place was heard. A number of C section went to the entrance of the police station and after a short while saw call-sign 20A disembark at the crossroads, before re-embarking and driving off. An armed crowd started to assemble. Sergeant Hamilton-Jewell ordered that the vehicles be taken into the compound of the police station, possibly to have access to the vehicle mounted Clansmen radio, possibly to preserve the vehicles, or possibly to make C section's presence less obvious. As above, C section would not have been able to contact either of the call-signs in Majar-al-Kabir or headquarters at CAN and they had limited ammunition. Sergeant Hamilton-Jewell asked the Iraqi police to contact a different police station in the hope that that police station could pass a message by landline telephone to the headquarters at CAN. That attempt to pass a message onto headquarters was not successful.
32. Shortly after, the crowd went into the police station and C section retreated into the store room. It was in, or near, that room that the men of C section were assaulted and shot. In a brief by the Special Investigation Branch of the RMP to the families of C section in January 2004, the following summary was given of the evidence of one Iraqi witness:

A witness who is not a policeman tells us that on the morning of 24th June he was in the market when he heard the sound of gunfire, combining a prolonged burst of automatic fire with a number of single shots. He decided to investigate and walked to the Sana district, where he met several locals who were lifting one of their number off the ground. On enquiring, he was informed the man had been shot dead by British troops after he had pointed a rifle at them.

The witness continued his journey and next stopped beside the Ba'ath party headquarters, which is at the top of the road where the police station is located. A crowd had gathered and a number of these were armed, two with RPG launchers. He has named both the men, who told him they had attacked the

police station and were now making their way to where further gunfire could be heard. Moving on to the police station he saw two British military vehicles parked inside the compound, one of which was burning. He saw numerous people firing through the front windows into the interior and again identified two of them, who were not the men he had earlier named. The crowd then began to gather at the main entrance to the building and he called on them to stop as he intended to go inside; which he did after ensuring a friend was in a position to observe what was happening. Why the crowd listened to him has never properly been explained, other than it was in respect for him as an older member of society.

Having entered the courtyard he saw a British soldier kneeling behind a low wall on the opposite side, pointing a rifle in his direction. Having made his intention known to the soldier he made his way around the inner perimeter of the building, passing him and arriving outside a room diagonally opposite the entrance. This he described as a bathroom/toilet, with an internal door to the right affording access to a larger storeroom. He describes how a British soldier lay dead immediately inside the bathroom doorway and another soldier stood inside the inner doorway. From photographs he has identified this standing man as Simon Hamilton-Jewell.

By this time the crowd had started to enter the courtyard so the witness moved over to the soldier he had initially seen and, shielding him from the crowd, walked him back to the complex of rooms. He has identified this man as Tom Keys. Following him into the inner storeroom he saw three further soldiers sitting against the left hand wall.

Returning to the courtyard he was approached by three men, two of whom he earlier identified as firing into the police station. ... One of the men told him to leave as they wished to kill the soldiers and he claims that for the next fifteen minutes he attempted to negotiate with the crowd, one of whom eventually pulled him away from the doorway. This exposed Simon Hamilton Jewell, who was still in the inner doorway, and he was shot several times by one of the three men the witness had named. These three and a fourth named person then entered the room. The witness left the police station at this point and whilst doing so heard sustained gunfire from within.

33. At some point after 11:38am, an Iraqi doctor in an Iraqi ambulance approached the Incident Control Point set up by the "Quick Reaction Force" and stated that there were British forces at the police station. At this stage, the "Quick Reaction Force" thought the men must be from call-sign 20B. The doctor offered to affect their release and this offer was accepted. The doctor left to return some minutes later to state that the British forces had been killed. This was reported back to headquarters at CAN at 12:40pm.
34. The Iraqi doctor returned to the Police station and returned at approximately 12:55pm with the bodies of three soldiers. At this stage, call-sign 20B had been safely extracted and those at the Incident Control Point realised that the dead soldiers must be RMP. This was the first confirmation of the presence of C section at the Police station that day. The doctor returned again to the Police station and at approximately 1:08pm he delivered the other three bodies.

Subsequent investigations into the circumstances

The Capewell Report

35. The Joint Headquarters published a report dated 8 July 2003 ("the Capewell Report"). The investigating commander, Colonel Capewell, was directed to seek to provide: (a) a clearer understanding of the context and circumstances of the incident; (b) a review of operational procedures within the 1PARA Tactical Area of Responsibility (TAOR); and, (c) key judgements and recommendations.
36. Colonel Capewell's conclusions absolve commanding officers of any responsibility. In particular, he concluded that there was no evident "operational complacency"; that the severity of the crowd's actions could not have been anticipated; that "the death toll could easily have been higher but for the superb handling of the company action that extricated the 1PARA patrol"; and, that "I do not believe that on balance the killings could reasonably have been prevented."
37. As for communications, Colonel Capewell concluded that "[o]n cursory examination it appears that the fate of the RMP patrol might have been mitigated if reliable communications were in place" but this "is not justifiable, the situation must be judged against the ferocity of the 1PARA action required to withdraw from the contact." An Iridium satellite phone would, he concluded, "have been of little use as they are ineffective within the confines of a building such as the Police station."
38. That conclusion is impossible to reconcile with the fact that 1 PARA were able to call on the "Quick Reaction Force" just two days previous to the deaths by using an Iridium phone from the roof of the very same Police station in which C section were killed.

