

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT TAIN

[2025] FAI 1

TAI-B115-22

DETERMINATION

BY

SHERIFF GARY AITKEN

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC
(SCOTLAND) ACT 2016

into the death of

JOE WILLIAM SPENCER

Tain, 18 December 2024

Determination

The sheriff, having considered the information presented at the inquiry, determines in terms of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, (hereinafter referred to as “the 2016 Act”):

In terms of section 26(2)(a) of the 2016 Act (when and where the death occurred)

The late Lance Corporal Joe William Spencer, born 30 March 1992, (hereinafter referred to as “LCpl Spencer”) died at approximately 17:41 hours on 1 November 2016 within an ISO container at the Air Weapons Range, Tain.

In terms of section 26(2)(b) of the 2016 Act (when and where any accident resulting in the death occurred)

The accident resulting in death took place at approximately 17:41 hours on 1 November 2016 within an ISO container at the Air Weapons Range, Tain.

In terms of section 26(2)(c) of the 2016 Act (the cause or causes of the death)

The cause of the death of said LCpl Spencer was a gunshot wound to the head.

In terms of section 26(2)(d) of the 2016 Act (the cause or causes of any accident resulting in the death)

The cause of the accident resulting in the death of said LCpl Spencer was the undemanded discharge of a single round from an L115A3 sniper rifle then in the lawful possession of LCpl Spencer.

In terms of section 26(2)(e) of the 2016 Act (any precautions which (i) could reasonably have been taken and (ii) had they been taken, might realistically have resulted in death, or any accident resulting in death, being avoided)

LCpl Spencer's death or the accident resulting in his death might realistically have been avoided if the following reasonable precautions had been taken:

- (i) If the correct words of command to carry out the unload drill at the conclusion of the first shooting detail on the afternoon of 1 November 2016 had been given by C/Sgt 1 and complied with by LCpl Spencer.

- (ii) If DS 1, who was a safety supervisor, had not left the firing line and had observed LCpl Spencer carrying out the unload drill at the conclusion of the first shooting detail on the afternoon of 1 November 2016 and had noted any defect or issue with that drill.
- (iii) If all students had been ordered to carry out normal safety procedures for the rifle when leaving the firing point at the transition from day shooting to night shooting on 1 November 2016.
- (iv) If LCpl Spencer had not been holding his rifle vertically in close proximity to his body during the un-demanded discharge.

In terms of section 26(2)(f) of the 2016 Act (any defects in any system of working which contributed to the death or the accident resulting in death)

There were no defects in any system of working which contributed to the death or the accident resulting in death.

In terms of section 26(2)(g) (any other facts which are relevant to the circumstances of the death)

The following facts are relevant to the circumstances of LCpl Spencer's death:

- (i) The full approved programme for the Sniper Operators' Course should have been followed, in particular the completion by all students of the Skill at Arms lessons for the sniper rifle prior to undertaking a Weapons Handling Test for that weapon system.

(ii) Skill at Arms lessons are a mandatory precursor to soldiers completing a Weapons Handling Test to confirm their competence to use a particular weapons system. Successful completion of a Weapons Handling Test is recorded in the training records of a soldier. Participation in Skill at Arms lessons is not so recorded. The fact that such Skill at Arms lessons were not recorded has not assisted in clarifying whether or not LCpl Spencer had undertaken all relevant Skill at Arms lessons relating to the L115A3 sniper rifle prior to 1 November 2016.

Recommendations

In terms of sections 26(1)(b) of the 2016 Act (recommendations (if any) as to (a) the taking of reasonable precautions, (b) the making of improvements to any system of working, (c) the introduction of a system of working, (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances)

There are no recommendations made.

NOTE

Legal framework

[1] In Scotland, the Lord Advocate is responsible for the investigation of all sudden, accidental or suspicious deaths. That function is carried out on the Lord Advocate's behalf by the Scottish Fatalities Investigation Unit, a department of the Crown Office and Procurator Fiscal Service, often referred to as "the Crown" or "the Procurator Fiscal".

[2] This inquiry was held in terms of section 1 of the 2016 Act and was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 (hereinafter referred to as "the 2017 Rules"). This fatal accident inquiry was presented by the Crown as a discretionary inquiry in terms of section 4(1)(a)(ii) of the 2016 Act, namely as a death which occurred in circumstances giving rise to serious public concern.

[3] The legislation in force at the time of LCpl Spencer's death on 1 November 2016 was the Fatal Accident and Sudden Death Inquiry (Scotland) Act 1976 (hereinafter

referred to as “the 1976 Act”). In terms of that legislation fatal accident inquiries were mandatory where a person died as a result of an accident in the course of their employment. As a serving member of the British Army LCpl Spencer was a Crown servant and not an employee. Accordingly, his death was not subject to a mandatory fatal accident inquiry under the 1976 Act. Section 2 of the 2016 Act extends the category of mandatory inquiries to include those who die as a result of an accident which occurred in the course of their employment *or occupation* (my emphasis). Therefore, it covers Crown servants as well as employees. However, although the 2016 Act received Royal Assent on 14 January 2016, before LCpl Spencer’s death, the commencement date for section 2 of the 2016 Act was 15 June 2017, after LCpl Spencer’s death. To add to the legislative complexity, a fatal accident inquiry proceeds under the legislation in force on the date that the Lord Advocate applies to the Court to hold an inquiry, not the date of the death of the person the inquiry relates to. In relation to LCpl Spencer the application was lodged with the Court on 15 December 2022.

[4] The Scottish Parliament clearly intended that members of the armed forces should fall within the category for the holding of mandatory fatal accident inquiries in Scotland when updating the legislative provisions for fatal accident inquiries. In applying for a discretionary inquiry in relation to the death of LCpl Spencer the Lord Advocate has not specifically indicated whether that decision is to give effect to the spirit of the impending change in the law as at the date of LCpl Spencer’s death that was clearly coming, to investigate a death of general public concern, or both. The Lord Advocate is under no obligation to explain that decision. All I wish to say on the matter

is that whatever the underlying reason, I am entirely satisfied that LCpl Spencer's death was a matter that merited the public scrutiny and consideration provided by a fatal accident inquiry. None of the other interested parties to the inquiry took any issue with the approach taken by the Lord Advocate.

[5] The purpose of this inquiry is set out in section 3 of the 2016 Act as being to establish the circumstances of the death and to consider what steps, if any, might be taken to prevent other deaths in similar circumstances. It is not intended to establish liability, either criminal or civil. The inquiry is an exercise in fact finding, not fault finding. It is not open to me to engage in speculation. The inquiry is an inquisitorial process. The Crown, in the form of the Procurator Fiscal, represents the public interest.

[6] In terms of section 26 of the 2016 Act the inquiry must determine certain matters, namely where and when the death occurred, when any accident resulting in the death occurred, the cause or causes of the death, the cause or causes of any accident resulting in the death, any precautions which could reasonably have been taken and might realistically have avoided the death or any accident resulting in the death, any defects in any system of working which contributed to the death, and any other factors relevant to the circumstances of the death. It is open to the Sheriff to make recommendations in relation to matters set out in subsection 4 of section 1 of the 2016 Act.

[7] Following an application by the Ministry of Defence I granted an order that the names and identities of armed service personnel, serving or having previously served, should be withheld from the public in the proceedings before the inquiry. I also granted an order in terms of section 11 of the Contempt of Court Act 1981 to prohibit the

publication of the name or other means of identification, including photographic reproduction (digital or otherwise) of service personnel appearing before or referred to in the inquiry. All service personnel giving evidence at the inquiry, or otherwise referred to at the inquiry, were identified by means of their rank or task description and a number or letter. I have followed the same pattern in this Determination. The sole exception is LCpl Spencer himself, who is, of course, the focus of this inquiry. My reasons for granting these order are discussed below at paragraphs [20] and [21].

[8] I also granted an application by the Ministry of Defence restricting access to the Court papers other than for the participants to the inquiry, other than on application made, intimated to the parties and after hearing the applicant and the parties to the inquiry. My reasons are discussed in paragraphs [20] and [21] below.

Introduction

[9] This inquiry was held into the death of Joe William Spencer. He was a 24 year old man, having been born on 30 March 1992. He joined the British Army in February 2011 and on completion of his basic training was posted to the 3rd Battalion of the RIFLES regiment, stationed in Edinburgh. He was promoted to Lance Corporal in 2015. He served with distinction and dedication and deployed abroad to take part in a number of major training exercises, including working alongside the United States Army. He deployed operationally to Afghanistan, where he was seriously wounded in a grenade attack. He worked his way back to operational fitness and was training to be a sniper. LCpl Spencer made his home in Scotland with his partner and they had

recently bought their first house together in July 2016. He died on 1 November 2016 at the Air Weapons Range, Tain, Ross-shire while on a sniper training course. A sniper rifle allocated to LCpl Spencer suffered an un-demanded discharge and he sustained an instantly and necessarily fatal gunshot wound.

Procedural history – pre inquiry

[10] This inquiry has a more detailed procedural history than some and I therefore consider that it will be useful to set that history out in some detail. A preliminary hearing was held by webex at Tain Sheriff Court on 1 February 2023. Mr Glancy, Principal Procurator Fiscal Depute, appeared for the Crown. Mr Webster KC appeared as senior counsel, with Ms Iridag as junior counsel, on behalf of the Ministry of Defence, representing the British Army. Ms Bone, solicitor advocate, appeared on behalf of Colour Sergeant 1. A further hearing was fixed for 13 March 2023.

