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The conduct of Lord Richards of Herstmonceux

REPORT FROM THE COMMISSIONER FOR STANDARDS

Summary of the complaint and investigation

1. I received a complaint dated 29 November 2016 from Anthony Heaford about General Lord Richards of Herstmonceux.¹ The complaint related to Lord Richards' speech in the House of Lords on 24 November 2016 in a debate about legal claims against the Ministry of Defence and UK armed forces personnel.² In his speech Lord Richards advocated the retrospective disapplication of the European Convention on Human Rights for members of Her Majesty's armed forces who served in Iraq and Afghanistan.
2. The complainant stated that Lord Richards had been named in allegations which were under investigation by the Royal Military Police and the Operation Northmoor team. The allegations apparently concerned the purchase of military equipment and other crimes allegedly committed in 2012 during the military campaign in Helmand, Afghanistan, under Lord Richards' command. He was Chief of the Defence Staff at the time. The complainant enclosed a copy of his allegations. He argued that the allegations created a conflict of interests with Lord Richards' speech advocating retrospective removal of legal liability.
3. I carried out a preliminary assessment of the complaint. I decided that the specific matters covered in the complainant's letter and the supporting document did not warrant investigation because they did not demonstrate a *prima facie* case that the House of Lords Code of Conduct had been breached. I do not cover the allegations in the complaint further in this report.
4. However, the complaint prompted a related question of whether Lord Richards should have declared an interest in relation to the part of his speech with which the complaint was concerned. I decided that it would be appropriate for me to investigate this matter. I therefore wrote to Lord Richards on 8 December 2016 seeking his response to this issue.³ He responded on 16 December 2016.⁴ I wrote further to Lord Richards on 13 January 2017,⁵ following which he wrote to the chairman of the Sub-Committee on Lords' Conduct, Lord Brown of Eaton-under-Heywood, on 16 January 2017.⁶

Key facts and Lord Richards' response

5. Paragraph 10(b) of the Code of Conduct requires members to declare when speaking in the House any interest which is a relevant interest in the context of the debate under discussion. The test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which the member discharges his or her parliamentary duties.

1 Appendix A

2 HL Deb, 24 November 2016, [cols 2052–88](#)

3 Appendix B

4 Appendix C

5 Appendix D

6 Appendix E

6. Paragraph 89 of the Guide to the Code of Conduct states, “the duties imposed on members in respect of declaration are in some respects broader than those in respect of registration.” Thus although the test of relevance is the same for declaration and registration, members may be required to declare an interest if it is relevant to a debate even if that interest does not need to be in the Register of Lords’ Interests.
7. The paragraph of Lord Richards’ speech relevant to this case was:

“Thirdly, notwithstanding the difficulties which I accept are involved in so doing, there is a crying need for retrospective action to lift the burden imposed on many hundreds of disciplined and loyal service men and women through flawed legal action taken against them under the ECHR for alleged crimes committed in Iraq and Afghanistan. This issue is critical to Armed Forces morale now and into the future. Beyond the injustice perpetrated on hundreds and probably thousands of fine people, action today as a sign of good intent is vital. Promises of jam tomorrow will not do. A failure to act retrospectively will lead to distrust and cynicism about how much confidence can be placed in future derogation plans. Do the Government intend to develop retrospective legislation to resolve this crucial issue? I would be most grateful if the Minister answered these questions.”⁷
8. Lord Richards was in senior military positions for most of the time that Her Majesty’s armed forces were engaged in Iraq and Afghanistan.⁸
9. The question which therefore arose was whether Lord Richards should have declared an interest in relation to the paragraph of his speech quoted above. In particular, as a former senior officer with oversight of the military campaigns in Afghanistan and Iraq it may be that he was part of a group of persons who might benefit from retrospective disapplication of the European Convention on Human Rights in respect of those campaigns. Such an interest is not required to be registered, but it may be that it was reasonably relevant to Lord Richards’ speech and so should have been declared.
10. I invited Lord Richards to respond to this matter.⁹ In response Lord Richards wrote that it had not occurred to him that he had an interest to declare. However, he could now see that it would have been wiser and more obviously in conformity with the rules on declaration if he had made clear that as a former serving soldier he was one of a group of persons who could possibly benefit from retrospective disapplication of the European Convention on Human Rights. Lord Richards apologised for not anticipating that he might have had a declarable relevant interest, and said he would take pains in future to ensure that any possible relevant interest was declared when he spoke in the House.¹⁰
11. I accepted Lord Richards’ explanation that he did not anticipate that the interest might be relevant. As the breach was minor and was acknowledged

7 HL Deb, 24 November 2016, [col 2066](#)

8 Lord Richards was Assistant Chief of the General Staff from 2002–05, Commander of the Allied Rapid Reaction Corps from 2005–06, Commander of the International Stabilisation and Assistance Force in Afghanistan from 2006–07, Commander in Chief of UK Land Forces from 2008–09, Chief of the General Staff from 2009–10 and Chief of the Defence Staff from 2010–13 (*Dods Parliamentary Companion*, 2017).

9 Appendix B

10 Appendix C

by Lord Richards, I considered that the case could be resolved by remedial action.

12. Remedial action usually involves “putting the record straight”, for example by amending the Register of Lords’ Interests, and the member making a formal apology.¹¹ As this case concerned non-declaration, no further action was needed to put the record straight
13. A formal apology normally involves the member writing to the chairman of the Sub-Committee on Lords’ Conduct, Lord Brown of Eaton-under-Heywood. I invited Lord Richards to do so,¹² which Lord Richards readily did.¹³

Finding

14. This case involved a minor instance of non-declaration of a relevant interest. Lord Richards accepted that he should have declared the interest, so the case was resolved by remedial action. I am grateful to Lord Richards for his co-operation with this matter.

Lucy Scott-Moncrieff, CBE
Commissioner for Standards

11 Paragraph 129 of the Guide to the Code of Conduct.

12 Appendix D

13 Appendix E

Appendix A: Letter from Anthony Heaford to the Commissioner for Standards, 29 November 2016

On Thursday 24 November Baron Richards called for a retrospective limitation on the application of applicable laws for soldiers who have served in recent conflict zones during the debate ‘Armed Services: Claims’.