Special Investigations Branch RMP investigation

39. Following the incident, the Special Investigations Branch (SIB) of the Royal Military Police (RMP) also commenced an investigation. On 22 January 2004, a briefing was given to the families.

The Land Accident Prevention and Investigation Team

40. The Land Accident Prevention and Investigation Team (LAIT) was tasked to investigate and it produced an 18 page report dated 12 March 2004. The aim of the report was "*to provide an accurate record of events leading up to the incident in order to assist a future Board of Inquiry.*" It relied on statements from the SIB investigation and "*personal discussions with key personnel.*" It was described as adding to the Capewell Report but subsidiary to the SIB investigation.
41. The initial terms of reference of the investigation included the identification of lessons learnt. However, the investigator subsequently explained to the Bol that lessons learnt originally included in the report were subsequently taken out. The report therefore explores questions of fact but makes no judgment or attribution of fault.

The Board of Inquiry

42. A Bol was convened by Order of Major General P A Wall PE General Officer Commanding 1 (UK) Armoured Division dated 15 March 2004. The Bol was ordered to investigate “*the circumstances surrounding*” the deaths. The Order stated (paragraph 2) that:

As the deaths are subject to an ongoing criminal investigation, the Inquiry will only investigate the circumstances up until the withdrawal of members of the Royal Military Police (RMP) into the police station in Al-Majarr Al Kabir on the 24th June 2003.

And (paragraph 5) that:

The Board is to investigate all the circumstances and record all evidence relevant to the Inquiry, save that the Board is not to attribute blame, negligence or recommend disciplinary action. In addition, the Inquiry is to express its opinion with regard to any material conflict in the evidence which may arise and give reasons for reaching that opinion.

43. The Bol was directed to report on a long list of matters divided into the following groups: a) the missions and tasks of [*inter alia*, 1 RMP]; b) the post active hostilities situation in Maysan Province (and specifically Al Majjar Al Kabir after 28th April 2003); c) 1 PARA BG operating methods/procedures; d) 156 Pro Coy RMP operating methods/procedures; e) events leading up to 24th June 2003; f) events on the 24th June 2003; g) training; h) rules of engagement; i) equipment issued to 1 PARA BG including the RMP detachment and CIMIC teams; j) communications; k) command and control; l) why did the incident happen?; m) could riot control agents have made a difference? n) could this incident have been prevented (either in whole or in part) and how?; o) any other issues which the President considers relevant.
44. The convening order required 123 military witnesses to attend the Inquiry. No members of the press or public were to be permitted to attend any part of the Inquiry unless otherwise directed (paragraph 11). No such directions were made. The President of the Bol was Colonel M G Hickson OBE Late RLC and he was assisted by three other members of the armed forces.
45. Major General Wall, who convened the Bol, also gave evidence to it in relation to issues such as the assessment of threat to British forces and the weapons searches undertaken by 1 PARA. It was noted in the “*Comments on the conduct of the Board of Inquiry*” that it was “*unusual for the Convening Officer...to have appeared as a witness*” but it was “*clear he was able to do so without any conflict of interest and it in no way undermines the integrity of the Board’s findings.*”
46. The Bol completed its task on 18 June 2004. It made findings as directed by the convening order and made 12 recommendations.
47. The Bol concluded (keeping in mind that it was directed not to attribute blame), that “In the round, the Board found that although there were a number of events that may have

had a bearing on the deaths of the 6 soldiers, it is impossible to state categorically that their fate would have been different if they had carried more ammunition or if communications had been better.” One assumes that the Bol chose the phrase “impossible to state categorically” carefully. The phrase means that it cannot be stated with certainty. To say that it cannot be stated with certainty, is not to say that a different fate was not possible, probable, or even highly likely.

48. The Bol was not uncritical. In particular, among its conclusions were:

The Board has concerns over the briefing, booking out and coordination and control of all RMP C/Ss, less A Sect, which was based at the Stadium. Briefings were ad hoc, booking out was poorly controlled and uncoordinated and once on the ground the patrols rarely updated the Ops Room on progress. The relative inexperience of the RMP P1 Comd resulted in the RMP Sects being able to operate independent of the [battle group] controls. The Sects often failed to book out with the PARA Coy desk in whose [area of responsibility] they were operating in and they rarely, if ever, had an Iridium phone. They had limited intelligence updates. They believed, in the Board's view, rightly, that they were not being supported by their RMP P1 hierarchy and when they raised issues these were not taken seriously or actioned. The Board however notes that the Military Police Officers Course has very little emphasis on P1 Comds skills, infantry operations and particularly command of an independent detachment.⁴ (emphasis added)

And:

[The platoon] were only reissued with approximately 50 rounds per person. The Board is of the opinion that even though Maysan Province was deemed to be benign, the issuing of only 50 rounds was insufficient, due to the size of the [Area of Responsibility] and the time it would take to deploy a [Quick Reaction Force]. Certainly the RMP Sect members felt that they were under resourced. Ammunition was available in 1 PARA BG, however, the RMP P1 hierarchy never asked for more. The 1 PARA personnel carried approximately 150 rounds per person. The Board feels this was a much more appropriate scaling.⁵ (emphasis added)