[11] A preliminary hearing was held by webex at Tain Sheriff Court on 13 March 2023. Representation was as before. Ms Bone intimated that she was now also instructed on behalf of the Senior Planning Officer. Ms Watt, solicitor advocate, appeared on behalf of Colour Sergeant 2. The Senior Planning Officer, Colour Sergeant 2 and Colour Sergeant 3 had all received statutory intimation from the Crown that they may be subject to criticism during the course of the inquiry and accordingly they were entitled to be parties to the inquiry. A further hearing was fixed for 12 April 2023.

[12] A preliminary hearing was held by webex at Tain Sheriff Court on 12 April 2023. Representation was as before. Dates were assigned for the inquiry to take place, in

person, at Tain Sheriff Court on the weeks commencing Monday 4 September 2023 and Monday 18 September 2023. A further preliminary hearing was fixed for 7 June 2023 for parties to draft a joint minute of agreement and to confirm the number of proposed witnesses and whether any of the witnesses were vulnerable.

[13] A preliminary hearing was held by webex at Tain Sheriff Court on 7 June 2023. Representation was as before. A further preliminary hearing was fixed for 31 July 2023 for draft joint minutes of agreement to be produced and the number and availability of witnesses to be clarified.

[14] On 27 July 2023 the Crown lodged a Rule 4.2(b) application seeking an order that evidence should be presented at the inquiry by way of manuscript or typewritten statements, productions, labels, transcripts and joint minutes of agreement, save for where the Court otherwise directs. The application also appended a list of witnesses with an indication of the witnesses the Crown intended to lead oral evidence from.

[15] The Crown application was considered and granted at a preliminary hearing which was held by webex at Tain Sheriff Court on 31 July 2023. Representation was as before. Mr Webster KC raised the possibility that Directing Staff 1, who was due to be a witness at the inquiry, might be the subject of criticism and therefore might require independent legal representation. Mr Glancy confirmed that this witness had not received any statutory intimation of such from the Crown as it was not considered likely that he would be subject to criticism. However, in light of Mr Webster KC's concerns he undertook to raise matters with the witness. Mr Webster KC also raised concerns in relation to the identification of the witnesses before the inquiry and access to

documentary productions at the inquiry. The hearing was continued to 15 August 2023 to allow the Crown to make contact with Directing Staff 1 to establish whether he intended to be represented at the inquiry and for the Ministry of Defence to lodge an application to restrict access to the documentary productions or for the anonymization of the documents and identities of the witnesses.

[16] On 11 August 2023 Directing Staff 1 intimated that he did intend to appear as a party to the inquiry and that he would be represented by Ms McDonnell, solicitor.

[17] On 15 August 2023 the Ministry of Defence lodged a Rule 4.2(b) application seeking that witnesses should not be identified by name and that a contempt of court order should be made to prevent the publication of any means of identifying the witnesses whether by name or by photograph or other image. The application also sought an order restricting access to the Court papers to anyone other than the parties to the inquiry, other than on application to the Court, intimation to the parties and after a hearing.

[18] A preliminary hearing was held by webex at Tain Sheriff Court on 31 July 2023. Representation was as before. Directing Staff 1 was admitted as a party to the inquiry. Mr Webster KC moved the Ministry of Defence Rule 4.2(b) application. Mr Webster KC also raised concerns about the availability of three particular witnesses. Following discussions I ordered that additional information be provided by 28 August 2023 in relation to the availability of the witnesses.

[19] So far as the Ministry of Defence Rule 4.2(b) application was concerned, having heard from parties, I accepted Mr Webster KC's submission that members of the armed

forces giving evidence at the inquiry would have their names anonymised and ordered that their names cannot be published. An interim contempt of court order was put in place in that regard.

[20] Many of the witnesses are or were involved in particular duties in the armed forces and I am satisfied that to make their identities a matter of public record might put them or their families at risk and might prejudice future military operations. Soldiers perform an enormous number of duties, but snipers have an additional, very specialised skill. They are trained, to put it bluntly, to target and kill people at significant range. The presence of snipers is a significant physical and psychological threat to an enemy. Information about the identity of those trained for such duties might put them at physical risks from those persons, organisations and states who wish ill to this country. The United Kingdom may not formally be at war at present, but the global position is far from secure and I have no doubt that members of the armed forces are currently and certainly in the future are likely to be deployed on operations where a degree of anonymity may be, literally, a matter of life and death.

[21] Of fundamental importance to the inquiry was the evidence that witnesses could give about what happened. The purpose is to learn lessons for the future, not to apportion blame. Accordingly the identity of witnesses is of limited importance. What they saw, did and thought is far more important than who they are. I am satisfied that the anonymity orders granted had no effect on the purposes of this Inquiry.

[22] Thereafter the inquiry was continued to the first day assigned for hearing evidence, namely 4 September 2023.

[23] On 28 August 2023 further information was lodged with the Court confirming that the potential issue with the attendance of one of the witnesses had been resolved.

[24] At approximately 4:30 pm on Friday 1 September 2023 the Ministry of Defence intimated to the other parties and the Court that it intended to lodge three inventories of productions. These extended to several thousand pages of material. I was provided with a pen drive containing these productions on 4 September 2023.

[25] On 4 September 2023 LCpl Spencer's family were present in Court for the start of the evidence. Mr Webster KC sought to lodge the three inventories on behalf of the Ministry of Defence, although late. He submitted firstly that the material, although extensive, should not present a difficulty as it was assumed that the documents were a duplication of the material already lodged by the Crown. He also submitted that the inventories contained additional material so that the inquiry might have access to the full information. He was unable at the time to advise me what parts of the inventories were duplicates and what parts were additional information.

[26] Ms Bone submitted that despite the very limited time she had had to consider the inventories they appeared to contain considerable new material including supplementary statements taken from her clients, of which she was unaware. She understood that her clients were likely to give evidence during later that week. With great reluctance she made a motion to adjourn the inquiry, despite the consequent disruption and expense of any such adjournment. Ms Watt and Ms McDonnell adopted Ms Bone's submissions.

[27] Mr Glancy advised that from his preliminary inspection of the three inventories it appeared that they contained material of which the Crown was not aware and that he would also require further time to consider the material.

[28] I considered refusing to allow the late inventories to be received but having heard from Ms Bone that they appeared to contain material which was relevant to her client I allowed the three inventories to be received.

[29] Mr Webster KC sought permission for a potential witness for the Ministry of Defence to sit in court to hear the oral evidence. He anticipated that the potential witness might be called to give evidence in relation to steps taken by the Ministry of Defence in response to LCpl Spencer's death and Mr Webster KC submitted that it would be useful for the witness to hear the evidence given. I granted that request. Air Commodore 1 was present for part of the evidence and was the final witness to give oral evidence before the inquiry.

Procedural history - inquiry

[30] With the agreement of all parties on 4 September 2023 I heard evidence from Mr Spencer, LCpl Spencer's father, and from Staff Sergeant V, whose function as a witness at the inquiry was to give evidence about certain factual matters in relation to the orders and procedures for loading and unloading a particular type of weapon and to give a practical demonstration using such a weapon in court. Staff Sergeant V and the weapon were both present at Court and it made good sense to deal with that evidence to ensure that the weapon did not require to be brought back to Court on a subsequent

occasion. His evidence was of great assistance to the inquiry and largely uncontroversial.

[31] Thereafter the inquiry was adjourned for further evidence until the week beginning 18 September 2023, the originally intended second week of evidence. This was to allow parties an opportunity to fully consider the material lodged by the Ministry of Defence. In addition, I fixed a procedural hearing, by webex, for 8 September 2023 for the Ministry of Defence to produce a reconciliation between the productions lodged by the Crown and the productions contained in the three inventories lodged on its behalf, to be lodged with the Court, and for parties to advise of their availability and the availability of witnesses for future dates.

[32] On 7 September 2023 the Ministry of Defence timeously produced the reconciliation between their inventories of productions and those lodged by the Crown.

[33] At the procedural hearing by webex on 8 September 2023 the reconciliation document produced by the Ministry of Defence was discussed, along with potential future dates for hearing evidence. The inquiry was adjourned to 18 September 2023 at Tain Sheriff Court to continue hearing evidence.

[34] On 13 September 2023 the Ministry of Defence lodged an application for a fourth inventory of productions to be lodged, although late.

[35] On 18 September 2023 all other parties confirmed that they had no objection to the Ministry of Defence's fourth inventory of productions and I allowed that to be received, although late. Mr Glancy continued with the presentation of the Crown evidence. The inquiry heard oral evidence on 18, 19, 20 and 21 September 2023.

Thereafter the inquiry was adjourned until the week commencing 22 January 2024 for the hearing of further evidence, the first date that all parties were next available.

[36] On 22 January 2024 parties helpfully lodged a joint minute of agreement confirming that the productions lodged before the inquiry are what they bear to be and may be referred to without being spoken to in evidence. Thereafter Mr Glancy continued with the presentation of the Crown evidence. The inquiry heard oral evidence on 22, 23, 24 and 25 January 2024.