Baron Richards was recently named by myself in allegations regarding the corrupt purchase of £46 million of equipment for British forces in Afghanistan in 2012—this matter is currently being investigated by the military police and Operation Northmoor team. I have made six further allegations to the military police of crimes committed under the Baron’s command (he was Chief of the Defence Staff when these incidents occurred), plus one further charge regarding an alleged war crime, again under the Baron’s command, is being considered by the International Criminal Court.

It is my assertion that if the Baron’s historical military command is being investigated for criminal acts in a conflict zone, then surely his making speeches in the House of Lords calling for retrospective clemency for such acts is self-serving, professionally very dubious and possibly corrupt.

I have enclosed copies of the allegations I have made—Baron Richards is named specifically in ‘charge 7’ although please bear in mind that all the charges relate to his command and so again these raise a conflict of interest for the Baron to my mind.

Please also be aware that even with consideration to ‘natural justice’ it is my intention to speak loudly and widely about all these matters due to my lack of confidence in the government/MoD’s ability to police itself.

“Statement of Allegations and Evidence Relating to British Army/ISAF Conduct in Helmand, Afghanistan 2012”, by Anthony Heaford

Author: **Anthony C Heaford** (Former British Territorial Army Soldier)

Army Number: 30088729

Parent Unit: [Redacted in original], TA Light Aid Detachment

Deployed Unit: [Redacted in original], Light Vehicles Platoon

CLP Unit: [Redacted in original], Recovery Platoon

NATO Operation: Enduring Freedom

UK Operation: Herrick 16

Tour Dates: April–October 2012

Roles: Vehicle Mechanic in Camp Bastion
Airfield Perimeter Guard Duties
Combat Logistic Patrol Top Cover
Detention Facility & WIA POW Guard Duties

Note: My role as Top Cover (machine gunner in vehicle’s cupola) during Combat Logistic Patrols (resupply convoys servicing the FOBs and PBs throughout Helmand) is central to my claims. The role is best illustrated in the following YouTube videos:

- *8km convoy resupplies troops in Helmand, Afghanistan*
- *Desert convoy put in logistical reverse 19.03.13*

Allegation One—Stoning Afghan Children

Informal orders given to retaliate against Afghan children (aged 8 to 14 years) who threw stones at us or attempted to steal items off our vehicles as we drove through their villages during Combat Logistic Patrols.

Events

Informal Orders

Instructions for preparations for CLPs—to take bags of loose stones for storage in the cupola, which should be thrown at the children in response to stone throwing by them or attempts to steal kit off the vehicle (within the Light Vehicles Platoon only).

These instructions were repeated regularly from mid-June to mid-September, only within the Light Vehicle Platoon and its workshop and never in the presence of a SNCO or Officer. The principal proponents of this instruction were Cpl [redacted in original] and Cpl [redacted in original] and a number of the Platoon's Craftsmen.

The Recovery Platoon was aware of this instruction, my refusal of said and the repercussions I endured but they did not endorse the order, but they did condemn (privately to myself) the attitude of the Light Vehicle Platoon (calling them 'dickheads').

Refusal of Orders

Prior to my first CLP top cover duty on 21 June 2012, I was informally briefed within the Light Vehicle Platoon Workshop on TTPs to be used in role, including stone throwing at children. I expressed my scepticism of its effectiveness, safety, morality and legality.

My suggestion of photographing the perpetrators and asking the ALP or village elders to assist was ridiculed.

My suggestion to use catapults and 'paint ball'-type ink pellets as an alternative and more effective but less harmful TTP was also rejected.

After my first Top Cover duty of 21 June I stated:

- To throw a stone effectively would mean exposing one's body from behind ballistic plates. There were very effective enemy snipers operating throughout the Area of Operation and I felt this was a pointless risk to take.
- It endangered the children's lives more as they would move closer to the vehicle to be out of the line of sight of the Top Cover.
- The children stealing from the vehicle were out of the line of sight of the Top Cover, and the children who we could see were often a deliberate distraction.
- Most of the children were just 'being children' and enjoyed the 'game' of stone throwing fights with British soldiers (over five separate patrols I am only aware of one minor theft from a vehicle).
- I questioned the effectiveness, morality and legality of stone throwing.

- I reiterated the Mission Statement to “Win Hearts and Minds”
- A request for a riot-type visor for my helmet was refused by [redacted in original].

I then referred to the official Operation Herrick Individual Aide-Memoire instructions:

“Do not break the law. Do not retaliate.”

On or about 22 June 2012 I openly rejected my Platoon’s effective standing order to throw stones at Afghan children when on CLP Top Cover duties. My refusal was because I questioned the order’s effectiveness, morality and legality.

Incidents

When passing through populated areas the vehicles were followed and watched by children for various reasons, including:

- Curiosity at the 20+ heavy vehicle convoy passing through their village
- Asking for sweets, pens, drinks, etc.
- Steal any unsecured items from the vehicle
- Stone throwing as a ‘game’ or in response to our not having sweets, pens, etc.
- Open animosity—stone throwing (often sling shots) intending to cause injury.

CLP, 21 June/Operation [redacted in original]/Nad-e-Ali



Stone throwing: this photo is unusual in that the stone throwers were on the other side of a canal (most were in alleys beside the road as we drove through villages) and this was the only instance where they appear to be being coached. The two stone throwers were c. 12 to 14 years, whilst the person dressed in white was c. 16 to 18 years.

It is very easy to identify the individuals and the location from the original photograph, which I believe validated my suggestion that cameras and local law enforcement were the most effective response to stone throwing.

CLP, 21 June/Operation [redacted in original]/Nad-e-Ali



This photo shows ALP riding alongside the CLP to stop stone throwers. When beside my vehicle and an adjacent alley where a group of children were throwing stones the ALP dismounted and the stone throwers (all children aged c. 8 to 14 years) scattered.

This shows effective command and control was possible, with coordinated between ISAF and ANSF forces, so that each vehicle knew who these armed and non-uniformed men were as they rode by.

