

DGS&S 23/9/4

12 Oct 04

## REVIEW OF SERVICE POLICE INVESTIGATIONS ON OPERATIONS

### BACKGROUND

1. Concerns have been raised over the time taken by the Service Police (SP) to investigate incidents that occur on operations and about the effectiveness of the investigations. These issues were raised at a meeting held on 28 Apr 04 between S of S and the bereaved families of a number of military personnel killed in Iraq. On 21 May 04 VCDS asked DGS&S to carry out a review into these issues and make recommendations for improvements. VCDS cited a report from the US where it appeared that allegations into prisoner abuse had surfaced on 14 Jan 04, with the subsequent investigative and legal processes being carried out in a timescale that led to sentencing on 19 May 04.

### AIM

2. The aim of this review is to examine SP investigations on operations, the subsequent staffing processes and other related issues, assessing the current situation and making recommendations aimed at improving the effectiveness and timeliness of investigations.

### TERMS OF REFERENCE

3. The 21 May 04 minute from VCDS to DGS&S identified a number of clearly defined work strands that effectively formed the terms of reference. These are detailed at Annex A.

### ASSUMPTIONS

4. The core assumption is that the SP will continue to provide policing services in a range of operational theatres and that these operational theatres will vary in terms of permissiveness from relatively benign to hostile environments.

5. A secondary assumption is that there are unlikely to be any new resources made available to the SP and that the outcome of restructuring resulting from the Defence White Paper and the Future Army Structure work may mean there are fewer SP resources. Any proposals requiring additional resources will necessitate an STP bid.

### METHODOLOGY

6. The work was carried out by a Study Team comprising the Defence Police Policy Cell (DPPC) in D Def Sy, assisted by a member of DGMO's organisation.

We consulted a wide range of stakeholders, sometimes by means of formal office calls and visits and on other occasions in the course of more informal telephone conversations. A list of those consulted is at Annex B.

7. We collected a wide range of statistical and qualitative data from the RN Regulating Specialisation, Royal Marine Police, Royal Military Police (RMP), RAF Police (RAFP) and the Ministry of Defence Police (MDP). This included the mapping of the investigative and post-investigative processes (Annexes C and D).

8. On 3 and 4 Aug 04 members of the Study Team visited Basrah where they met a range of in-theatre staffs including the GOC and COS MND (SE), Commanding Officers, legal staffs, the Provost Marshal and members (RMP and RAFP) of 61 Section Special Investigation Branch (SIB). This visit was undertaken to validate the initial conclusions drawn from the analysis phase of the study and to obtain an insight into the practical difficulties of carrying out investigations in a demanding and non-permissive operational theatre.

### **RELATED STUDIES**

9. We took account of a number of other studies that had a bearing on our work, most notably the ongoing work of the Tri-Service Act Team (TSAT) and the recent study into Boards of Inquiry (BOI). A full list of these parallel work strands is at Annex E.

### **COMPARISON WITH THE US**

10. Publicity surrounding the case of Jeremy Sivits led to comparisons being made between the relative timeliness of UK and US investigations. The investigation into Sivits began on 14 Jan 04 and he was sentenced at Court Martial on 19 May 04. However, it should be borne in mind that this was a case involving a guilty plea and a pre-trial agreement. Further information on this case and on the US investigative process is at Annex F.

### **ANALYSIS OF SERVICE POLICE INVESTIGATIONS**

11. Using the specific questions VCDS asked, our assessment is set out below.

### **DETERMINE THE FUTURE REQUIREMENTS FOR SERVICE POLICE INVESTIGATION TEAMS**

What competences and skill sets are required?

12. For operational deployment, the SP need not only basic police and investigative training, but also a wide range of other training. At the outset of Op TELIC, there were some gaps here (mainly in relation to soldiering skills), but

these have now been addressed. It is also noteworthy that RAFP and RMP deploying to 61 Section SIB are now undertaking their pre-deployment training together, which was not the case initially. This package includes skill at arms, low-level collective military skills, first aid, language and cultural awareness, PW handling and tactical questioning.