[37] On 23 January 2024 Mr Webster KC raised an objection during the evidence of Student A. Student A had previously given evidence on two occasions to the Ministry of Defence Service Inquiry into LCpl Spencer's death, once under oath and the second time under affirmation. Put very simply a Service Inquiry is an inquisitorial multi-service panel convened to investigate military incidents such as LCpl Spencer's death. The Service Inquiry hears evidence, under oath, from witnesses and produces a report containing its findings. The Service Inquiry report in relation to LCpl Spencer's death was lodged as a production with the inquiry by the Ministry of Defence, as production 1 in their first inventory. Transcripts of the evidence given by various witnesses to the Service Inquiry had helpfully been lodged with this inquiry by the Crown and the Ministry of Defence. These included the transcripts relating to Student A. A Service Inquiry has much in common with a fatal accident inquiry. Both are concerned with learning lessons for the future. At the conclusion of all further inquiries into LCpl Spencer's death, such as any potential Coroner's Inquest, the Service Inquiry report in relation to his death will be published on the Defence Safety Authority website and will

be publically available. The anonymous designations for the witnesses before the Service Inquiry, for instance Student A, are the same anonymous designations used before this inquiry to aid cross reference in due course.

[38] The substance of Mr Webster KC's objection was that Student A had given contradictory evidence in his two appearances before the Service Inquiry. The transcripts of his evidence before the Service Inquiry were available to me. Mr Webster KC's concern was that if Student A were to adopt those transcripts and provide evidence to the inquiry that was also inconsistent he might leave himself open to possible perjury proceedings and accordingly should be provided with a warning that he was not obliged to answer any question which might tend to incriminate him. This objection raised an important point of principle and practicality for the inquiry both in relation to Student A and other witnesses due to be called.

[39] It may be of assistance to explain the usual position in relation to fatal accident inquiries. A fatal accident inquiry is usually but not always dealt with either after criminal proceedings relating to the death have concluded or the Lord Advocate has taken the view that criminal proceedings are not to be taken. However, if a witness at a fatal accident inquiry gives evidence that incriminates himself or herself in the commission of a crime then that evidence would be, at least potentially, admissible against them at a subsequent criminal trial. The crime may or may not be related to the death. In Scotland no one is obliged to incriminate themselves. This situation can be dealt with in one of two ways. The Lord Advocate may, at her discretion, provide the witness with an undertaking that any evidence the witness gives will not be used in a

criminal trial. Such an undertaking may be conditional. This allows the witness to give evidence freely to the inquiry. Such formal undertakings are very rare. Or the presiding Sheriff may administer a warning to the witness, largely in the form of a common law caution, advising the witness that they are not obliged to answer questions where their answer may tend to incriminate them in the commission of a criminal offence. The witness may therefore refuse to answer a question, denying the inquiry the benefit of their evidence on that point. This is a situation which does occur but is still fairly rare in practice.

[40] So far as this inquiry was concerned, Mr Glancy was able to advise me that the Lord Advocate had not and did not intend to issue any undertakings to the witnesses. However, he made the point that after detailed consideration of the circumstances of LCpl Spencer's death the Crown had decided to proceed by way of fatal accident inquiry rather than by criminal prosecution. The evidential requirements and standard of proof for a criminal prosecution in Scotland are considerably higher than those used in a fatal accident inquiry.

[41] In relation to Student A in particular he conceded that there was a contradiction between Student A's previously recorded evidence, given on two separate occasions, but pointed out that differences in recollection by a witness at different times is not something that inquiries and courts are unfamiliar with. It was a fairly large leap from there being an inconsistency in the evidence of a witness and a successful perjury prosecution being pursued.

[42] The added complexity in this particular case is that, very unusually, the Lord Advocate is not the sole potential prosecuting authority. As certain witnesses to the inquiry were, and are, members of the armed forces they are subject to military discipline, which may include prosecution before a military tribunal. Mr Webster KC was able to advise me that no undertakings would be given to the witnesses in regard to their evidence and understandably he could not say what attitude the military prosecutors would take to matters. He conceded that this state of affairs might mean that the inquiry would be deprived of certain oral evidence.

[43] Ms McDonnell helpfully drew my attention to The Armed Forces (Service Inquiries) Regulations 2008 and in particular to Regulation 12 which states:

“12. – (1) Subject to paragraph (2), evidence given by a person to a service inquiry panel shall not be admissible against a person at a summary hearing or in proceedings before a civilian court or a service court.

(2) Evidence given before a service inquiry panel may be admissible in proceedings referred to in paragraph (1) for –

- (a) an offence against section 42 of the Act where the corresponding offence under the law of England and Wales is an offence mentioned in sub-paragraph (b);
- (b) an offence under section 2 or 5 of the Perjury Act 1911.”

[44] In effect this means that evidence given by a witness at a Service Inquiry is not admissible against themselves except in very limited circumstances. However, were a witness to adopt the evidence they gave to a Service Inquiry in the course of other proceedings, for instance a Fatal Accident Inquiry, it is at least arguable that the evidence would then become admissible in other proceedings. Accordingly, I accepted that there was force in Mr Webster KC’s submission that evidence given by certain

witnesses at the inquiry might put them at risk of prosecution, even if more so by the military authorities than the Lord Advocate. In fairness to the effected witnesses I concluded that a warning would likely be essential, even if this restricted the oral evidence available to the inquiry. In the particular circumstances of Student A's evidence I concluded that such a warning was not necessary.

[45] During the afternoon of 25 January 2024 Mr Glancy indicated that the next witness he proposed to call was Directing Staff 1, to be followed by Colour Sergeant 2. Before the first of these witnesses was called into Court his solicitor, Ms McDonnell, made a motion echoing and expanding on Mr Webster KC's earlier objection, and seeking that I administer a warning to Directing Staff 1 in relation to self-incrimination. Ms McDonnell went further and submitted that the form of warning I should administer should advise the witness that he need not answer any question other than confirming very basic personal details. That proposition was clearly significantly wider than the prohibition on self-incrimination. In support of that proposition Ms McDonnell submitted that in the context of this inquiry it would not be possible for a lay person to understand which questions, or rather which answers, might be self-incriminating and therefore which questions should be answered and which they might wish to refuse to answer.

[46] Ms McDonnell referred me to the Determination dated 7 December 2015 of Lord Beckett, then a Sheriff, into the deaths of John Kerr Sweeney, Lorraine Sweeney, Erin Paula McQuade, Stephanie Catherine Tait, Gillian Margaret Ewing and Jacqueline Morton (published on the Scottish Courts and Tribunal Service website as [2015] FAI 31).

This inquiry may be familiar as the “Glasgow Bin Lorry Inquiry”. At Paragraphs [212] to [214] Lord Beckett states:

“[212] I considered that in order for the right afforded to Mr Clarke by section 5(2), and the common law, to be practical and effective, he would require to understand which questions might tend to show that he was guilty of an offence. I considered that it would be very difficult for him to grasp the scope of the circumstantial case contemplated by Ms Bain and its implications. I concluded that the most practical and effective means of warning Mr Clarke was to tell him that he need not answer any question other than his name and age.

[213] When he was called as a witness, I confirmed with Mr Clarke that he had had legal advice that morning and then said to him:

‘You can choose to answer questions if you wish to do so...But I must tell you this: the law says that you do not have to answer any question if the answer would tend to show that you are guilty of any crime or offence. In practice, that means that you do not have to tell any of the people who ask you questions any more than your name and age.’

[214] From time to time, I reminded Mr Clarke of this when I deemed it appropriate. For the most part he chose not to answer questions, but he did choose to give a full account of the events of 22 December. Since I gave Mr Clarke a warning that he was entitled in law to refrain from answering questions, his declining to answer certain questions and the absence of evidence from him has played no part in my drawing inferences adverse to him.”

[47] I heard from Mr Glancy and Mr Webster KC, who reiterated their submissions made earlier in relation to Student A. Mr Webster KC added that while a broad warning of the type proposed by Ms McDonnell might deprive the inquiry of oral evidence from the witness in this particular enquiry I have the benefit of the police statements and transcripts of the evidence given to the Service Inquiry and can take the contents of these into account in producing this Determination. Ms Bone did not wish to make any submissions. Ms Watt adopted Ms McDonnell’s submissions on behalf of her client, Colour Sergeant 2.

[48] I did not consider that I was bound by the approach adopted by Lord Beckett, although his reasoning and approach are of considerable assistance. I was satisfied from the evidence generally available to me that both witnesses were properly in a category where their answers to certain obvious questions, if given, *might* lead to self-incrimination. Therefore a warning against incrimination was appropriate for each witness. I carefully considered Ms McDonnell's submission that such a warning should mirror that given by Lord Beckett and go beyond what the law actually requires. This is a delicate question.

[49] A witness is generally obliged to answer all questions put to them in a court or inquiry. Indeed, failure to do so may amount to prevarication and be punishable as a contempt of court. The standard warning, if administered, is that the witness is not obliged to answer any question which may tend to incriminate themselves of a criminal offence. In comparison, all interviews conducted by the police and other investigating agencies of persons suspected of committing a criminal offence are preceded by a description of the allegation and a caution. The terms of the caution are rather wider than a court warning and are to the effect that the interviewee is not obliged to say anything but that anything which they do say will be recorded and may be used in evidence against them. Even that is rather more restricted than an indication that only restricted personal details need be confirmed.