49. It addressed the possible options to assist C section as follows:

It was not until the RMP bodies had been brought out of the town that the [Battle Group Operations Room] or any member of the [Battle Group] on the ground knew for definite that there were RMP in Al-Majarr Al Kabir on 24 June 2003. There was always a possibility that the RMP had moved on and until the [battle group operations room] knew for definite, they concentrated on the contact involving C/Ss 20A and 20B. If the RMP C/Ss at the Police Station had been equipped with an Iridium phone, as per the 1 PARA BG Op [Order], then they may have phoned the [Battle Group Operations Room] when the initial contact in

⁴ Bol, page 30, para 109(h)

⁵ Bol, page 31, para 109(o)

the town took place. This would have given them some situational awareness and it may have enabled them to make a decision to extract or to call for assistance. There was never an intention to issue the RMP, or any PARA patrols, with Thuriaya or TACSAT, however again, if they had those communications assets available to them then again they may have become more situationally aware and they may have taken different actions. Had the Gazelle crew been tasked to positively confirm that the RMP vehicles were at the Police Station, and they had been able to see them, then the [Battle Group Operations Room] would have been in a position to take a different course of action. They may have chosen to deploy the [Air Reaction Force] to the area of the Police Station; they may have tried to get C/S 20A or C/S 20B to try and reach the Police Station; however, the confirmation that the RMP were definitely at the Police Station was never received and therefore these options were not considered by the [Battle Group Operations Room] staff. If C/S 20A or 20B had known that there were RMP in the town they may have changed how they extracted from their contracts, however they were not aware and therefore again these options were not considered. The Board has no record of any communications emanating from the RMP at the Police Station requesting assistance.⁶

50. As to whether the deaths could have been prevented or avoided, it said:

With the benefit of hindsight it is easy to state that this incident could have been prevented/avoided:

- 1) There was a requirement for the RMP to visit the Police Station, they could however have been accompanied by PARA C/Ss had the threat indicated that this was required. It did not.*
- 2) There was no all informed communications network available. The RMP should therefore have had an Iridium phone. This would have allowed the [Battle Group Operations Room] to know that they were in the town and would have resulted in different actions being taken by the [Battle Group Operations Room], which may have allowed the RMP to extract. The [Battle Group Operations Room] could have tasked the [Air Reaction Force] differently, and even though it would have been difficult, they could have tasked C/S 20A or C/S 20B to try and reach the Police Station.*
- 3) The RMP C/Ss should have had more ammunition and this may have resulted in them deciding a different course of action at the Police Station, particularly if they knew that reinforcements were imminent.⁷*

51. On 9th February 2005 the Director Personal Services (Army) wrote to the families conveying the outcome of consideration, following the Bol's conclusions, of whether individuals "should receive some form of internal sanction or censure, under

⁶ Bol, Page 25, para 103

⁷ Bol, page 35, para 109(II)

administrative procedures.” It was indicated that an unnamed “senior officer” had considered the Bol report and concluded that:

...the actions of the individuals under investigation did not directly cause the deaths of your son and comrades. In his opinion administrative sanction was not therefore appropriate in relation to two of the individuals concerned. He did, however, conclude that the chain of command should give further consideration to the possibility that another two individuals should face some form of administrative sanction. These opinions were reviewed with great care by the chain of command, who decided not to accept the recommendation that these two individuals should be investigated further.

It was also said that:

These are not straightforward matters and the judgements that have been arrived at were by no means easy ones. We have accepted following Col Hickson’s work, that there was a number of factors that contributed cumulatively to the creation of circumstances in which the deaths occurred. Some of these factors were associated with local systemic weaknesses in Army procedures as applied by individuals on the ground. We have acknowledged these failings and we are taking positive action to rectify them through the Board of Inquiry recommendations.

No disciplinary or administrative action was therefore taken by the Army against any commanding officer.

Coroner’s Inquest

52. An inquest was opened in 2004. The families of the 6 RMP were represented throughout the Inquest process by solicitor John Mackenzie. By letter of 14 September 2004, the Coroner wrote to Mr. Mackenzie and said: *“It is not clear to me that the European Convention on Human Rights has any application to deaths that occurred outside jurisdiction but in the light of recent judgments from the House of Lords, I do not think there would be significant difference in the inquest procedure whether or not the Convention applied.”*

53. By letter of 21 December 2004 the Coroner stated:

I agree that the Mousa case has no relevance in determining whether or not the Inquest will be concluded since that will happen in any event. ... It is, however, very relevant in determining whether or not the Human Rights Act is engaged. This is important because this has a considerable bearing on the scope of the Inquest and it is likely that the same problem will arise in relation to a substantial number of the Iraq inquests.

54. Mr. Mackenzie made arguments to the effect that Article 2 of the Convention was engaged. At the outset of the Inquest it was indicated by the Coroner that “This is not an Article 2 hearing.”⁸

⁸ This wording is taken from the letter of Mr. Mackenzie dated 6 April 2006.

55. The Coroner opened his narrative (dated 31 March 2006) with the following:

In a non-jury case such as this, there is no obligation on the Coroner to sum up the evidence. However, it is customary for him to indicate any areas that are of particular concern to him and at least in broad terms the evidence that led him to his conclusions, which are set out in the Inquisition. If he intends to apply the provisions of Rule 43, then he may mention the matters that he proposes to raise.