13. Aside from standard military skills required of any Service person deploying to an operational theatre, SP require training in the investigation of the most serious offences, up to and including murder, that would normally be handed over to HDPF in the UK (Although it is recognised that the SP investigate the full spectrum of offences in Germany). Furthermore, the operational tempo and likely interest in certain categories of cases from bereaved families, Parliament, the media and lawyers means that operational investigations will be potentially more complex than non-operational ones. There may also be high-level pressure for quick resolution. We are clear, however, that timeliness must not be at the expense of thoroughness and transparency.

14. Out of a current strength of 3759 SP, only 164 (4.3%) are qualified to Level 3 and available for deployment (i.e. trained to carry out investigations into the most serious offences). A number of additional personnel are qualified to Level 3 but are employed in non-investigative posts. This raises a question about availability for deployment and currency. Other factors such as medical restrictions and compassionate reasons further reduce the available pool of deployable personnel. During our visit to Basrah we were told that the SP were operating at full stretch and had a considerable backlog. We were told that were there to be another major incident – either on Op TELIC or elsewhere – RMP SIB would struggle to cope. It is noteworthy that the number of shooting incidents cases has now almost doubled. A table showing the total number of Level 3 trained investigators and those who are available for deployment is at Annex G. We believe that better use could be made of current resources. **This will entail training more investigative personnel to Level 3 standard and ensuring that these trained resources are used on Level 3 investigations on operations. We so recommend.**

15. Given the high level of decision-making, policy and strategic skills required to investigate the more complex and serious inquiries/major incidents in a difficult operational environment, there is a requirement for the SP to have trained Senior Investigating Officers (SIOs). These need to be deployed on operations or be available to support the operational effort at short notice. This use of SIOs to take control of such inquiries is in keeping with HDPF best practice. **It is believed that there are insufficient SIOs trained across the SP and we recommend more be trained.** Despite the number of high-level cases currently under investigation on Op TELIC we note that there is no SIO deployed. **We recommend that this capability should be deployed in theatre at all times.**

16. There is some evidence of skills fade amongst investigators. Ideally, those deployed on operations should have recent investigative experience.

Therefore, where possible, those deployed to operational theatres should be the most experienced and technically competent available and not first tour investigators.

Is the associated initial training and subsequent career development training well matched to the requirements of the job?

17. There are at present some differences in the training that the respective Services undertake to achieve Level 3 standard. However, the Defence College of Police and Personnel Administration (DCPPA) has plans to harmonise all police training and is currently developing in consultation with PMs an investigative training course which will be piloted in Jan 05 and rolled out in Apr 05. The PMs will confirm whether this is fit for purpose. As part of the Defence Training Review the vision is that all branches of the SP and the MDP will train together and adopt best practice.

18. SIO training should take account of the operational context and **we recommend that consideration should be given either to a bespoke military SIO course, or to the addition of a military module to the current course which is delivered by HDPFs.**

19. There are differences in the single-Service career management of specialist investigators. In the Army, personnel transferring to the RMP SIB employment role remain in the SIB for the duration of their career. By contrast, RN SIB and RAFP personnel are more likely to move between investigative roles and other core policing tasks which, in the case of the RAFP, include higher level security outputs.

20. In terms of career development there are further opportunities that are worth exploration. These might include variations of refresher and updating training. As an example, the MDP's system of weekly Force Notices keep all personnel up to date with legislative and other key policing issues. Consideration might also be given to secondments to HDPFs, although the practical resource implications of this for the Services would need to be carefully thought through. **We recommend that the Defence Police Chiefs Forum (DPCF), composed of the Chief Constable MDP and the Service PMs, should be invited to examine these two areas.**

#### **EXAMINE HOW WE EMPLOY AND DEPLOY THE AVAILABLE INVESTIGATIVE RESOURCES**

Is this managed in the most effective manner?