[50] While I am not necessarily convinced that such a wide warning will always be appropriate I reached the conclusion that it was necessary in the particular circumstances of this case to protect the rights and interests of the two witnesses. This is

particularly so where any adoption of their earlier statements and particularly their evidence to the Service Inquiry *might* render admissible against them evidence which was not admissible at the time it was given. I therefore warned both witnesses using the form of words used by Lord Beckett and quoted above. Both witnesses exercised their right to refuse to answer questions. While this deprived the inquiry of the benefit of their oral evidence they were both perfectly within their rights to refuse to answer questions and I draw no adverse inference from that and nor should anyone else.

[51] The evidence contained in their statements and transcripts has given me considerable detail with which to prepare this Determination. Statements taken shortly after a significant incident are a very valuable source of evidence and can be sufficient to allow conclusions to be drawn in an inquiry. It may be of assistance for a witness to give oral evidence to supplement a previous statement, for the purposes of clarification or expansion. That is why the Crown often lead oral evidence from witnesses. The absence of that oral evidence may or may not be to the detriment of the inquiry. I am satisfied in this case that the correct balance of competing interests required the witnesses to be warned in the manner I used, and that their resulting refusal to answer questions were decisions which they were legitimately entitled to take. I do not consider that this has had a material effect on the conclusions I have reached in this Determination. Nevertheless the inquiry, and in particular LCpl Spencer's family, have not had the benefit of hearing direct evidence from these witnesses.

[52] The concerns of the witnesses were not merely speculative, as the successful prosecution at Court Martial in 2018 of three individuals who were still serving in the

Army arising from the death of a soldier during a training exercise in 2012 demonstrates. That case is mentioned further at paragraph [590] below.

[53] Thereafter the inquiry was adjourned until the week commencing 19 February 2024 for the hearing of further evidence.

[54] On 19 February 2024 Mr Webster KC lodged a 5th Inventory of productions on behalf of the Ministry of Defence along with a statement from Air Commodore 1. The inventory of productions contains documents referred to in the statement of the witness. There was no objection from any of the other interested parties and the statement and inventory were received. The inquiry heard the oral evidence of Directing Staff 2 and commenced hearing the evidence in chief of Air Commodore 1. Air Commodore 1 was called by Mr Glancy as part of the Crown evidence but his evidence in chief was taken, with the agreement of all, by Mr Webster KC.

[55] It had been anticipated that Air Commodore 1 would conclude his evidence on 20 February 2024. However, at the start of the Court day I was advised by Mr Glancy that further information had come to light which necessitated additional police enquiries and potentially enquiries by the Ministry of Defence. I was advised that all parties were agreed that these investigations were necessary and that it in the circumstances it would not be appropriate to conclude the evidence of Air Commodore 1. Accordingly, I adjourned the inquiry to a procedural hearing by webex at 9:30 am on Monday 15 April 2024 to allow those investigations to be progressed. Air Commodore 1 was thanked for his attendance and advised that his evidence would be concluded on a future date, to be later fixed.

[56] On 15 April 2024 the inquiry called by webex and I was advised that the additional investigations had been completed. Mr Glancy lodged a further Rule 4.2(b) Notice on behalf of the Crown, to which no objection was taken, along with additional statements. Parties confirmed that the additional investigations would not necessitate re-calling any of the witnesses or calling additional evidence. The inquiry was continued until 31 May 2024, by webex, for Air Commodore 1 to conclude his evidence.

[57] On 31 May 2024 Air Commodore 1 concluded his evidence. All parties confirmed that there was no further evidence to be led before the inquiry. I adjourned the inquiry until 21 August 2024 by webex for parties to prepare written closing submissions.

[58] All parties lodged helpful and detailed written closing submissions. On 21 August 2024 I heard the closing submissions on behalf of the Crown, presented by Mr Glancy. These were of necessity fairly detailed and occupied all of that day. Thereafter I adjourned the inquiry until 28 October 2024 by webex to hear the closing submissions on behalf of the other parties.

[59] On 28 October 2024 I heard the closing submissions on behalf of the Ministry of Defence, presented by Mr Webster KC; on behalf of Colour Sergeant 1 and the Senior Planning Officer, presented by Ms Bone; on behalf of Colour Sergeant 2, presented by Ms Watt and on behalf of Colour Sergeant 3, presented by Ms McDonnell.

[60] Mr Glancy advised me that he understood that the Coroner in Hampshire intends to hold an Inquest into the death of LCpl Spencer and that two dates have been fixed in the middle of January 2025 for that purpose.

[61] I thereafter made avizandum, meaning that the inquiry has concluded, pending the production of this Determination.

The facts

[62] I will deal with the facts I have found established in this inquiry in 12 separate chapters. These factual matters are those which I have found to be established by evidence agreed between the parties and contained in two joint minutes of agreement, the oral evidence heard from witnesses and the documentary material lodged by parties to the inquiry. Those chapters are:

1. LCpl Spencer's personal and professional background – Paragraphs [63] to [66]
2. General description of the operation of the L115A3 sniper rifle – Paragraphs [67]-
[77]
3. Sniper Operators' Course (General) – Paragraphs [78] to [79]
4. Distributed Training – Paragraphs [80] to [90]
5. Pre-Cadre Training – Paragraphs [91] to [95]
6. Sniper Operators' Course (51 Brigade) – Paragraphs [96] to [99]
7. Barry Buddon – Paragraphs [100] to [113]
8. Tain – Paragraphs [114] to [142]
9. Un-demanded Discharge – Paragraphs [143] to [147]
10. Medical evidence – Paragraph [148]
11. Examination of the L115A3 sniper rifle – Paragraphs [149] to [153]
12. The cause of the un-demanded discharge – Paragraphs [154] to [160]

LCpl Spencer's personal and professional background

[63] LCpl Spencer was the youngest of three brothers. He was 24 years old at the time of his death. He had a keen love of fly fishing and enjoyed competitive sport while at school. He left school with fifteen GCSE's and decided to join the Army. In 2010 he and his future partner met initially on line and then in person shortly before his deployment to Afghanistan in 2011. They bought a house in 2016 and were planning a future together.

[64] LCpl Spencer carried out his basic training at Catterick in 2011. He finished top of his class and was awarded a ceremonial rifle. He was posted to C Company, 3 RIFLES, based in Edinburgh. In April 2012 his unit deployed to Afghanistan for a 6 month operational tour. On 9 August 2012 LCpl Spencer was seriously wounded when a grenade was thrown into a farm compound while he was on patrol. He received extensive hospital treatment and was eventually able to return to operational fitness.

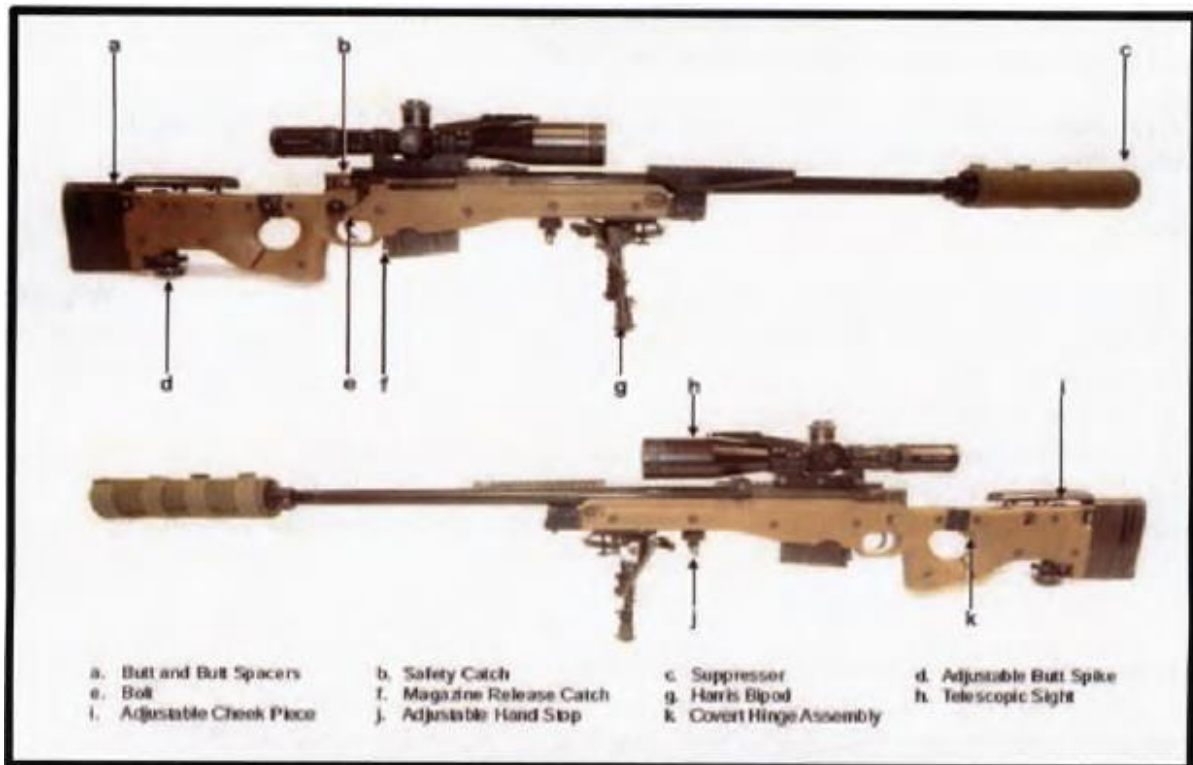
[65] In 2014 he took part in a large scale battlegroup exercise in Kenya. He received recognition as the best rifleman in his Company and in 2015 was promoted to Lance Corporal. Soon after his promotion he deployed with B Company, 3 RIFLES, to take part in a joint training exercise with the United States Army in Louisiana, where he commanded a sniper pair.