CLP, 6 or 13 July/Gereshk Valley area

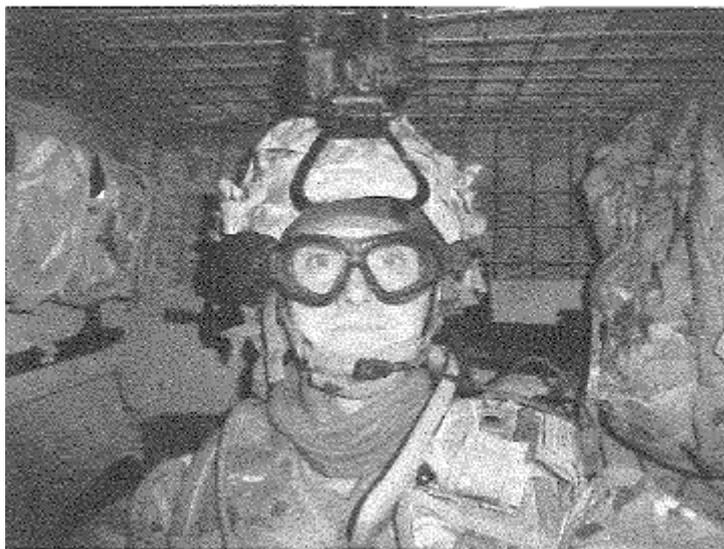
Stone throwing: A lone Afghan male child, <8 years old, waiting beside a compound wall on raised ground 20 metres from convoy route with stones ready to throw. An adult female Afghan rounded the compound wall corner, saw the boy and caught him by the back of his collar as he prepared to throw a stone, yanking him away so that his feet left the floor. As well as being quite amusing, this illustrated to me that most of the belligerents were in fact just 'children being children' as we drove our convoy through their village and that stone throwing was frowned upon by some adult Afghans.

CLP, 6 or 13 July/Gereshk Valley area

Stone throwing: Three Afghan children, aged c. 8 to 12 years, five metres to side of convoy route, 40 metres in front of my vehicle and all with stones in hand ready to throw. I waved, smiled, gave the thumbs up and gestured sincerity, to which the children all dropped their stones and waved and smiled back. This was witnessed with note by the drive and vehicle commander (from Recovery Platoon) of my vehicle.

CLP 21 June[[redacted in original]] or CLP 27 and 28 June[[redacted]]

Stone throwing: Passing some open ground on the edge of a village we came under fierce and accurate stone throws, from numerous 10 to 14-year-old children, some using slingshots (David and Goliath style). I was hit centrally between the eyes by a boy with a rubber slingshot and although dazed I was very luckily not injured as the stone hit the rubber bridge of my ballistic goggles (as per photo below). After a few seconds I responded by giving a thumbs up through the cupola and waving. The two boys looked at each other quizzically, and then started laughing in response to my reaction—another illustration to me that these were just ‘children being children’. It was also a reminder of the necessity of full face visors for this role, as was provided to soldiers from the USA in the same role.

CLP, 6 or 13 July/Gereshk Valley area

Theft from Vehicle and Driver’s Broken Nose: Whilst passing the edge of a village children beside the route were stoning our vehicle. We were advised via radio from the vehicle behind us that a child was attempting to remove something from our moving vehicle—this was out of my line of sight from the cupola, despite my constant scanning of the area.

Following the orders given during the patrol briefing, the driver opened his door with his pistol drawn. As soon as he turned his head towards the door opening he was hit on the nose by a stone, causing it to bleed heavily.

The vehicle continued moving throughout this incident. I later saw a boy (c. 12 years) running away with the battery cover from our vehicle, which had been secured with two wing nuts. Despite his injury the drive continued with the remainder of the CLP and later said the injury was entirely his own fault for

opening the door. He did not hold any blame or prejudice against me over the incident.

Following this incident, on a daily parade within the Light Vehicle Platoon I was identified to the rest of the Platoon ‘as a soldier who was endangering other soldiers’ lives’ by my refusal to partake in stone throwing at children. This parade was held by [redacted in original]—it was the only parade in my six month tour that was not held by or attended by a Senior NCO or Officer. I believe this was done deliberately so the chain of command could distance themselves from these illegal orders—orders that they were surreptitiously endorsing (detailed in Allegation Three—Punishment of Soldiers Who Refused Such Orders).

Allegation Two—Using Phosphorous as an Offensive Weapon

CLP, 6 or 13 July/Gereshk Valley area

During the final briefing before departing Camp Bastion on the Combat Logistic Patrol we were given ‘escalation of force’ orders to address the issue of children stoning us and stealing from our vehicles:

- (1) Reiteration of instruction to throw stones at children
- (2) Fire mini-flare so they would bounce off the ground close to the children
- (3) Threaten and intimidate children with small arms, specifically pistols

Details

Each final briefing was given immediately prior to departure with route, security, communications and immediate action drills updates, etc. They usually consisted of two or three addresses to the entire patrol compliment.

There was only one CPL briefing of the five I attended where I heard these instructions given:

- (1) Confirmation of the instruction to retaliate against stone throwers by throwing stones back.
- (2) We were instructed that mini-flares should be used as a deterrent against children trying to steal from the vehicles, but that “firing them in to the air had the same effect as a fire work display to the children”. Consequently we were told to fire the mini-flares towards the children, so that “they bounce off the ground beside them”.
- (3) We were told that a final resort should be to threaten the children with ‘small arms’ weapons. We were told that our SA-80 rifles did not scare the children, but that they were very scared of pistols and that we should ‘wave’ our pistols in an attempt to scare them (as per the Incident detailed on page 5).

None of the 100+ personnel assembled for this briefing questioned this order or raised any objections. Because of my experience over refusing the order to throw stones I did not speak out against this order.

Throughout my tour I did not see or hear any reports or rumours of anyone ever following the second order of actually firing a mini-flare towards anyone.

I have since read in a book, “No Worse enemy”, by the journalist Ben Anderson who states that in 2007 (or 2008) he witnessed British soldiers on patrol in Helmand firing phosphorous flares so that they hit the ground within 10 feet of civilian Afghan vehicles—again intended as a ‘warning shot’.

I am trying to find further corroborating evidence of this claim via veterans’ networks and reputable Afghan journalist whom I have been sharing information with.

Allegation Three—Punishment of Soldiers Who Refused Illegal Orders

My refusal of the informal order to throw stones at Afghan children resulted in punishments, bullying, theft of personal kit, ostracisation within my Platoon and other significant repercussions to my refusal of this illegal order. These repercussions have continued since leaving the Army in the form of very negative unofficial job references.