Although the Coroner sets the bounds of evidence he wishes to hear, or in the words of Section 11(2) "All persons having knowledge of those facts whom he considers it expedient to examine", valuable guidance is given by the 14th general principle from Jamieson, which I read out at the beginning of these proceedings.

I announced on Tuesday that my short form verdict in each case would be that he was killed unlawfully. Even if it was evident, which in this case it is not, Rule 42 would prohibit me from naming any culprit or culprits.

The suggested form of Inquisition set out in the Appendix to the Rules, provides for the short form verdict that I have reached. Section 11(5)(b) of the Act sets out the particulars required and include "How, when and where the deceased came by his death." The meaning of "how" is further explored in Jamieson and other cases, and in a non-Article 2 Inquest does not have the extended meaning given in Middleton; I must also pay proper regard to Rules 36 and 42, although in the unlikely event of a clash between the Rules and the Statute, the Statute must prevail. A Coroner's Court is therefore a Court of Inquiry, not of trial, charged with ascertaining certain facts and the Coroner's conclusion as set out in the Inquisition, which must be findings of fact, not expressions of opinion.

56. On the issue of communications, this was said:

What they [C section] did not have was an Iridium telephone. I am clear that Colonel Beckett had ordered that all patrols were to be equipped with them. Clearly, a person commanding some 1,500 troops cannot personally ensure that his orders are meticulously obeyed, such an order would be passed down the chain of command, but I think that at some point there is need for one of the links to be pro-active rather than reactive and ensure there has been compliance with order. It is not for me to identify the particular link, but it is a matter which I shall cover in the Rule 43 letter.

57. And in concluding it was said:

I would end by conveying my deepest sympathies to the families, friends and comrades of these 6 brave men. It is easy to say that the risk of death goes along with being soldier, but if a life should be lost in circumstances such as this is an entirely different matter and one which it is not proper for a Coroner to explore. (emphasis added)

58. By letter of 13 April 2006, the Coroner wrote to the Secretary of State for Defence indicating his intention to send a report under Coroners' Rule 43, the purpose of which "is to prevent a recurrence of similar fatalities, and so the question as to what extent the matters raised were applicable to the Inquest in question is not wholly relevant." The main body of that letter is repeated below:

The points I would wish to raise are:

1. *Scales of Ammunition – The Royal Military Police were issued with 50 rounds each. I was told that they could have had more if they had asked. However, I wonder if this is the point, should not their Superior have considered how much they should have and, having done so, made sure they had it?*
2. *Vehicles – Number One Para. were using a 4 tonne lorry and was told that at one point it had to be push-started. What shocked me was not that this had to be done – nearly all vehicles breakdown occasionally – but that nobody seemed to be surprised that it happened. It is very easy to see a situation where some users could be wounded and the remainder would have insufficient strength to push-start a vehicle. A fleet of reliable vehicles does not seem to be too much to ask for.*
3. *Communication – Nearly every witness told me that the Clansman was almost useless in the Iraq conditions. I was told that its replacement Bowman is much more capable, although it was not issued in 2003, it is now apparently becoming available. The use of an Iridium phone might have dealt with some of the Clansman deficiencies and Colonel Beckett had issued a clear order that all patrols should be equipped with it. Although supplies were not abundant, I was told that the Royal Military Police could have had one. Clearly, they did not and there may be some conflict as to how persistent they were in requesting it. It appears to me that, not only should they have had an Iridium phone, but that there is a responsibility in the chain of command to check that they have it and, if necessary, prevent them going on patrol without one.*

So far as the prevention aspect is concerned, British troops are active in many areas but I have in mind particularly those in Afghanistan, where communication problems may be even greater than in Iraq; I consider it important that not only is the best equipment available, but that it is issued to properly trained soldiers who should then use it.

*It is clear that the Royal Military Police were not in the habit of reporting in whilst on patrol and the reason may at least in part have been inability to do so.
(emphasis added)*

59. The Secretary of State replied by letter of 1 June 2006 seeking to reassure the Coroner that the matters raised had been addressed further to the Bol.

Consideration by the Metropolitan Police

60. Three parents of the 6 RMP (Mr. Miller, Mr. Keys, and Mr. Aston) met with Dave Johnston of the Metropolitan Police Service (MPS) on 12 October 2006, in order to explore whether they may obtain accountability through the MPS. Following that meeting, Dave Johnston wrote to the Attorney General explaining that it was not a matter to which MPS resources could be directed but that alternative remedies may be pursued through the military and the Attorney General. He framed the issue as follows:

The second area of concern relates to what the families perceive as gross neglect by the officers and senior NCOs in charge of their sons by failing to ensure that the soldiers were properly equipped with ammunition and satellite phones on that fateful day. They also point to abject failure by those in direct command, to comply with existing standing orders regarding the issue of this equipment and the failure to properly monitor the movements of these men to ensure their safety, as being significant failures which were preventable and ultimately led to the deaths of their sons.

It is on the second area that I direct my letter to you. There have been several internal military enquiries into these matters and I am not privy to the detailed findings of these enquiries. However, the families point to the coroner's inquest and board of inquiry, both of which appear to identify failings in compliance with standing orders and issue of equipment. The families would maintain that neither of these inquiring bodies had the terms of reference to identify or apportion blame and to my knowledge that is certainly the case for coroner's inquests. Given this restriction, the families clearly feel that justice is not being done and that despite clear factual evidence of failures in command, no individual is being held to account through a military courts martial.