[66] In August and September 2016 LCpl Spencer attended the 3 RIFLES sniper cadre where he was the top rifleman on the course. He was continuing his sniper training on the date of his death.

General description of the operation of the L115A3 sniper rifle

[67] The standard weapon issued to infantry soldiers in the British Army is the SA80 rifle. It is gas powered and has a two stage safety catch which is either “on” or “off”

[68] In contrast, the weapon LCpl Spencer was using on the date of his death was the specialist sniper rifle used by the British Army, namely the L115A3 8.59 millimetre sniper rifle (hereinafter referred to as “the rifle”). Reproduced below is an open source image of a L115A3 rifle from the internet showing the principal features of the rifle.



[69] The rifle is a bolt action rifle. It has a three stage safety catch. It is fed from a detachable five round magazine. It was fitted with a suppressor. A suppressor is a cylindrical device approximately 300 millimetres long which attaches to the muzzle of the rifle. The device is primarily intended to suppress the muzzle flash of the weapon and reduces the sound produced by a limited amount. From the butt plate (the end of

the rifle that fits against the firer's shoulder) to the end of the suppressor (where the projectile is discharged) is 1400 millimetres, or 4 feet 8 inches.

[70] To load the rifle, five rounds are inserted into the magazine. The magazine is a metal box with an open top which slots into the underside of the rifle. The bolt is the protruding metal arm with a ball on the end on the right side of the rifle. Lifting the ball up, pulling the bolt backwards and thereafter pushing the bolt forwards again draws a round from the magazine into the breach of the rifle. Pulling the ball downwards to its initial starting point cocks the rifle. With a magazine containing rounds attached to the rifle it is referred to as loaded. However, the rifle can only fire once a round is drawn into the breach by the operation of the bolt – the process of “cocking” the rifle.

[71] If, once cocked, the rifle is then fired, it cannot fire again until the bolt is manually drawn back, which discharges the spent cartridge from an opening on the right hand side of the rifle, known as the ejection port, and when the bolt is thereafter pushed forward to cock the rifle again it draws a fresh round from the magazine into the chamber. Only pulling the trigger will cause the rifle to fire, providing it is cocked. If a cocked rifle is not fired pulling the bolt back will eject the unused round in like manner to a spent cartridge after firing the rifle.

[72] The rifle is fitted with a three stage safety catch. Most other weapons used by the Army have a two stage safety catch, like the SA80. The safety catch on the rifle is a small sliding metal switch located on the side of the breach, just above the bolt. With the safety catch in the furthest forward position the rifle will fire. The trigger and bolt are both operational. With the safety catch in the middle position, known as “1st Safety”, the

trigger is disabled and the rifle cannot be fired. However, the bolt can be operated to eject rounds or cock the rifle. With the safety catch in the furthest rear position, known as "2nd Safety", the trigger and the bolt are locked and cannot be operated. The rifle cannot fire.

[73] To unload the rifle the magazine is first ejected. This is achieved by pushing a lever close to the magazine. The magazine, with any remaining ammunition, drops from the underside of the rifle. Once the magazine is removed the source of fresh ammunition for the rifle is removed. After the magazine is removed the bolt is manually drawn backwards. This ejects any spent or unfired cartridge from the breach. Once the cartridge has been ejected it is possible to carry out a visual inspection of the breach by looking into the ejection port to confirm that no round is present. In poor lighting conditions, or as a secondary check, the operator can insert a finger into the breach through the ejection port to confirm that it is clear. Thereafter the bolt is pushed forward to close the ejection port and "cock" the rifle, but in the absence of a magazine no fresh round can be drawn into the breach and the rifle is safe.

[74] If there is no round in the breach and no magazine fitted to the rifle the position of the safety catch is immaterial as the rifle is inert and presents no danger as a firearm. The position of the safety catch assumes critical importance when the rifle is loaded or loaded and cocked.

[75] In very basic terms, when the trigger of the cocked rifle is pulled, with the safety catch fully forward, the firing pin strikes the percussion cap at the base of the cartridge, igniting the propellant. The resulting expanding gasses drive the projectile (the bullet)

out of the muzzle of the rifle at extremely high velocity. The firing pin is a small metal device at the base, or back, of the breach. It is roughly the size of a match head. The firing pin visibly protrudes to the rear of the breach by about five millimetres when the rifle is cocked.

[76] Despite the military specifications of this particular rifle, in the essential operation of the bolt action system it is exactly the same in principle to commercially available hunting rifles. Magazine fed bolt action rifles have been in military use since the late 19th century and a rifleman from the trenches of the Somme would almost certainly be able to operate the rifle with no difficulty. Safe procedures for the loading and unloading of bolt action rifles are just as applicable to the operation of a Highland estate engaged in culling or hunting deer or the activities of a civilian gun club as to the activities of Army snipers.

[77] Unlike the rifle, if the safety catch on an SA80 rifle is off and the trigger is pulled it will keep firing until either the trigger is released or the weapon runs out of ammunition.

Sniper Operators' Course (General)

[78] The course that LCpl Spencer was a student on at the time of his death was the sniper operators' course. This is a two-month long course, the successful completion of which qualifies a soldier as a sniper. A sniper requires to demonstrate the highest levels of marksmanship and historically, sniping was a military course with a low pass rate.

[79] Until 2016, the sniper operators' course was delivered centrally by staff of the Support Weapon School, Sniper Wing at the School of Infantry. This accorded with the Army's policy at that time of delivering courses within centralised training establishments which delivered on-site training courses to its personnel.

Distributed training

[80] In order to train more soldiers by making available a greater number of courses to participants, the Army, over time, has migrated to the concept of "Distributed Training". All sniper related training was reviewed from November 2014 until March 2015 by a commercial contractor which recommended that the Support Weapon School should continue to train the sniper platoon command elements, but that the "operator" training, that is to say basic sniper training, could be conducted in the Field Army as "distributed training".

[81] Distributed Training is a model increasingly relied on by the Armed Forces. The delivery of the content of a course, in its entirety or in part, is taken away from the organisation responsible (in this case, Support Weapon School), and the instruction is conducted by suitable qualified and experienced trainers, in such a way that the consistency or quality of delivery is not undermined by this "devolved" or "distributed" concept.

[82] The Unit responsible for delivering the training becomes the training provider, the instruction being conducted by suitably qualified personnel either from that Unit or from assisting units. The training provider is also responsible for ensuring that the

endorsed programme and course content is delivered. In essence, suitably qualified instructors deliver training that is set out in a course syllabus which is analogous to what would have been formerly delivered, in this case, by Support Weapon School personnel.

[83] A “Sniper Operators’ Course” programme was developed and designed to be delivered at either Brigade or Unit level. In July 2016, The Army’s Capability Directorate (Combat) reviewed the course documentation and authorised the course to be taught applying the distributed training model.

[84] Concurrently with the above, in April 2016, Support Weapon School delivered a course to existing sniper platoon staff in the planning and delivery of the new sniper operators’ course using the distributed training model. The sniper platoon commanders of three battalions, namely 1 SCOTS, 3 SCOTS and 3 RIFLES, all senior non-commissioned officers, were students on this course and through their collaboration, a sniper operators’ course was proposed for late 2016 for 51 Brigade.

[85] The intention of these three individuals was that each of them, as sniper platoon commanders and also as senior non-commissioned officers, would take the lead in the delivery of three consecutive phases of the course at ranges at Barry Buddon (near Dundee), the Air Weapons Range at Tain, and at Otterburn Training Area, near Newcastle. The course leads and administration at these three locations would be delivered by the sniper platoon commanders of 1 SCOTS, 3 SCOTS and 3 RIFLES respectively, following a course programme that adhered to the syllabus approved by the School of Infantry.

[86] Inasmuch as any one individual had a principal role to play in the planning and delivery of this course across these three locations, the sniper platoon commander of 3 SCOTS, namely C/Sgt 1, had this responsibility. C/Sgt 2 from 1 SCOTS, had responsibility for the delivery of the content of the first phase of the course at Barry Buddon, from 3 October 2016 until 28 October 2016. C/Sgt 1 would take the lead on Phase 2, at Tain Air Weapons Range from 31 October 2016 until 18 November 2016. C/Sgt 3 of 3 RIFLES was intended to take the lead on the final phase of the course at Otterburn.

[87] For the duration of the course, those in charge of each phase were assisted by a cohort of eight more junior non-commissioned officers (hereafter referred to as “NCOs”), across the rank range of sergeant to lance corporal, drawn from the Sniper Platoons of 1,2 and 3 SCOTS, 3 RIFLES and the Scots Dragoon Guards. These Units reflected the student composition of the course. These NCOs were to discharge various duties over the duration of the entire course, such as instructor, safety supervisor, or otherwise assisting with the smooth running of the course.

[88] The course programme had been submitted by C/Sgt 1 to the staff at the Dismounted Close Combat Cell of the School of Infantry, Warminster, and ultimately approved by them. This programme accorded with the expectations of the Army’s Capability Directorate Combat for the content and delivery of this course.

[89] Any departures from or amendments to the approved course programme required a communication from those responsible for proposing any such divergence to the School of Infantry for their consideration and approval of any change.