21. Front Line Commands are responsible for force generation for deployed joint operations overseas. In compiling the Joint Force Element Table (JFET) PJHQ ensures that capabilities are coherently delivered and duplication is eliminated. The Provost capability is predetermined as part of the planning

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process, albeit on a single-Service basis. This does not necessarily lead to the best use of limited resources. The ability to sustain the mission and respond to changes in the operational environment and tempo presents challenges. As a consequence of this, **we identified the benefit of having a surge capability, whereby a suitably trained and prepared pool of personnel at heightened readiness would be available for deployment. We recommend that the PMs consider this.** If this were to be adopted, consideration should be given as to how this could be used on a tri-Service basis.

22. In the course of our visit to Basrah we observed that the RMP Unit Investigation Element (UIE) – which deals with less serious investigations involving Army personnel – was formerly operating under the command and control of OC Provost Company but had been transferred to OC 61 Section SIB. This provides a greater degree of technical oversight, has improved the quality of the UIE's work and results in additional resources which can be used to assist on higher level inquiries. **We endorse this initiative and recommend it should be formally adopted on future operations.**

23. There are some equipment issues, many of which arise because investigators deploy as individuals and not as part of a formed unit. Our visit to Basrah showed that 61 Section SIB had limited access to scanners/photocopiers, no digital cameras, insufficient computers and laptops, and poor communications. Additionally, there were compatibility problems with the IT. Initially, they had insufficient vehicles, which were unsuitable for the environment and the task. This situation is compounded by the fact that there are no equipment tables for investigators to support deployed operations. **We recommend that these equipment shortfalls should be addressed by identifying and funding dedicated equipment and ensuring that this information is incorporated into equipment tables.** Given the items required, the cost should not be substantial.

24. On the question of administrative support, there are no dedicated clerks and audio typists supporting 61 Section SIB. This meant that the SP had to spend time on these and other administrative duties, all of which detracted from their primary role. At the time of our visit, clerical support was about to be provided, but audio typists still remained an issue. Although not originally provided, we observed that two interpreters had been attached to 61 Section SIB. The importance of this capability was noted, because the interpreters' role went beyond translation and encompassed a more investigative function, particularly in the identification and screening of witnesses. **Given the importance of these support personnel to the SP we recommend they are provided as a high priority and that this is an integral part of the planning process.**

25. There are currently no dedicated provost staff at PJHQ. The establishment of a dedicated provost function at PJHQ (probably at SO2 level) would ensure that there is a competent, specialist source of expertise and interface between the operational Command and the single Services. It would

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also provide a tri-Service focus for operational policing. **We recommend this post be established as soon as possible.**

26. When looking at the ability of the SP to operate in non-permissive environment, it should be recognised that there are a number of practical difficulties that will either delay an investigation or preclude any meaningful investigation. These factors include:

- Following the declared cessation of hostilities on Op TELIC, the role of some of the PM's personnel was changed to undertake training of the Iraqi Police Force, meaning that fewer resources were available during subsequent periods of higher tension.
- In operations such as Op TELIC, SP need Force Protection, which may not be immediately available. In addition, they will often be required to self-protect, taking personnel away from their primary task.
- In some cases, attempting to get to the crime scene could cause more incidents and place SP and others in danger.
- Lack of timely access to the scene of an incident hampers any investigation.
- An inability to locate civilian witnesses.
- Religious and cultural factors relating to rapid burial may render it impossible to examine bodies. In Iraq, Investigating Officers have requested exhumation on six occasions (twice for the same individual). Only three requests were granted (*Hansard (Commons)*, 7 Jul 04, 720/721W).
- Environmental factors such as terrain, climate (e.g. generators failing and rendering IT inoperable).
- The reliance on external forensic science laboratories.
- Lack of immediate in-theatre legal advice to military suspects.
- Availability of military personnel both in theatre and those who have returned to their peacetime location. Additional problems arise during multinational operations or if any personnel come from SF units. There is evidence of some tension at tactical level on the ground between some COs and sub-unit commanders and investigators. This reflects a lack of understanding of respective priorities.