The bullying became significantly worse after the Parade when I was identified by Cpl Day ‘as a soldier who was endangering other soldiers’ lives by my refusal to partake in stone throwing at children.

In theatre this targeting of me was endorsed by Captain [redacted in original], Captain ??? (Captain [redacted in original]’s replacement), Warrant Officer [redacted in original] and Sgt. [redacted in original]—all of the Light Vehicles Platoon.

Since leaving the army I have been targeted for abuse on social media by people who have identified themselves as former and still serving members of the British Army.

I believe that I lost one job and was compelled to leave another because of an unofficial Army reference network providing very negative unofficial personal and employment references for me. I first requested this be addressed by Brigadier [redacted in original] but to no avail. I then pursued this matter with the UK Minister for Veterans; after six months I was told by [redacted in original] (Member of UK Parliament) that because no formal requests for employment references had been made to the Army they were unable to take any action.

I believe that the fact that no formal requests for job reference having been made, that this confirms my belief that former and serving members of the British Armed Forces by-pass the formal system and instead operate an informal and unofficial reference network. This consequently gives great prejudice against soldiers who have not followed illegal or corrupt orders that pervades sections of the British Army.

Consequences

Following the two employment references outlined above I realised that this situation made it virtually impossible for me to find gainful employment. I have since tried to start two businesses working for myself, but the stress, anger and frustration I am still enduring meant I was unable to focus on these aspirations.

I am currently diagnosed as suffering from “Stress Related to Military Service” and have been receiving counselling since I felt compelled to leave my last employment approximately two years ago.

I have full details regarding the two jobs I have lost/felt compelled to leave, including the names of the former service people I believe participated in this unofficial reference system. I would be happy to provide this information if required for your investigation.

Subsequent Action and Events to Date

September 2012

Informed 4 Battalion REME Second-in-Command of bullying. Direct bullying ceased for the remaining few days of tour. No further action taken.

(Please see accompanying note)

February 2013

Informed TA unit Staff Sergeant [redacted in original] about events and experience on tour—advised not to raise any issues to avoid “causing trouble”. Formally left TA in April 2013 and waited 6 months (the limit of military law being applicable to me) before pursuing complaint further.

October 2013

Submitted formal complaint to the UK Service Complaints Commission. Due to the gravity of my allegations a normal three month time limit was waived and I was referred to Brigadier [redacted in original] of 42 Brigade.

Over the course of three interviews with the Brigadier I completed a signed statement containing all my allegations. I then withdrew my formal complaint, advising the Brigadier that I had achieved all I set out to do—to make the Senior Command aware of my concerns.

Signed Statement of Evidence Submitted.

January and March 2014

Repercussions to my Service: I believe that I lost one job and was compelled to leave another because of an unofficial Army reference network providing very negative informal personal and employment references for me. I pursued this matter with the UK Minister for Veterans; after six months I was told by [redacted in original] (Member of the UK Parliament) that because no formal requests for employment references had been made to the Army they were unable to take any action.

February 2014

Upon meeting socially the Training Major of my former TA unit I realised that none of my concerns raised with Brigadier [redacted in original] regarding serious bully within the TA Unit as well as Afghanistan had been passed on or acted upon.

April 2014

Publication of the UK Defence Select Committee report into the 14 September 2012 Taliban raid on Camp Bastion: Upon reading I again realised that none of the very significant information I had passed to Brigadier [redacted in original] had been communicated to the Committee.

May 2014

UK Defence Select Committee acknowledge my claims as being of ‘considerable interest’ after I submitted them directly.

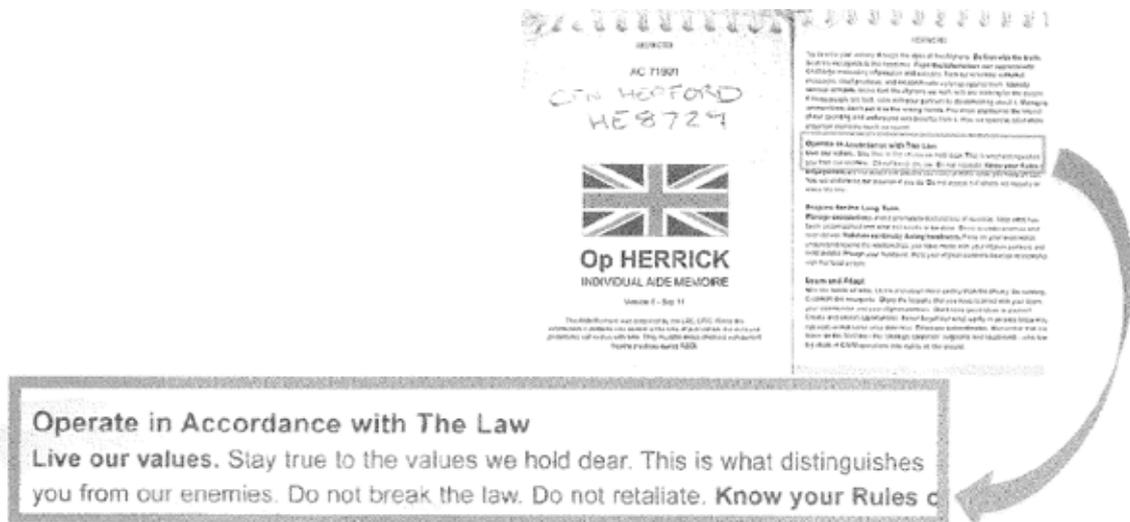
October 2015

Advised that both the Defence Select Committee and Ministry of Defence are not willing to investigate my claims further.

Pre-Deployment Training March 2012:

An “Aide-Memoire” issued to each soldier deploying to Afghanistan.

During pre-deployment training we were told repeatedly that Herrick 16’s principle aims were winning Afghan Hearts and Minds and opium eradication.