[90] It is against this background that the course attended by LCpl Spencer was conceived and implemented.

Pre-cadre training

[91] All the students on the sniper operators' course attended by LCpl Spencer had attended some form of pre-cadre training. These had all been of several weeks' duration, varying in their content and emphasis, and mostly delivered in their parent units before arriving at Barry Buddon to start Phase 1 of the sniper operators' course. The content of this training depended on the perspective of the senior NCO's who had planned and were conducting it.

[92] Some of these training packages included, in some cases, the complete delivery of all eighteen Skill at Arms lessons for the rifle, while others had a greater focus on basic infantry skills, with only some form of familiarisation with the weapon.

[93] LCpl Spencer, with most of the other 3 RIFLES students on the sniper operators' course, had attended a pre-cadre period of training at Brecon and Sennybridge in Wales. This was conducted under the auspices of his platoon commander, C/Sgt 3. This training banded together the 3 RIFLES students along with those Scots Dragoon Guards students who were also to be attending the sniper operators' course.

[94] The 3 RIFLES students deployed on this pre-cadre training were said by one witness to have been provided with the full Skill at Arms lessons for the sniper rifle, with only one student who was later a participant on the sniper operators' course not receiving this instruction. There is only one witness whose final position was to state

that LCpl Spencer had been in receipt of these lessons. There was no written record of those who had received these lessons as the Army does not routinely record this information. What is recorded are those who pass a Weapon Handling Test, the successful completion of which is mandatory and necessary in respect of any weapons that a soldier will fire on a range.

[95] The content of these pre-cadre courses was disparate and that several of them duplicated, in part, the content of the sniper operators' course itself

Sniper Operators' Course (51 Brigade)

[96] The 51 Brigade sniper operators' course attended by LCpl Spencer had an approved course programme on a daily basis from the first day of phase 1 at Barry Buddon on Monday 3 October 2016 until the final day at Otterburn on Friday 9 December 2016. This was only the second sniper operators' course to be conducted using the distributed training model. This particular course was constructed with three distinct phases, to run sequentially at Barry Buddon, Tain and Otterburn (Northumberland). Senior NCOs from the sniper platoons of 1 SCOTS, 3 SCOTS and 3 RIFLES were to lead each of these three phases, respectively.

[97] Phase 1 at Barry Buddon took place from 3 October until 28 October, with instructors and students working a Monday to Friday working week for the duration of the first four weeks of this course. The senior NCO responsible for the delivery of training in accordance with the course programme, was C/Sgt 2, the sniper platoon commander of 1 SCOTS.

[98] The programme for Week 1 directed that skill at arms lessons for the rifle were to be delivered, during forty-minute periods in the sequential order set out in the course programme, from Wednesday 5 October until Friday 7 October. These lessons were to follow the syllabus set out in written Army instructions entitled "Sniping Part 1". Within those instructions, each of the eighteen lessons have dedicated chapters which, for every lesson, sets out the aim (what will be taught), the duration, the method, what equipment is required for its delivery and how each lesson is to be conducted.

[99] In order to confirm that these lessons had been understood by the students, Weapon Handling Tests for the rifle were scheduled within the programme for Friday 7 October, the successful completion of which would enable the students to move onto the ranges for live firing with the rifle during the following week and subsequent weeks of the course.

Barry Buddon

[100] The three days of Skill at Arms lessons that the course programme determined should have been delivered at Barry Buddon from 5 October to 7 October did not happen. The Weapon Handling Tests that should have taken place on Friday 7 October, after the conclusion of Lesson 14, took place much earlier that week, on the Monday or Tuesday, in the absence of the skill at arms lessons having been delivered as anticipated in the course programme, itself based on Army instructions in regard to weapon handling training.

[101] Live firing practices took place on 5 October and 6 October. On these days, Skill at Arms lessons 1 to 7, and 8 to 12 respectively, should have been delivered and the Weapons Handling Test should not yet have been carried out.

[102] In one form or another either during pre-cadre training or even in advance of these courses taking place, as may have been the case for LCpl Spencer, these lessons appear to have been delivered at Unit level.

[103] The content of any pre-cadre training received by students on the sniper operators' course varied. Some Units provided the full Skill at Arms lessons in advance of any pre-cadre training, which focussed on military skills. Weapon Handling Tests were conducted on the first day of the sniper operators' course at Barry Buddon, after refresher training on the rifle, contrary to the approved course programme. LCpl Spencer's Army personal records do not record him passing a Weapons Handling Test on the rifle prior to attending the sniper operators' course.

[104] Students from 2 SCOTS were put through a full and rigorous skill at arms syllabus on the rifle within their battalion as a precursor to going on any pre-cadre. At some point, the 3 SCOTS students were banded together with 1 SCOTS in their pre-course. It appears that skill at arms training was delivered at some stage prior to the commencing the sniper operators' course. The one group whose pre-course training does not appear to have concentrated on the rifle to the same extent are those from Scots Dragoon Guards and 3 RIFLES, both of whom attended the same pre-cadre training.

[105] It is against the background of these inconsistencies in the pre-cadre levels of rifle tuition among the students that the departures from the programme at Barry Buddon must be viewed.

[106] The departure from the approved course programme on that first week at Barry Buddon appears to have been influenced by the pre cadre training conducted by the units contributing students to the course.

[107] The official view of the Army, is that there is no intent to generate a pre-cadre course as all specific sniper training requirements will be delivered on the sniper operators' course and the approved course programme should be adhered to enabling progression through the required learning.

[108] LCpl Spencer did pass a weapon handling test at Barry Buddon which enabled him to fire on the ranges there. However, it is clear that the three days of intensive skill at arms lessons on week one were not delivered to anything like the extent that the programme (and the Army itself) intended. Insofar as there was any Skill at Arms instruction at Barry Buddon, its principal aim appears to have been to enable the students to pass a weapon handling test, the successful completion of which was vital to them being able to fire live rounds with the weapon.

[109] It is also not clear that the pre-course training at Brecon for the 3 RIFLES and Scots Dragoon Guards contingent, did include the full quota of skill at arms lessons. Any familiarisation during this pre-course training was to enable trained and experienced soldiers familiar with other weapon systems to take a weapons handling test.

[110] LCpl Spencer had been in the sniper platoon for a period of well over a year by the commencement of the sniper operators' course. There is no record of him completing a Weapons Handling Test for the rifle prior to his attendance at Barry Buddon.

[111] The delivery of skill at arms lessons, for any weapon, instils a "muscle memory" in those thus trained. This enables an activity or a sequence of actions to be completed almost unconsciously.

[112] Those arriving on that course at Barry Buddon were a disparate group, with varied experience of the rifle. The distributed training model required adherence to the syllabus and programme, which had been carefully curated over a period of months to accord with the requirements of the course as directed by the Army's Capability Directorate Combat. Adherence to that programme would have ensured the delivery of the full inventory of lessons on the rifle, the content of which was not simply to enable them to pass a weapon handling test that would have taken no more than twenty minutes, but to be fully familiar with the safe operation of the rifle.

[113] The purpose of including those three days of skill at arms training was to instil in students the necessary knowledge and understanding of that equipment, including the muscle memory, in order that they were capable and competent in its safe use, as they progressed through the various phases of the course and beyond. Their successful completion would have enabled the students to go forward to the ranges to conduct a series of progressive live firing practices that afforded them the best opportunity of safely and successfully completing the course.

Tain

[114] The fourth and final week of the sniper operators' course at Barry Buddon should, had the programme been adhered to, have included the students completing shooting practice Live Firing 9 on 24 and 25 October 2016 as a precursor to undertaking the Annual Combat Marksmanship Test (hereafter referred to a "ACMT") on 26 and 27 October 2016. The successful completion of the ACMT, which the students were required to pass on no more than two attempts, was critical to them remaining on the course. Failing the ACMT twice would have resulted in their expulsion from the course.

[115] As a result of a scheduling difficulty at Barry Buddon, weeks four and five of the sniper operators' course were exchanged. Scheduling difficulties with ranges are not uncommon.

[116] Week five, from 31 October to 4 November 2016 should have been the first week of Phase 2 of the sniper operators' course. Phase 2 was to be conducted at the Air Weapons Range, Tain. The emphasis of the second phase of the course was to be on fieldcraft and sniper skills. This week was brought forward to fill the newly created void of the final week at Barry Buddon. Accordingly, the Live Firing 9 practice sessions and the ACMT shoots would now take place at Tain.

[117] Over the weekend of 29 and 30 October 2016, those students still on the course relocated to Fort George, east of Inverness. They were to reside there for the duration of the second phase of the course at the Air Weapons Range at Tain, which was due to run over a three week period from 31 October until 18 November 2016.

[118] The range at Tain is principally established for military aircraft to practise live firing therefore the range infrastructure is not as established for small arms firing as is the case at Barry Buddon.

[119] The transfer of the course to Tain also resulted in C/Sgt 1, the sniper platoon commander of 3 SCOTS, assuming command of Phase 2.

[120] To accommodate the change to the programme, C/Sgt 1 had drafted a Range Action Safety Plan (hereafter known as a "RASP") in advance of the live firing at Tain. This is a document which is required to be produced in advance of any live firing on military ranges. Within that, he was identified as the Planning Officer. In drafting it, he enlisted the assistance of his company commander, a Major in 3 SCOTS, the Senior Planning Officer (hereafter referred to as "SPO").