27. The majority of these inhibitors are beyond the control of the SP or chain of command. There is a problem of in-theatre legal advice to military personnel, where the current practice is to fly in a lawyer only when a number of suspect interviews are required. **This could be overcome by providing an appropriately qualified legal adviser in theatre or, to a lesser extent, by providing a video link to this specialist resource (The former would require provision for a PACE lawyer in the JFET). We recommend that this should be given further consideration.** In-theatre witness availability, which can inhibit the progress of SP investigations, could be ameliorated through better understanding between the SP and the chain of command. We note that the TSAT propose that it should be made a duty on COs to facilitate investigations undertaken by the SP. **We also recommend that briefings from or material about SP and Service legal staffs are part of the pre-deployment training of military personnel.** The key message should be that provided personnel have operated within the law, SP investigations will protect them and the Department from any allegations that surface.

Are the oversight arrangements which are in place for monitoring the progress of individual investigation adequate?

28. On operations, investigations are supervised at various levels within the SP chain of command. In addition, regular Case Progress Reports and Case Management Reports are administrative tools which are used to inform COs and supervisors on conduct of inquiries and delay.

29. The adequacy of the oversight arrangements will vary according to the experience and technical expertise of those in command. Although under the C2 of the in-theatre PM, OC 61 Section SIB's technical oversight and support is provided remotely from UK. Therefore, careful consideration should be given to the selection of the most qualified and experienced personnel as OC. On operations, investigative experience at PM/Deputy PM level would provide additional benefit, particularly in relation to in-theatre direction.

Is the staffing process for completed Service Police Investigations timely and properly supervised? Is there the greatest possible use of concurrent working in staffing the results of the investigation by the Service Prosecuting Authorities and the Chain of Command?

30. The post-investigative process (Annex D) is undeniably complex, but like the investigative process, a complex case may take time, but should not be rushed at the expense of quality.

31. There is a question over who owns the overall post-investigative process. At present, no single organisation has overall ownership and this creates difficulties in terms of taking a strategic overview and managing the timeliness of the process. **On a separate but related issue, it would be worth revalidating and standardising the timescales allocated to the individual steps of this**

process to ensure they are relevant and timely. We recommend this be done.

32. We understand that all completed investigation reports and associated evidence are currently distributed by hard copy. Greater use could be made of IT, which would improve timeliness throughout the process.

33. In undertaking this study we have stayed alongside the TSAT, who are likely to deliver a number of key changes aimed at improving both the robustness of process and, in some cases, timeliness. One key change will be the proposal to remove the power of COs to dismiss court martial-only offences without any form of hearing, while keeping them at the heart of the process. We support this. Another key change, again for suspected court martial-only offences, will be the process whereby the SP engage with a new Joint Service Prosecuting Authority (JSPA) from the outset. Both these changes take in account the Attorney General's concerns on the conduct of prosecutions in serious cases. Although the detail of the process is not yet agreed, the direct engagement of the police with the JSPA will mirror the way in which HDPF engage with the Crown Prosecution Service. Again, we support this.

#### **QUALITY ASSURANCE AND OVERSIGHT**

What are the current assurance mechanisms; how well do they operate?

34. SP reports and evidence are distributed to the CO, legal and Prosecuting Authority (PA) staffs, all of whom can challenge the content. From discussions with these staffs and Higher Authority no evidence emerged of any substantive concerns over the quality of SP investigations on operations.