Mission Theory:

Winning Hearts and Minds and Opium Eradication

Mission Reality:

Stoning Afghan children and protecting Afghan politicians’ opium harvesting (as detailed in my separate report “Afghan Opium Harvesting Protected by British Occupation Forces”)

Fear of Raising Complaint Earlier in Tour

I loved my tour, my service in the Army and remain proud of all I achieved. Serving in Afghanistan was the culmination of a life-long ambition. My negative experiences on tour did not deter me from wanting to complete my service, which did play a part in my not raising complaints earlier. But the three main factors for not raising my complaint earlier are as follows:

- Fear—I had already found the Chain of Command to be corrupt and thought submitting a complaint would only exacerbate the situation or result in my being forced to return home early.
- Fear—the best simile I can think of for the environment within the Light Vehicle Platoon is “Lord of the Flies-esque”. I had already been threatened by a mentally unstable L/Cpl with his loaded pistol pointed at me (I have

strong photographic evidence to support this claim). I genuinely feared for my personal safety and even my life at times within the Platoon.

- I felt it necessary to raise my complaint eventually as the level of bullying was increasing day by day. I only felt safe to do this in the final days of tour, as the operational tempo was decreasing as we prepared to leave theatre.

Combat Logistic Patrols

21 June (daylight patrol)/Operation [redacted in original]

CLP Commander: [redacted in original]

0430 Depart Camp Bastion on Highway 1 driving East
 0600 From Gereshk moved South beside NED canal, towards Nad-e-Ali
 0900 Arrival FOB Shawqat
 1150 Return journey, ALP on motorbike stop children throwing stones
 1205 Children throwing stones from opposite side of canal

27/28 June (night time patrol)/Operation [redacted in original]

1830 Parade
 2030 Depart Camp Bastion on Highway 1 driving East past Gereshk
 2200 Turn South on Route 601, towards Lashka-Gah
 2330 Arrived at Patrol Base Attal
 0200 Arrived Lashka Gah Durai
 0800 All back Camp Bastion

6 July (daylight patrol)

0800 Depart Camp Bastion on Highway 1 driving East
 1400 Arrived FOB Shorqat (?)
 1500 Arrived PB Pimon (?) Crane lift in FPB
 2000 Arrived Camp Bastion

13 July (daylight patrol)

0500 Depart Camp Bastion on Highway 1 driving East
 0630 Turn Left off Highway 1 before Gereshk, heading North, across desert
 1000 Arrive PB Rahim (?) or PB Oullette (?), Upper Gereshk Valley
 1500 Returned Camp Bastion

23/24 August (night time patrol)/Operation [redacted in original]

1900 Parade
 2030 Briefing
 2100 Depart Camp Bastion on Highway 1 driving East
 2230 Right off Highway 1 after Gereshk, Arrive FOB Price

2350 Continue East on Highway 1, turn off North to Arrive PB Hazrat (?)

0300 Returned Camp Bastion

Charge 1:

Being concerned in the production and trafficking of a class A drug (an offence under UK domestic law).

Detail: Providing both armed protection and irrigation to said class A drug production.

Penalty:

A maximum sentence of life imprisonment, a fine or both.

Accused:

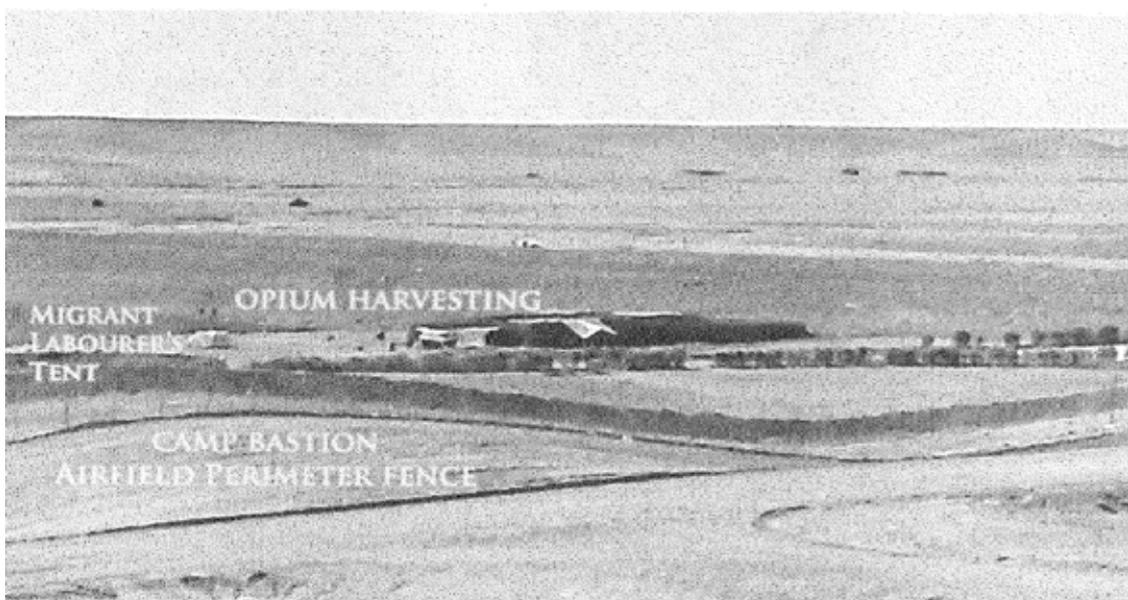
Squadron Leader James Steward, Commanding Officer of the Force Protection Wing.

Group Captain Jeff Portlock, Commanding Officer of Camp Bastion.

Evidence:

My claim is that on the 22 April 2012, whilst on a 24 hour guard duty in Tower 11 on Bastion's perimeter, I was ordered to provide overwatch and protection to the two compounds immediately to my front (in centre and on RHS of image below) from harassment from Afghan National Security Forces. Besides these two compounds was a field of c. 4 acres of poppies and there were over a dozen migrant labourers harvesting opium. We were ordered to watch for approaching ANSF vehicles and report any such sightings in the valley. We were told that the QRF would respond and intercept any such vehicles trying to approach the compounds.