[121] The responsibilities of both the Planning Officer, Senior Planning Officer, Range Conducting Officer and Safety Supervisors are set out in written guidance produced by the Army.

[122] In this particular case, C/Sgt 1, when drafting the RASP, apart from engaging with the SPO, also sought the assistance of a Warrant Officer in the Divisional Small Arms School Corps and sent drafts to him for approval and comment. The purpose of the RASP is to ensure the safe conduct of live firing.

[123] Within the RASP for the shooting practices that were to take place at Tain during the week commencing 31 October 2016, the duties of the Range Conducting Officer (hereafter referred to as "RCO") and Safety Supervisors are set out. According to the RASP, the RCO was responsible for overseeing all aspects of the live firing in accordance

with the rules contained in the appropriate written guidance produced by the Army. In particular, he was to check the condition of the

- (1) Target mechanisms,
- (2) Telephone Communications, and
- (3) Range in Use markers.

[124] The duties of the Safety Supervisors were also set out within the RASP, which indicated that they were responsible for the safe conduct of firing as directed by the RCO and in accordance with the rules contained in in the appropriate written guidance produced by the Army. In particular, they were to

- (1) ensure safe handling of weapons at all times,
- (2) be familiar with the movement's box, target locations and range restrictions,
- (3) ensure correct targets are being engaged,
- (4) ensure that no firing out of arcs takes place,
- (5) intervene if a breach of safety is to occur,
- (6) stay alert at all times, and
- (7) have a torch with white light on them

[125] The written instructions in the Army guidance are that "safety supervisors are to be competent and are responsible for the supervision of firing as directed by the RCO".

Safety supervisors must know:

- a. The safe handling and firing drills of the weapons being supervised. Safety Supervisors are to have passed WHTs for those weapons they are responsible for,

- b. The weapon states of readiness on the firing point and during movement, and
- c. to adopt a position which avoids being struck by an ejected cartridge case.

During firing Safety Supervisors:

“are positioned to observe and correct errors of weapon drills including muzzle clearance and physically intervene swiftly if required.”

Safety supervisors require to be in a position relative to the firers they are supervising whereby they can observe their actions and conduct on the firing point and be in a position to intervene to correct any errors or departures from what would be regarded as safe handling of weapons.

[126] C/Sgt 1 was aware that as a result of the scheduling issues at Barry Buddon and the exchange of weeks four and five, that the shoots to be conducted during the first week at Tain were to be Live Firing 9 on the first two days, with the following two days allocated to the ACMT.

[127] The targetry required for the completion of Live Firing 9, other equipment required, the activity contained therein and its duration are mandated in written Army guidance. The guidance sets out how this lesson is to be conducted, the stores and equipment required, how the shoot is to be conducted and the details of the live firing practices themselves. It states that each detail (firing party) should take approximately sixty minutes to complete all practices and that twenty-four rounds are to be issued to each firer.

[128] According to the Week 4 programme, the only range activity on Monday 31 October 2016 was Live Firing 9, with firing scheduled to take place from 09:00 until 12:10, and from 13:10 until 15:30.

[129] As noted above, Army guidance sets out how this lesson is to be conducted and what targetry is required. In spite of that, the RCO directed that targets that did not comply with the those directions, namely steel plates (also referred to as "falling plates") suspended by wires from steel gantries, were to be used for Live Firing 9.

[130] The RCO, safety supervisors and students booked onto the range at 11:30 hours on 31 October 2016 and required to set up, deploying targets out as far as 900 metres from the firing point. The students assisted the civilian range staff in doing so. This cut into the available range time. As a result the first day of shooting at Tain was not a complete success. By the end of that day, none of the students had successfully completed Live Firing 9.

[131] C/Sgt 1 was the RCO for the range on 1 November 2016, but as a result of having a career interview, Sergeant 1, a colleague from 3 SCOTS, assumed the responsibility for the first part of the morning. According to the course programme, the shoot that day was again Live Firing 9, and for the first part of the morning, Sgt 1 persisted with the targets from the previous day. During the morning, they switched to Small Arms Pop Up targets which they required to put out onto the range and the process of changing over the targets took a couple of hours. Sgt 1 then handed over the range to C/Sgt 1, who arrived around lunchtime.

[132] By lunchtime on Tuesday 1 November 2016, none of the students had yet successfully completed Live Firing 9. It was only in the afternoon of that day with the correct targets deployed that they were able to commence Live Firing 9.

[133] For the afternoon's shooting, C/Sgt 1 had split the twenty-two students into two groups of equal size with the first detail shooting and the second detail acting as observers for each soldier shooting, after which they would exchange places.

[134] The firing point was along a low embankment, punctuated by at least one clump of gorse bush which prevented all firers effectively firing shoulder to shoulder. Their direction of firing was approximately northwards. LCpl Spencer, with Student A as his observer, and several other firers and spotters to their left, were beyond (to the right of) this gorse bush on the right of the firing point looking downrange. Of all the firers, LCpl Spencer and his spotter were furthest right.

[135] Once the targets had been replaced LCpl Spencer shot in the first afternoon detail. Some form of unload drill was carried out for the first detail by C/Sgt 1 between the first detail finishing shooting and the second detail starting shooting. Although unknown at the time, LCpl Spencer did not properly complete that unload drill. Nor did Student D and his rifle was found on the firing line to have a magazine fitted, a round in the chamber and the safety catch on. This was noted, and made safe, by his spotter, Student F.

[136] C/Sgt 1, in his affidavit, confirmed what his usual practice is when giving the command to unload. That practice accords with Army guidance and is consistent with the correct unload drill for the rifle. The issue is whether that sequence of commands

was indeed given at the conclusion of LCpl Spencer's shooting practice, or whether there was some deviation from it.

[137] Of all the firers and safety supervisors interviewed, not all have a clear memory of the unload drill at the end of the shooting by the first detail, an event that would have been both repetitive and unremarkable at the time it occurred. Several of those present have no clear memory, while others prefixed any answers with "would" or "would have". What remains is a residue of evidence that is indicative of the usual directions and sequence of events at the conclusions of a shooting practice not having been followed.

[138] The majority of the recollections of those present is that at the end of the daylight shooting practices, it was only the final detail which did a full unload drill after finishing their shoot. If the words of command for an "unload" drill were properly given at the conclusion of the firing by the first detail, that drill was not properly carried out, at least by LCpl Spencer and Student D, and their failures were not identified by any of the safety supervisors or students at the time. Student D's failure was later spotted. LCpl Spencer's was not, with fatal results.

[139] Any deviation from the usual words of command at the end of the shooting of the first detail, which included LCpl Spencer, would be significant. It is clear that several firers from the first detail, LCpl Spencer among them, went to the ammunition point to fetch rounds for their spotters, then about to fire. Neither Student D's rifle nor LCpl Spencer's rifle were properly unloaded. It is fortunate that Student F was vigilant enough among his other activities to unload Student D's rifle.

[140] Student A, LCpl Spencer's spotter, in preparing himself to shoot, could easily have overlooked LCpl Spencer's rifle not having been subject to a complete unload, with LCpl Spencer going off to collect ammunition on Student A's behalf.

[141] DS 1 was a safety supervisor during the afternoon shoot on 1 November 2016. He was positioned behind sniper pair 11, namely LCpl Spencer and Student A. DS 1 left the firing line to get warm clothing and food from his kit bag in one of the ISO containers. By the time he had returned the first detail, including LCpl Spencer, had finished shooting and swapped over to the second detail. DS 1 was not present and therefore could not and did not see LCpl Spencer at the end of his shooting. He was therefore unable to confirm whether or not LCpl Spencer had properly carried out the unload drill at the end of shooting. C/Sgt 1, who was the Range Conducting Officer was unaware that DS 1 had left the firing line.

[142] A direction to both details to line up on the firing point at the end of that afternoon's shooting to conduct a full unload drill, referred to as "normal safety procedures", in the presence of safety supervisors in advance of the students waiting for the night shooting to commence would have identified any weapons which were not safely inert. Any round still within a rifle would either have been ejected or safely, if negligently, discharged down the range. Had that occurred all weapons coming off that firing point as the daylight started to fade would have been safe.

Un-demanded discharge

[143] After both details fired during the day it was intended to carry out a night shoot. In advance of the night shoot commencing, the students were divided into three details, with LCpl Spencer being assigned to shoot in the final detail of the evening. There are ISO containers at the Tain range close to the firing point being used on 1 November 2016 by the sniper operators' course. An ISO container is a metal shipping container, of the type often seen on freight trains or lorries. The ISO containers were used to provide some shelter for those using the range. A volunteer was sought to move from the final detail to the second detail, then waiting in one of the ISO containers behind the same firing point. LCpl Spencer volunteered and joined the second detail as they waited in the ISO container.

[144] Although the RASP directed that the "correct amount of ammunition is issued and is only issued to the detail about to fire", all three details had been issued with their ammunition in the period after the daylight shooting had finished and before the night shoot commenced.

[145] On entering the container, LCpl Spencer joined ten other students who were already waiting there.

[146] The floor of the ISO container was congested or cluttered with packs, webbing, valises and other equipment. The rifles issued to the other students which were within were resting on their bipods in close proximity to each other. The students were chatting, trying to keep warm. The lighting was fairly poor, although some ambient light remained, augmented by the occasional use of head torches or whatever

light was emitted by the use of mobile telephones. The students were dressed in ghillie suits. These have netting and fake foliage on them.