I would therefore respectfully ask, that you consider meeting with the three fathers to discuss these matters in more detail and to consider whether your powers in such military matters should or could direct further investigation or charges under military law. I have enclosed under separate cover, details of the three fathers.

61. In response, and by letter of 21 November 2006, the Attorney General indicated that it was the Secretary of State for Defence that has the ministerial responsibility for military matters, including investigation by military authorities. The Attorney General does have superintendence of the Army Prosecuting Authority, but the Authority had received no papers from the military police to consider the incident. That is important: consideration of blame has been held within the army chain of command.

The Monro Review

62. Unsatisfied with the lack of any accountability for the circumstances leading to the six deaths, relatives of the men met with Lieutenant General Sir Freddie Viggers on 23 February 2007 to present a case, including a written submission, that further investigation was necessary. Further to that meeting, Brigadier Monro was tasked to review the case. His terms of reference were "To examine the materials produced by

the Miller and Keys Families concerning the deaths of the 6 RMP servicemen at Al Majarr Al Kabir (MAK) on 24 June 2003 and the subsequent investigative actions, in order to establish whether those materials presented to the Adjutant General contain new evidence that merits further investigation or other actions.”

63. In his letter to Lt. Gen Viggers dated 25 September 2007, he stated: “My remit has not been to run another Inquiry but to determine whether there should be another Inquiry on the basis that there is new evidence to justify further investigation. I have concluded that whilst there are a number of concerns and conundrums not answered (perhaps inevitable in a case of such complexity), there is no such evidence.” That conclusion was communicated to the families by Lt. Gen. Viggers by letter of 12 October 2007. In that letter, it was also stated that: “Brigadier Monro has recommended that I should satisfy myself that the appropriate administrative and legal processes that followed the Army’s Board of Inquiry were properly carried out. These processes are the responsibility of the chain of command and I have therefore invited the Commander in Chief Headquarters LAND to review them.”

Application to the European Court of Human Rights

64. On 31 August 2008, and with Mr. Mackenzie continuing to act, an application was lodged with the European Court of Human Rights (ECtHR) (Application No. 16919/08). The application was made with concern on behalf of Mr. Mackenzie that the application would be vulnerable to being declared inadmissible on the basis of non-exhaustion of domestic remedies. However, it was considered that seeking judicial review in the domestic courts would be too expensive and was not a viable option. By letter of 23 March 2010, the ECtHR conveyed the decision to declare the application inadmissible on the basis of a failure to exhaust domestic remedies.

Consideration by the Minister for the Armed Forces

65. In 2010, John Miller, father of Corporal Simon Miller, made a request to Nick Harvey MP (Minister for the Armed Forces) that the circumstances of the deaths be reviewed. That review is currently underway. The latest correspondence is an email from Headquarters Land Forces of 27 October 2011 indicating that “the analysis by officials is still underway” but Nick Harvey MP expected to be able to respond in the New Year, if not before. It was explained that, “In terms of how the review is being conducted, I can confirm that officials are checking through the material that was provided to the BOI and as part of the RMP SIB investigation, as well as searching for and checking any other material they feel may be relevant. This has been an extensive exercise and has involved 1-3 officials working on the exercise, although others have of course been contacted particularly in terms of tracing and retrieving documents.”

66. The outcome of that review is awaited.

The Grounds of Challenge

The Law

Article 1 jurisdiction

67. Article 1 of the European Convention on Human Rights (ECHR) states that:

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

The rights and obligations arising out of Article 2 apply in this instance only if the death of the 6 RMP occurred with the jurisdiction of the UK for the purpose of Article 1. Jurisdiction is “essentially territorial.”

68. The leading authority on the limits of Article 1 jurisdiction is now the judgment of the Grand Chamber in *Al-Skeini v United Kingdom* (Application No 5572/07), 7 July 2011. That authority is of particular relevance here because the Grand Chamber considered the jurisdictional limits of the UK in Iraq, including during the period of Coalition occupation. It held that where Iraqi civilians had died in the course of security operations conducted by UK forces, there was a jurisdictional link for the purpose of Article 1. It follows that where a member of the UK forces dies during the same period and in the course of a security operation conducted by UK forces, there is a jurisdictional link for the purpose of Article 1.

Article 2: the duty of effective protection

69. Article 2 of the ECHR provides:

Everyone's right to life shall be protected by Law...

The right has been interpreted to impose positive obligations on the State to take steps to prevent the loss of life. The effect of the case law was summarised by the House of Lords in *R (Middleton) v West Somerset Coroner* [2004] UKHL 10 as follows (para 2):

The European Court of Human Rights has repeatedly interpreted article 2 of the European Convention as imposing on member states substantive obligations not to take life without justification and also to establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life.

70. In *McCann and others v the UK* (Application no. 18984/91) the European Court of Human Rights (ECtHR) said:

150. In keeping with the importance of this provision (art. 2) in a democratic society, the Court must, in making its assessment, subject deprivations of life to the most careful scrutiny, particularly where deliberate lethal force is used, taking into consideration not only the actions of the agents of the State who actually administer the force but also all the surrounding circumstances including such matters as the planning and control of the actions under examination.