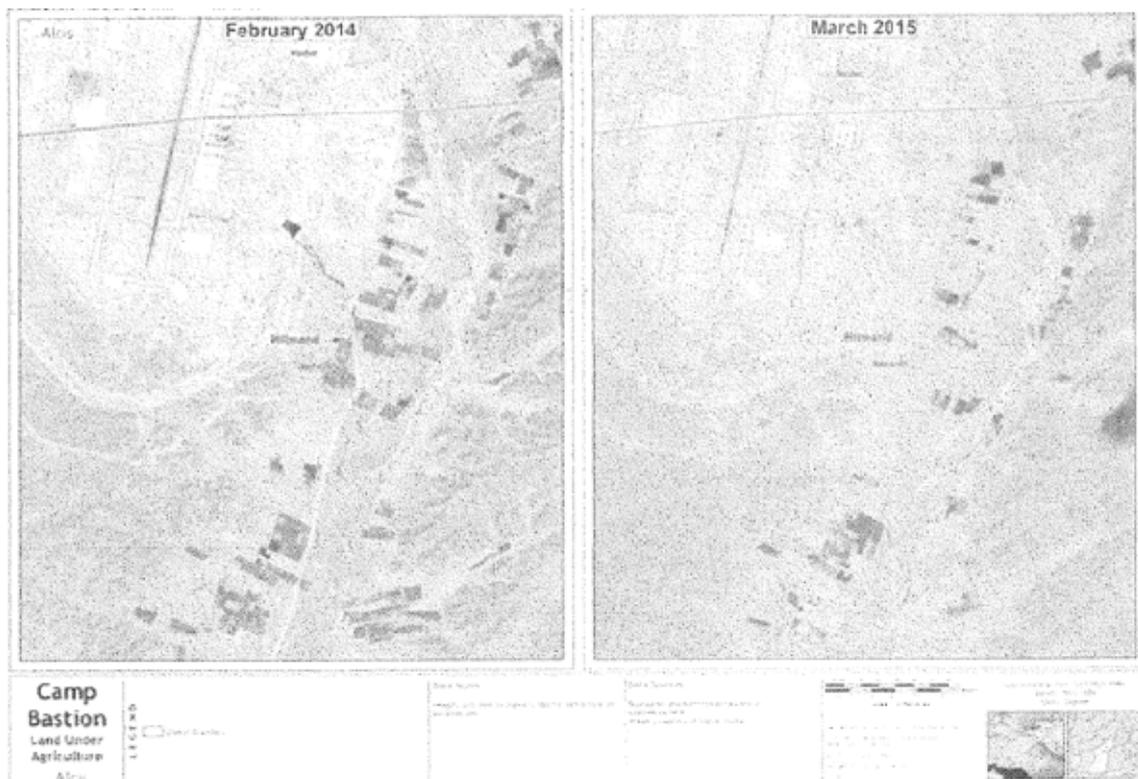
The view from tower 11 on 22 April 2012:





Text with image below:

“Changes in the amount of land under agriculture (and poppy cultivation) following the close of Camp Bastion/Leatherneck. The February 2014 image shows water stored inside the base as well as the run-off subsequently used to irrigate poppy along the perimeter wall of the base. The March 2015 image shows the lack of storage water and run-off and a substantial drop in land under agriculture, including poppy cultivation.”



Charge 2:

Misapplying or wasting public or service property (an offence under UK military law).

Penalty:

Dishonourable discharge.

Accused:

Brigadier Doug Chalmers, Commanding Officer 12 Armoured Brigade.

Event:

Between 18 and 23 April 2012 Operation Shafuq was intended to demonstrate ISAF's ability to work in conjunction with the ANA, to clear insurgents from an area 15km south of Bastion, and to destroy poppy crops as part of our stated poppy eradication efforts.

The reality of this operation is most clearly described by a BBC journalist embedded with British forces at the time—his report is here: <http://www.bbc.co.uk/programmes/b01gng5d>

Evidence:

During a 9 Armoured Company, Light Vehicles Platoon parade on 17 April we were told that the ANA had started the operation 24 hours early, without notice, and that this meant that the element of surprise was lost and the aim of effectively clearing insurgents from the area had already been defeated. This also clearly illustrates that the ability of ISAF to working conjunction and coordination with the ANA had failed before it had begun.

On the 21/22 April British Forces (me) were actively protecting opium harvesting on Afghan government land within 200m of Camp Bastion fence, in contravention of our stated aim of poppy eradication and in direct opposition to operation Shafuq's aims 15km further south.

Accusation:

Despite every element of Operation Shafuq having failed before it had begun the command chose to go ahead with the mission without regard for the safety or integrity of British/ISAF forces. I believe this was because it was the first major operation of Herrick 16, our 'flagship operation', and the command did not have the courage, intelligence or morality to review the situation, instead going ahead with a pointless, duplicitous, corrupt and dangerous operation as a box ticking exercise for their own **personal** service records to read well—i.e. *mission accomplished!*

Charge 3:

Failing to make an official record he has a duty to make, with intent to deceive (an offence under UK military law).

Penalty:

2 years in prison.

Accused:

Major XXXX and Captain XXXX of 12 Armoured Brigade

Names unknown but these photographs show the two Officers in question:



Event:

On 22 April 2012 whilst on duty in guard tower 11 I was visited by two British officers. After chatting with and repeating my security brief (detailed in ‘charge 1’) to these officers I then attempted to raise my security concerns. My primary concern was the migrant labourers camping just 100 metres from the airfield security fence. The officers’ reaction was to laugh, then deny being able to see the four acre poppy field or the migrant labourers to our front, and to then leave the observation platform within seconds, still laughing and joking. I also informed an RAF Regiment Sergeant, part of the force protection team, when he visited the tower that day. His approximate response was to shrug his shoulders and give me a look of “what can I do?” This Sergeant had given the same reaction when we were informed that the force protection commander had decided **not** to punish soldiers caught sleeping or otherwise neglecting their duties when on guard in the airfield towers—normally a court martial offence I think.

Accusation

Whilst I believe these officers were not ultimately responsible, they did fail in their duty—their duty to the state mission and their duty to ensure the protection of Camp Bastion. This was the only such visit I witnessed over the six months I was doing this duty and I believe that their visit to the tower that day was very specifically to see the poppy fields and opium harvest, but in the role of ‘tourists’ rather than military officers, sightseeing rather than soldiering.

Qualification

I appreciate that as a one tour Territorial Army vehicle mechanic my opinion and observations may be reasonably questioned but I hope the statement below, made by Major General Sturdevant of the US Command, will help qualify my claims and accusations:

“We literally had poppy growing right up against the perimeter fence. That was another thing that Maj. Gen. Gurganus tried to take action on, but he wasn’t able to accomplish

that. It was because the Afghans had to do it. We weren't allowed to. The biggest external threat to the base came from there."