35. We have examined the investigative process (Annex C) and found it to be sound. In other theatres, routine Technical Evaluations are carried out on the SP, by their own chain of command, to ensure that established procedures and practices are followed. **On Op TELIC there has been no Technical Evaluation and we recommend that this should be undertaken.**

36. We have no reason to doubt that current assurance mechanisms are satisfactory. Coupled with improvements to processes relating to BOIs, such as more regular contact with bereaved families on progress, we believe this should meet the requirement. If further assurance were needed, one form it might take is the use of an independent assessor, as occurs elsewhere in the Department. While there could be no question of doing this with ongoing investigations, a selection of closed files could be reviewed periodically, as currently happens with closed MDP complaints and discipline files. This is undertaken by a former Chief Constable and a former Police Complaints Authority member, in their capacity as non-departmental Members of the MOD Police Committee. **If it was felt that independent assurance would add value, we recommend this be explored further.**



What feedback mechanism exists to ensure that any lessons from particular investigations are taken fully into account?

37. As a part of any investigation, the SP may identify issues that arise in the course of an inquiry and need to be raised either by including them in the SP report or by raising them with the chain of command. Where there is a lesson to be learned in relation to the investigative process, advice would then be promulgated to the SP.

38. Any observations on the conduct of the investigation made subsequently by those involved in the post-investigative process would also be raised with the SP chain of command and with the PM if it is a sufficiently major issue.

39. There is a well-established operational lessons identified procedure. However, it was not clear to us that lessons that would assist the SP are being either identified or learned - in particular, the importance of making notes as soon as possible when coming off patrols, as continues to be routinely done in Northern Ireland. In the course of our visit to Basrah we were advised that such notes were not readily available to the SP. The importance of making such notes should be re-emphasised. **We recommend that they should be recovered by the SP and kept for a sufficient length of time, given the possibility of allegations surfacing some years after a particular operation.** Provided this is done, this should help in situations where military personnel are not available for immediate interview by the SP, due to operational commitments. This is particularly important on operations such as Op TELIC where numerous contacts may occur in a short period of time. More generally, **we recommend that better and wider use be made of the lessons identified process.**

ARE THERE OTHER THINGS THAT COULD BE DONE TO STREAMLINE THE CURRENT SERVICE POLICE INVESTIGATION PROCESS?

40. As noted previously, the TSAT has proposed that for court martial-only offences, the SP may involve the JSPA in parallel from the outset of the investigation. Further benefit in terms of streamlining the current process could be obtained by facilitating this earlier direct access to PA advice. This could be through having a PA capability embedded with the SP or through periodic surgeries held in theatre. Introducing a 24-hour PA helpline would also assist the SP. **We recommend that the most practical solution be identified and implemented.**

41. While we note in paragraph 36 that the current investigation process is satisfactory and we believe there is very little difference in approach between the three Services, **we recommend that this should be revalidated.**

## OTHER ISSUES

42. A key issue not addressed previously in this report is the policy for the recording and investigation of shooting incidents. This was issued in Feb 04 as a consequence of the shift from the 'warfighting' to the post-conflict phase of the operation. This policy document uses the following definition: "*An incident where shots are fired by UK forces resulting in the death or injury of any person*" and the presumption is in favour of a SP investigation. While this presumption can be dispensed with at Brigade Command level, provided action fell within the ROE, this discretion has been used only twice. We note, however, that some local counter-insurgency operations after a declaration of the end of hostilities can be more intense than anything that occurred during such hostilities. This policy has been a major driver in the size of the caseload that the SP have to investigate. As we note in paragraph 26, there are many practical inhibitors to the timely conduct of investigations on operations and the consequent ability to arrive at an outcome where the case can be closed. We understand that further consideration is being given to this policy.

43. We acknowledge that this is an extremely sensitive issue in view of the likely removal of the CO's power to dismiss courts martial-only offences without any form of hearing (and the Attorney General's interest in this).

## CONCLUSIONS

44. In the course of this quick but wide-ranging study we have found no major issues that are not already being considered as a result of parallel work strands. The biggest issue on robustness of process – and certainly the one of most concern to the Attorney General – is the ability of COs to dismiss courts martial-only offences. It is likely that the new Armed Forces Bill will remove this power.