71. As an example of a breach of the positive obligation in the context of armed conflict, the ECtHR in *Isayeva v Russia* (Application No 57950/00) criticized the Russian military's failure to adequately anticipate the arrival of Chechnyan fighters, the absence of any

preemptive measures to warn or evacuate the populace, the failure to accurately quantify the operational risk of deploying aircraft armed with heavy combat weapons, and the decision to utilize what the ECtHR regarded to be disproportionate and indiscriminate weaponry.

Article 2: the duty of adequate investigation

72. Where there is an arguable breach of Article 2, the State is required to instigate an investigation into the circumstances. The case law sets out certain minimum requirements necessary for the investigation to comply with the State's obligations under Article 2. In particular, (1) it must be effective, which includes taking the necessary steps to secure evidence, investigating with sufficient promptitude, and being capable of ensuring accountability for State agents or bodies for deaths occurring under their responsibility; (2) it must have a sufficient element of public scrutiny of the investigation or its results; (3) it must be conducted by a body independent both hierarchically and practically of those being investigated; and (4) the relatives of the deceased must be able to play an appropriate part. For authority, see, for example, *McCann v United Kingdom* (1995) 21 EHRR 97, *Jordan v United Kingdom* (2003) 37 EHRR 52 and *R (Smith) v Secretary of State for Defence* [2010] UKSC 29 at [64].

Inquests: the legal framework

73. The legal framework at the time of the Inquest in this case was to be found in the Coroners Act 1988 and the Coroners Rules 1984, subject to the guidance given by the Courts in *R v Coroner for North Humberside and Scunthorpe, ex p Jamieson* [1995] QB 1 and *R (Middleton) v West Somerset Coroner* [2004] UKHL 10.
74. The Coroners Rules 1984 provided:

36 (1) The proceedings and evidence at an inquest shall be directed solely to ascertaining the following matters, namely- (a) who the deceased was; (b) how, when and where the deceased came by his death; (c) the particulars for the time being required by the Registration Acts to be registered concerning the death.
(2) Neither the coroner nor the jury shall express any opinion on any other matters."

40. No person shall be allowed to address the coroner or the jury as to the facts.

41. Where the coroner sits with a jury, he shall sum up the evidence to the jury and direct them as to the law before they consider their verdict and shall draw their attention to rules 36(2) and 42.

42. No verdict shall be framed in such a way as to appear to determine any question of— (a) criminal liability on the part of a named person, or (b) civil liability.

43. A coroner who believes that action should be taken to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held may announce at the inquest that he is reporting the matter in writing to the person or

authority who may have power to take such action and he may report the matter accordingly.

75. In *Jamieson*, the Court of Appeal set down the following guidance for implementation of the Coroner Rules. In particular:

(1) An inquest is a fact-finding inquiry conducted by a coroner, with or without a jury, to establish reliable answers to four important but limited factual questions. The first of these relates to the identity of the deceased, the second to the place of his death, the third to the time of death. In most cases these questions are not hard to answer but in a minority of cases the answer may be problematical. The fourth question, and that to which evidence and inquiry are most often and most closely directed, relates to how the deceased came by his death. Rule 36 requires that the proceedings and evidence shall be directed solely to ascertaining these matters and forbids any expression of opinion on any other matter.

(2) Both in section 11(5)(b)(ii) of the 1988 Act and in rule 36(1)(b) of the 1984 Rules, 'how' is to be understood as meaning 'by what means.' It is noteworthy that the task is not to ascertain how the deceased died, which might raise general and far-reaching issues, but 'how ... the deceased came by his death,' a more limited question directed to the means by which the deceased came by his death.

(3) It is not the function of a coroner or his jury to determine, or appear to determine, any question of criminal or civil liability, to apportion guilt or attribute blame. (emphasis added)

76. In *Middleton*, it was explained that something different was required when the death in question engaged Article 2. Lord Bingham explained how the rules were to be interpreted to comply with Article 2:

35. Only one change is in our opinion needed: to interpret 'how' in section 11(5)(b)(ii) of the Act and rule 36(1)(b) of the Rules in the broader sense previously rejected, namely as meaning not simply 'by what means' but 'by what means and in what circumstances'.

36. This will not require a change of approach in some cases, where a traditional short form verdict will be quite satisfactory, but it will call for a change of approach in others (paras 30–31 above). In the latter class of case it must be for the coroner, in the exercise of his discretion, to decide how best, in the particular case, to elicit the jury's conclusion on the central issue or issues.

The interpretive change was enshrined in statute by the Coroners and Justice Act 2009 (see section 5).

R (Smith) v Secretary of State for Defence [2010] UKSC 29

77. *Smith* is a particularly helpful decision of the Supreme Court in that it considers the extent to which Article 2 requires an investigation to be held whenever a member of the armed services dies on active service and the extent to which an Inquest (whether a

Jamieson or *Middleton* type inquest) is capable of discharging the investigative duty that arises. The case concerned *Private Smith* who died of heatstroke on a British military base in Iraq.