Charge 4:

Performing a duty negligently (an offence under UK military law).

Penalty:

2 years in prison.

Accused:

Squadron Leader James Stewart, Commanding Officer of the Force Protection Wing.

Event:

On 14 September 2012 the Tongan armed forces, who may or may not have been responsible for guarding the section of Bastion's airfield perimeter (depending on which account you read)¹⁴ where the 15 attackers breached the fence, were not issued night vision equipment

Evidence:

- (1) On 15 September 2012 I was informed by a Corporal of the light vehicle platoon, 9 armoured company, 4 Bn REME (who has access to 'privileged' intelligence information) that the reason for the success of the raid was because some guard towers did not have night vision equipment.
- (2) A GQ magazine article on the airfield raid, published September 2013, made the same allegation, that the Tongan guard were not issued night vision equipment.
- (3) The Wikipedia entry for the Tongan armed forces states: "During the September 2012 Camp Bastion raid Tongan troops were in perimeter guard towers without any night vision devices." [https://en.wikipedia.org/wiki/His_Majesty's_Armed_Forces_\(Tonga\)#History_of_Tonga_Armed_Forces](https://en.wikipedia.org/wiki/His_Majesty's_Armed_Forces_(Tonga)#History_of_Tonga_Armed_Forces)
- (4) The declassified US Marine investigation in to the airfield raid states: "the detainee reported Tower 17 trained a light towards the attackers once they were inside the perimeter. However, the attackers were able to move into a small wadi, and Tower 17 did not react further", referring to the one surviving attacker's statement. This suggests that the Tongan guard were alert enough to react to disturbances near the fence but were not well enough equipped to identify the cause of the disturbance. <http://www.hqmc.marines.mil/Portals/142/USCENTCOM%20Bastion%20Attack%20Investigation%20Redacted%2015-6%20Report.pdf>

Whilst I appreciate that none of the above may provide definitive proof of my allegation I believe collectively they warrant further investigation.

¹⁴ In October that year the acting commander of the Tongan Armed Forces stated that the Tongan force at Camp Bastion had not been required to fully man the section of Camp Bastion's perimeter through which the attackers passed. The British High Commissioner to Tonga also stated that it was British, and not Tongan, personnel who were responsible for the penetrated section of the perimeter. https://en.wikipedia.org/wiki/September_2012_Camp_Bastion_raid#Tongan_response

Anecdotally, when I was using night vision (thermal imaging) on guard duties that summer I was able to observe a dog chasing a hare across a field c. 150 metres from my tower and on another occasion I was able to observe a figure crouching in a roadside ditch at c. 400 metres distance and moving between the ditch and bushes on the far side of the road. I recall this was one week before the attack during my last guard duty in Tower 11, at about 22.30 hours. I reported it by radio to the guard command but was advised “not to worry about it”. My request to illuminate the area with a mini-flare was refused—we had previously been told not to use the mini-flares as the residents living in the valley adjacent to the airfield had complained the flares “disturbed them”. Retrospectively I now believe this figure was probing and testing our defences and observation facilities.

Accusation

That the decision not to provide every manned guard tower with night vision equipment was criminally negligent and was the primary reason for the success of the airfield raid.

Charge 5:

Failing to make an official record he has a duty to make, with intent to deceive. An offence under UK military law.

Penalty:

2 years in prison.

Accused:

Brigadier Fitzgerald, Commanding Officer 42 (North West) Brigade.

Event:

Around November 2013 over the course numerous meetings and extensive correspondence I informed Brigadier Fitzgerald of very specific information relevant to the recently announced UK Defence Committee inquiry into the Camp Bastion airfield raid of 14 September. Upon the publication of the inquiry’s findings in April 2014 it became apparent that the Defence Committee had not received the information I submitted (the same information that is now included in my previous emails: charge 1, charge 2 and charge 3).

Evidence:

Email correspondence and formal statements submitted to the Brigadier.

Accusation

It is my belief that Brigadier Fitzgerald failed to make an official record he had a duty to make with intent to deceive the Defence Committee, the UK government and Parliament, which is an offence under UK military law.

Charge 6:

Failing to make an official record he has a duty to make, with intent to deceive. An offence under UK military law.

Penalty:

2 years in prison.

Accused:

Lieutenant General Capewell, Chief of Joint OperationsEndFragment.

Event:

Whilst giving evidence to the UK Defence Select Committee's Accountability Review the General characterised the decision to tolerate poppy cultivation close to the perimeter fence as "a **minor tactical error**" which contributed to the enemy's success.

Evidence:

Paragraph 37 of <http://publications.parliament.uk/pa/cm201314/cmselect/cmdfence/830/830.pdf> and my allegations detailed in 'charge 1' email.

Accusation:

British forces did not just 'tolerate' poppy cultivation and opium harvesting besides Camp Bastion airfield—we irrigated the fields and provided active protection from Afghan security forces interference. British forces were complicit in a class A drug's production.

It is my belief that Lieutenant General Capewell failed to make an official record he had a duty to make, with intent to deceive the Defence Committee, the UK government and Parliament, by deliberately withholding information which is an offence under UK military law.

Charge 7:

Failing to make an official record he has a duty to make, with intent to deceive. An offence under UK military law.

Penalty:

2 years in prison.

Accused:

Lieutenant Colonel Neil Thorpe, Commanding Officer, Theatre Equipment Support Battalion (4 Close Support Battalion REME).

Event:

On or about 11 September 2012 members of the light vehicle Platoon, 4 Bn REME (including myself) were ordered to lie to the Secretary of State for Defence (Philip Hammond MP) regarding the condition of equipment, namely the new Foxhound vehicle. This vehicle was delivered to theatre in June 2012 but was still not operational in September 2012 due to technical issues, I think relating to the suspension torsion bars. The government minister was deceived in this matter by ourselves and also by the use of the vehicles in a cursory patrol in the vicinity of Camp Bastion.

Evidence:

I hope that technical documentation and operational records will support my allegations, but without access to these I cant substantiate this claim further.

Accusation:

The Secretary of State for Defence was deceived with regards to the condition of 4 Bn REME's equipment to cover up procurement failings and to justify the subsequent extension of the contract for Foxhound vehicles by £46 million in November 2012.