45. The new Bill will also provide for a JSPA with which the SP will engage from the outset on court martial-only offences. This too should bring improvements in terms of timeliness and quality of investigations.

46. In the course of our consultation, no significant concerns on the quality of SP investigations on operations were raised and no evidence of any problems was found. The Team's visit to Basrah reinforced this point and showed that investigations are being done well, in a difficult operational environment where there are a number of practical issues that can hamper an investigation – not least the fact that it will be impossible to gain access to the scene of some incidents because of the operational situation.

47. The SP on Op TELIC are stretched and this has highlighted the comparatively small number of investigators who are SIO and Level 3 qualified. It must also be recognised that there is a significant difference between the work done in UK (where the most serious offences would normally be handed to HDPFs) and the sorts of investigations likely to arise in an operation such as Op

TELIC. As skills fade may be an issue, the importance of ready access to suitably qualified and experienced personnel is reinforced.

48. There are some equipment difficulties on operations, which could be alleviated by formalising an equipment table. The establishment of dedicated Provost staff at PJHQ would ensure that there is a competent, specialist source of expertise and interface between the operational Command and the single Services, and also provide a tri-Service focus for operational policing.

49. There can be both avoidable and unavoidable delays, but complex investigations and the post-investigative processes do take time and speed must not be at the expense of quality. That said, some trimming may be possible in respect of the timescales for some steps in the process.

50. In general, there are well-established internal procedures in place for oversight and assurance on operations. In respect of Op TELIC, technical oversight and support is currently provided remotely from UK. This is not the complete answer and needs to be augmented by an in-theatre capability.

51. We have identified a number of specific proposals, set out below, that we believe can deliver improvements. An Implementation Plan (Annex H) has been drawn up with actions attributed and indicative timescales for completion identified. While some of these timescales are tight, they have been prompted by the start of Op TELIC V (4 Oct 04). Oversight on progress will be maintained by the DPPC on behalf of VCDS.

### **RECOMMENDATIONS**

52. We make the following recommendations:

- a. More investigators should be Level 3 qualified (para 14).
- b. More investigators should be SIO trained (para 15).
- c. An SIO should always be deployed in theatre (para 15).
- d. A bespoke military SIO course or a military module to supplement the current HDPF course should be considered (para 18).
- e. Refresher and updating training, and secondments to HDPFs should be considered (para 20).
- f. Consideration be given to establishing a surge capability that ensures the training, preparation and readiness of Level 3 investigators (para 21).
- g. Formally transfer command and control of the UIE on future operations to OC SIB Section (para 22).

- h. Various aspects of equipment shortfall should be addressed and incorporated into equipment tables (para 23).
- i. Support personnel should be provided to the SP as a high priority and this should be an integral part of the planning process (para 24).
- j. Dedicated Provost staff should be established at PJHQ (para 25).
- k. Suspects have easier and more timely access to legal advice in theatre (para 27).
- l. Pre-deployment training for Service personnel should include an education on the role of the SP and Service legal staffs (para 27).
- m. Revalidate the timescales of the individual steps of the post-investigative process (para 31).
- n. A Technical Evaluation should be carried out into SP deployed on Op TELIC and any operational deployment of similar size and duration (para 35).
- o. Consideration should be given to using an independent assessor to undertake a periodic review of closed SP casefiles (para 36).
- p. Patrol notes should be made and subsequently recovered and kept by the SP for a sufficient length of time, as happens in Northern Ireland (para 39).
- q. More effective and wider use should be made of the lessons identified process (para 39).
- r. SP should have earlier direct access to PA advice (para 40).
- s. Revalidate the investigative process (para 41).

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Deborah Loudon  
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Annexes:

- A. Terms of Reference
- B. List of Those Consulted
- C. Generic Service Police Investigative Process
- D. Post-Investigative Process
- E. Related Studies
- F. Comparison with the US
- G. Service Police Operational Investigative Capability
- H. Implementation Plan

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