78. Their Lordships were not unanimous but there are a number of points of note. As per Lord Philips:

- (1) An inquest will not be the appropriate vehicle for all inquiries into State responsibility for loss of life ([81]): “An inquest can properly conclude that a soldier died because a flack jacket was pierced by a sniper's bullet. It does not seem to me, however, that it would be a satisfactory tribunal for investigating whether more effective flack jackets could and should have been supplied by the Ministry of Defence. If the article 2 obligation extends to considering the competence with which military manoeuvres have been executed, a coroner's inquest cannot be the appropriate medium for the inquiry.”
- (2) At [86] “It will often be only in the course of the inquest that it will become apparent that there is an issue as to whether there has been a breach by the State of its positive article 2 obligations. Only at that stage will it be appreciated that the exercise that is in progress is one called for by article 2 and one that must, if possible, satisfy the requirements of that article. Whether the inquest will be the appropriate medium to do this will depend on the nature of the obligation that is alleged to have been broken.”
- (3) In the case of *Private Smith*, it was necessary to satisfy the procedural requirements of article 2 “because the evidence that was placed before the coroner has raised the possibility that there was a failure in the system that should have been in place to protect soldiers from the risk posed by the extreme temperatures in which they had to serve. On the facts disclosed it was arguable that there was a breach of the State's substantive obligations under article 2.” ([87])

79. Lady Hale agreed that the death of a serviceman does not automatically require an Article 2 compliant investigation. As to when such an investigation *is* required, she explained (at [105]) that, “one must not overlook the fact that there have been many cases where the death of service personnel indicates a systemic or operational failing on the part of the State. These may range from a failure to provide them with the equipment which is needed to protect life to mistakes made in the way they were deployed due to bad planning or inadequate appreciation of the risks that had to be faced. These are cases where the investigator should, as article 2 requires, take all reasonable steps to secure the evidence relating to the incident, to find out, if possible, what caused the death, and to identify the defects in the system which brought it about and any other factors that may be relevant: see *R (Middleton) v West Somerset Coroner* [2004] 2 AC 182 , para 36.” The line between those cases that do and do not require an article 2 compliant investigation ought to be held “at cases where there are grounds for thinking that there was a failure by the state in fulfilling its responsibility to protect life and not extending it to cases which, although involving the element of compulsion that is inherent in service life, are truly outside that category” ([107]).

80. Lord Rodger agreed that the death of a serviceman would not automatically engage Article 2 but that it will do so where there is “reason to believe that the military authorities may indeed have failed in their article 2 duty to protect the soldier’s life” (at [126]). His lordship stressed that “political aspects” would not be properly within a Coroner’s remit.
81. Lord Brown agreed with Lord Philips that “an inquest will not always be the appropriate vehicle for discharging an article 2 investigatory obligation” ([151]). His Lordship also agreed with Lord Philips that “in practice the only real difference between a *Jamieson* inquest and a *Middleton* inquest is likely to be with regard to its verdict and findings, rather than inquisitorial scope” ([152]). Verdicts and findings are not a matter for the Coroner which are “severely circumscribed when an inquest is confined to ascertaining ‘by what means’ the deceased came by his death (a *Jamieson* inquest); not so where the inquest is to fulfil the article 2 investigatory obligation when it must also ascertain ‘in what circumstances’ the deceased came by his death...an article 2 obligation will require the coroner or jury to state conclusions upon the important underlying issues in a way that plainly goes far beyond the sort of restricted verdict available in a *Jamieson* inquest and in such cases a *Middleton* inquest is required” although, even then, the verdict must be conclusions of fact rather than expressions of opinion ([153]).
82. Lord Mance was of the view that an Article 2 compliant inquest was required because “the sequence of events set out in Mrs Smith’s case ... are suggestive of systematic rather than simply operational errors and persuade me that there is here a sufficient case of State responsibility for Private Smith’s death for us to be able to rule now that the fresh inquest should be of the *Middleton* type” ([218]).

The inadequacy of investigations thus far

83. The first point is that the circumstances in which Corporal Paul Long and his colleagues were killed place an obligation on the UK to conduct an investigation compliant with the requirements of Article 2. It is trite that servicemen face danger and there will be circumstances in which servicemen lose their lives in the course of action. However, as was made clear in *Smith*, there are circumstances in which the death of a serviceman will necessitate an Article 2 inquiry. The circumstances of the deaths in this case reveal obvious defects in the systems which ought reasonably be expected to be in place to protect the lives of British soldiers. For that, one needs look no further than the army’s own Bol which, although directed not to attribute blame, nevertheless found that C section’s peers rightly believed that they were not supported by the RMP platoon hierarchy, and that C section ought to have been equipped with an Iridium phone and ought to have had more ammunition.
84. The second point is that none of the investigations or inquiries conducted to date can be said to have discharged the investigative duty that arises under Article 2. There have been a number of internal inquiries including the Capewell Report, the SIB investigation, the Bol, the Land Accident Prevention and Investigation Team report, and the Monro Review. None of these investigations are independent. That is fatal in terms of compliance with Article 2. The most significant investigation has been the Bol. In addition to the Bol’s fundamental problem of independence, it cannot be said to be effective given the limitation of the convening Order that the Bol was “not to attribute

blame, negligence or recommend disciplinary action.” It also failed to provide involvement for the relatives save that they were to receive a copy of the report.