Extension:

The Chief of the Defence Staff at the time, General Richards, in his post-military career has been paid by accountancy firms Price Waterhouse Coopers and Goldman Sachs for speaking engagements. I have been able to find director-level links between these accountancy firms and the manufacturer and designers of the Foxhound vehicles. Whilst I will not go so far as to accuse the ex-General of corruption I do believe there is enough circumstantial evidence for these links and payments to be investigated further.

Appendix B: Letter from the Commissioner for Standards to Lord Richards of Herstmonceux, 8 December 2016

I am writing because I have received a complaint about you from Mr Anthony Heaford. The complaint concerns your speech in the House of Lords on 24 November 2016 in a debate about claims against the Ministry of Defence and UK armed forces personnel. A copy of the complaint is enclosed.

The complainant refers to the following paragraph of your speech:

“Thirdly, notwithstanding the difficulties which I accept are involved in so doing, there is a crying need for retrospective action to lift the burden imposed on many hundreds of disciplined and loyal service men and women through flawed legal action taken against them under the ECHR for alleged crimes committed in Iraq and Afghanistan. This issue is critical to Armed Forces morale now and into the future. Beyond the injustice perpetrated on hundreds and probably thousands of fine people, action today as a sign of good intent is vital. Promises of jam tomorrow will not do. A failure to act retrospectively will lead to distrust and cynicism about how much confidence can be placed in future derogation plans. Do the Government intend to develop retrospective legislation to resolve this crucial issue? I would be most grateful if the Minister answered these questions.”¹⁵

The complainant states that you have been named in allegations that are under investigation which concern the purchase of military equipment and other crimes allegedly committed under your command. The complainant suggests that this created a conflict of interests with your speech calling for retrospective removal of legal liability.

I have carried out a preliminary assessment of the complaint. I have decided that the specific matters covered in the complainant's letter and the supporting documents do not warrant investigation because they do not demonstrate a *prima facie* case that the House of Lords Code of Conduct has been breached.

However, the complaint raises a related question of whether you should have declared an interest in relation to the paragraph of your speech quoted above. In particular, it may be that as a former senior officer with oversight of the military

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campaigns in Afghanistan and Iraq you are part of a group of persons who may benefit from retrospective disapplication of the European Convention on Human Rights in respect of those campaigns, and it may be that an interest along those lines should have been declared. I have decided that it would be appropriate for me to investigate this matter.

On the basis of the matter set out in the previous paragraph it appears that the following provision of the Code may have been breached:

“10. In order to assist in openness and accountability members shall: ...

(b) declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion; ...”

Paragraph 10(b) of the Code is expanded on as follows:

“11. The test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a member of the House of Lords discharges his or her parliamentary duties: in the case of registration, the member’s parliamentary duties in general; in the case of declaration, his or her duties in respect of the particular matter under discussion.

12. The test of relevant interest is therefore not whether a member’s actions in Parliament will be influenced by the interest, but whether a reasonable member of the public might think that this might be the case. Relevant interests include both financial and non-financial interests.”

I also draw your attention to the seven general principles of conduct identified by the Committee on Standards in Public Life and incorporated into the Code of Conduct.

I invite you to respond in writing with a full and accurate account of the matter in question. A response by 5 January 2017 would greatly assist me in investigating this matter in a timely fashion.

As an investigation is under way there is a requirement for all evidence and correspondence relating to the case to remain confidential unless and until it is published by the Committee for Privileges and Conduct. I have alerted the complainant to this requirement in view of the final paragraph of his letter. In accordance with paragraph 119 of the Guide to the Code of Conduct a webpage on the parliamentary website will include basic information about the case.

I enclose a copy of the Code of Conduct for Members of the House of Lords and Guide to the Code of Conduct (fifth edition: July 2016).

Appendix C: Letter from Lord Richards of Herstmonceux to the Commissioner for Standards, 16 December 2016

Thank you for your letter of 8 December.

So far as the allegation of failure to declare an interest is concerned, I confess that it never occurred to me that I had in fact an interest to declare. However in the light of your letter, I can see that it would have been wiser and more obviously in conformity with the rules of the House, if I had made it clear that, as a former serving soldier, I am one of a group of persons who could possibly benefit from the retrospective disapplication of the European Convention on Human Rights.

I apologise for my failure not to have anticipated that this might have been seen as a relevant interest that I should have declared. I will take pains in future to make sure that any possible relevant interest is declared when I speak in the House.

Appendix D: Letter from the Commissioner for Standards to Lord Richards of Herstmonceux, 13 January 2017

Thank you for your letter dated 16 December 2016, which was received by my office last week.

I am grateful for your response and am satisfied that the non-declaration of the interest on 24 November 2016 was due to you not anticipating that the interest might be relevant. As you have acknowledged this, I consider that I can resolve this case by remedial action, in accordance with paragraph 129 of the Guide to the Code of Conduct.

Remedial action usually involves “putting the record straight”, for example by amending the Register of Lords’ Interests, and the member making a formal apology. As this case concerned non-declaration, no further action is needed to put the record straight.

As regards a formal apology, the normal practice is to write to the chairman of the Sub-Committee on Lords’ Conduct, Lord Brown of Eaton-under-Heywood. That letter needs only briefly to explain the situation and to acknowledge that your non-declaration was not compliant with the Code. If you could please send me a copy of the letter I will incorporate it in my report on the case.

I will now prepare a short report on the case. You will be sent a copy of the report shortly before publication. Until that point I would be grateful if this matter could remain confidential.

Appendix E: Letter from Lord Richards of Herstmonceux to the chairman of the Sub-Committee on Lords’ Conduct, Lord Brown of Eaton-under-Heywood, 16 January 2017

In speaking in the House of Lords debate of 16 November 2016 on “*Armed Forces: Legal Challenges and Derogation from the European Convention on Human Rights*”, I’ve been apprised by the Lords Commissioner for Standards that my non-declaration of a possible interest was not compliant with the House of Lords Code of Conduct. I confess that it never occurred to me that I had, in fact, an interest to declare. However in the light of the letter from the Commissioner for Standards, I can see that it would have been wiser and more obviously in conformity with the rules of the House if I had made it clear that, as a former serving soldier, I am one of a group of persons who could possibly benefit from the retrospective disapplication of the European Convention on Human Rights.