85. That leaves the Inquest which the Coroner made clear was a *Jamieson* inquest; that is, an inquest which does not, and is not intended to, comply with Article 2.
86. Neither can it be said that the investigations in combination discharge the Article 2 duty. The shortcomings of the Inquest, which was severely constrained as to the findings that it could make as to the circumstances surrounding the deaths, cannot be remedied by a Bol which was expressly directed not to attribute blame.
87. The third point is that there is a real need for an Article 2 inquiry. At present, Mrs Long feels a strong sense of injustice; that the questions she has about her son's death have not been properly answered and that, importantly, the lack of any accountability for the situation in which her son was placed does not do justice for her son. When one considers the circumstances of the death and the criticisms of the Bol which was directed not to attribute blame, that sense of injustice can be readily understood.
88. The investigations conducted thus far get close to the issues but do not properly address them. The Coroner, for example, had clear concerns as to the circumstances of the deaths. That much is revealed in the fact that he felt the need to make recommendations under Rule 43 to the Secretary of State. But that is the problem. The Coroner could see the failings but he could make no ruling on them; he was limited to writing a letter with recommendations to the Secretary of State. The Coroner noted that there was an order from Colonel Beckett requiring patrols to be equipped with a mobile phone; that Colonel Beckett probably could not be personally responsible for ensuring that the order is adhered to; that there must be a point in the chain of command which does, or ought to, ensure that the order is adhered to; but, that it is not for the Coroner to identify the particular link that ought to have ensured compliance. Article 2 requires that link to be identified, but it has not been. As for ammunition, the Coroner made a point in his rule 43 letter which was not so much a recommendation as a pointed criticism towards failures in the RMP chain of command. He asked: “should not [the RMP's] superior have considered how much [ammunition] they should have and, having done so, made sure they had it?” The Secretary of State's response to the letter, that the matter has been dealt with by the Bol, does not answer the question at all. The Bol could not answer the question because it was directed not to attribute blame.
89. Given the type of Inquest the Coroner made no summing up, and touched on the issues only in very brief terms in his narrative. As above, the Coroner felt the need, in concluding, to make the point that “[i]t is easy to say that the risk of death goes along with being soldier, but if a life should be lost in circumstances such as this is an entirely different matter and one which it is not proper for a Coroner to explore.” He was surely correct.
90. The Bol approved of many of the actions and decisions taken relevant to the deaths but was severely critical of others. As above, the Bol considered that other members of C section's platoon were right to feel that they were not supported by the Platoon hierarchy, that C section ought to have had an Iridium phone, and that C section should not have been sent on operations with so little ammunition. These criticisms do not ease

concerns about whether the failings have been examined and brought to light; they exacerbate concerns because they are the criticisms of a tribunal severely constrained by the direction not to attribute blame. What would a tribunal say if it did have the competency to attribute blame? It is telling that the Bol identifies these failings but does not go further. What were these failings? Who in the hierarchy was failing? Who is ultimately responsible for these failings? Whose failings in the hierarchy led to C section routinely operating without an Iridium phone or indeed any means of contacting headquarters to seek assistance? Which failings played a role in the death of Corporal Long and his colleagues? What has already been done to rectify these failings? And what else needs to be done? It cannot be suggested that these questions have been answered to an appropriately full extent by the Bol or the Inquest.

91. In short, an Article 2 compliant investigation is required.

92. As to the form of a future investigation, that is a matter for the Secretary of State, providing that it complies with the minimum requirements. We make the following observations as to the appropriate form:

- a. Independence is a requirement of law. In these circumstances, it is particularly important that the investigation is completely separate from and independent of the Ministry of Defence.
- b. It is extremely doubtful whether a fresh Middleton type inquest would be the appropriate forum. We point, in particular, to the points made by their Lordships in the *Smith* case to the effect that inquests are unlikely to be the appropriate forum where it is necessary to look at wider circumstances surrounding a death. To use the analogy of Lord Philips, this is not a case in which an answer is needed to a narrow question such as whether the soldier was killed by a sniper's bullet piercing a flak jacket. Answers are needed to broader questions, akin to whether more effective flak jackets could and should have been supplied by the Ministry of Defence.
- c. It will be necessary for those families who wish to participate, in the sense of being able to hear the evidence and to make submissions on the evidence, to be given an opportunity to do so.
- d. The terms of reference must be sufficiently broad to include the issues regarding the adequacy of the planning for operations, including the provision of equipment.
- e. The terms of reference must enable the inquiry to provide accountability, either in terms of having the capacity to attribute blame where appropriate, or in terms of being able to make factual findings with the intention of facilitating other mechanisms of accountability.

93. It is also pointed out that a further inquiry would not be starting from scratch. An inquiry would be able to rely on much of the evidence gathering completed by previous investigations. Indeed, one would think that previous statements closer in time to the events themselves would be the most reliable. The inquiry would have to consider the

evidence again with appropriate powers and terms of reference, conducting further investigation where necessary.

Damages

94. Mrs. Long will be seeking just satisfaction for breaches of the Article 2 procedural duty. She reserves the right, depending on what investigation now takes place and the outcome of such investigation, to seek just satisfaction for substantive breach of Article 2 and damages.

Action Required

95. It is recognised that there is a long history involved, that there is no immediate need for urgency, and that some time may be needed to consider a response to this letter. We request that a response is provided within 28 days and by 10 February 2012.

96. We look forward to hearing from you.

Yours faithfully,

Public Interest Lawyers

cc: the Treasury Solicitor