[147] LCpl Spencer was standing in the ISO container. He was holding his rifle vertically. The butt of the rifle was resting on the toe cap of his boot. He was occasionally resting his chin on the suppressor fitted to the end of the rifle muzzle. He was moving the rifle up and down on his boot, very gently. From that position it was impossible for him to manually operate the trigger of the rifle. Without warning the rifle discharged, inflicting an immediately fatal head wound to LCpl Spencer.

Medical evidence

[148] Following the un-demanded discharge a combat medical technician attached to the sniper operators' course tended LCpl Spencer and noted that he had sustained injuries which were incompatible with life. It was clear that LCpl Spencer had suffered a head injury which was instantly and necessarily fatal. A local general practitioner attended and pronounced life extinct at 18:45 hours. LCpl Spencer's body was conveyed to Raigmore Hospital, Inverness and on 3 November 2016 a post mortem examination was carried out. It was noted that LCpl Spencer had sustained a high velocity gunshot wound to the head, the entry wound being over the anterior aspect of the chin and the exit wound at the top of the head. The direction of travel of the bullet was consistent with the way LCpl Spencer had been holding the rifle. The cause of LCpl Spencer's death was certified as being a gunshot wound to the head.

Examination of the L115A3 sniper rifle

[149] The rifle on personal issue to LCpl Spencer for the duration of the course, bearing serial number 12449, was seized by Police Scotland and subsequently subjected to three separate inspections by ArroGen Forensics Ltd, the Defence Accident Investigation Branch and the Scottish Police Authority Forensic Services.

[150] The ArroGen Forensics Ltd examination determined that the trigger pull for the rifle was within the range specified for this make and model of rifle. Having subjected the rifle to various “drop” tests, dropping it onto its butt from heights of 30 and 60 centimetres, it was found that there was no tendency for it to discharge without pressure being applied to the trigger. It was noted that the trigger mechanism had not been secured properly within the body of the rifle, the foremost bolt having been partially unscrewed by approximately one and a quarter turns, and tested the rifle in this condition and with it secured as it should have been. In both conditions, it was not possible to cause the weapon to discharge without pressure being applied to the trigger. The conclusion was that the rifle was loaded with a round in the chamber at the time of discharge, but it was not possible to determine whether it was cocked prior to the moment of discharge. Had the weapon been cocked, the safety catch had not been applied as if it had been, it would have locked the firing pin away from the primer (the base) of the cartridge. There was no tendency for the weapon to discharge without pressure being applied to the trigger simply by bouncing the weapon onto the floor or dropping it from height.

[151] The Defence Accident Investigation Branch concluded that there was no evidence to suggest that equipment failure was the cause of the incident. The results achieved during testing lead to the conclusion that it is extremely unlikely that the weapon would have fired without some external interaction on the trigger.

[152] The Scottish Police Authority Forensic Report also examined the rifle. It was found to be in a good external condition and the safety catch was in working order. During tests, they determined that it was prone to accidental (un-demanded) discharge when jarred butt first on a hard surface, with the safety catch set to the "off" position, from a height of twelve inches (30 centimetres) and with the rear of the stock in its unfolded state. There is no evidence that LCpl Spencer was handling the rifle in such a manner prior to the un-demanded discharge. No defects were found in respect of the rifle.

[153] Taking the results of these three expert examinations together it allows a reasonable inference to be drawn that the rifle issued to LCpl Spencer was free of defects that may have explained, in whole or in part, its unintended and un-demanded discharge.

The cause of the un-demanded discharge

[154] The floor of the ISO container was congested or cluttered with packs, webbing, valises and other equipment, in contrast to what weapons which were within, which were resting on their bipods in close proximity to each other.

[156] The exception to this, as far as any rifles are concerned, was LCpl Spencer's rifle which he retained, holding it vertically in front of him occasionally resting the butt on the toe of one of his boots and bouncing it on his foot. There is no evidence whatsoever of any discord, tension or horseplay within the container. While the lighting was poor, some ambient light remained, augmented by the occasional use of head torches or whatever light was emitted by the use of mobile telephones, and from these light sources, those within were able to see.

[157] There is no evidence whatsoever of any sudden movement by anyone at any time in the period prior to the un-demanded discharge of LCpl Spencer's weapon. Nor is there even any hint of a suggestion that LCpl Spencer himself has activated the trigger to cause its discharge.

[158] While some of the testing the rifle was subsequently subject to determined that it could be discharged if dropped from height onto a hard surface, there is no evidence of any such handling of rifle before the un-demanded discharge.

[159] Given that the rifle was in a serviceable condition and free of defects the logical inference is that it was loaded and in a condition where it was capable of being fired if the trigger action was activated.

[160] In the absence of any direct evidence which would explain its discharge, it is necessary to look for any circumstantial evidence in support of how it was fired. The cluttered and congested ISO container together with the gentle but repetitive upwards and downwards movement of the rifle by LCpl Spencer while resting it on his toecap, coinciding with a moment in time when his head was above the muzzle, have conspired

to create a catastrophic constellation of events. It is a reasonable inference that all of these coincided with the snagging of the trigger on something at ground level, or close to it, causing the discharge of the rifle with instantly fatal consequences. There is no evidence to suggest that LCpl Spencer was aware that there was a live round in the chamber of the rifle.

The evidence

Joint minutes of agreement

[161] Parties agreed two joint minutes of agreement which were read into the inquiry by Mr Glancy. The first joint minute of agreement covered medical evidence in relation to LCpl Spencer's fatal wound. The second joint minute of agreement related to the productions lodged.

Witnesses

[162] The Crown lead oral evidence from fourteen witnesses. A brief summary of the evidence of these witnesses is given below, in the order in which they gave evidence.

Graham Spencer – 4 September 2023

[163] Mr Spencer is LCpl Spencer's father. Mr Spencer took the oath. He confirmed his age and marital status. He is a retired police officer. He adopted the statement he provided to the police on 7 November 2016. He was referred to Crown production 106 which contains background details in relation to LCpl Spencer and copies of letters of

condolence received by his family. He gave his evidence on behalf of himself, his wife, LCpl Spencer's two brothers and LCpl Spencer's partner.

[164] Mr Spencer spoke about LCpl Spencer, "Joe", with great emotion and pride. He advised that LCpl Spencer was the youngest of their three sons. He explained the family's surprise when LCpl Spencer announced that he wanted to join the army.

Although a sense of public service clearly runs strongly in the Spencer family there is not a particular tradition of military service. When Mr Spencer spoke to his son about this decision he found that it had been his desire since the age of seven or eight. The family supported LCpl Spencer in that decision and although he had wanted to join his local regiment, they were not recruiting at that time and rather than wait he joined the RIFLES in 2011. He excelled at basic training and was the best recruit in his year, being awarded a ceremonial rifle.

[165] Mr Spencer went on to describe LCpl Spencer's military career and stated that he knew better than to ask his son about his military service but occasionally he would share some experiences with his father. It was clear that LCpl Spencer loved military life and got on well with his peers and superiors. He was a thoughtful and dedicated soldier.

[166] Mr Spencer recounted how LCpl Spencer had been seriously wounded by a grenade attack while on operational deployment in Afghanistan. LCpl Spencer underwent numerous surgeries to remove shrapnel from his body and underwent physiotherapy both through the Army and privately to ensure he returned to operational fitness. Mr Spencer did not know whether his son had been offered medical

retirement but remembered him saying that he would not take it if it was offered as the Army was his life.

[167] Mr Spencer spoke of his love of fly fishing, a hobby tolerated by his two older sons but enthusiastically pursued by LCpl Spencer. Their time fishing together clearly meant a great deal to Mr Spencer.

[168] Mr Spencer also confirmed that LCpl Spencer and his partner had recently bought a house together, only a few months before his death.

[169] Mr Spencer spoke in detail about the numerous messages of condolences the family received from members of the Army of all ranks who had served with or knew LCpl Spencer. He spoke with particular poignancy about returning home to find a large bouquet of flowers on the doorstep with a letter from a Major in the United States Army who had worked with LCpl Spencer on a joint training exercise.

[170] Mr Spencer was not cross examined by any of the other parties to the inquiry.

Staff Sergeant V - 4 September 2023

[171] Staff Sgt V affirmed. He is 41 years old and has served 19 years in the military. He was a gunner attached to the artillery regiment of the Royal Marine Commandos. In 2020 he joined the Small Arms School Corps as a weapons instructor. He explained the various verbal orders to be expected when loading and unloading the rifle and demonstrated the operation of the rifle. He was referred to Crown production 30a – Dismounted Close Combat – Sniping – Part 1 (hereafter referred to as “Sniping –Part 1”). This document contains the British Army’s internal instructions for the use of the rifle.

Staff Sgt V described how he would use the information in the document to train soldiers to use the rifle. He explained that on picking up the rifle he would expect the firer to carry out "normal safety procedures". By this he meant that with the magazine off the bolt would be pulled back and the breach checked for any ammunition or other obstruction. Once the rifle is cocked the safety catch should be in 1st or 2nd safety position unless the rifle is to be fired immediately. Using an identical rifle, suppressor and magazine, but no ammunition, he repeatedly and patiently demonstrated and explained the operation of the safety catch, bolt and magazine. His practical demonstration of the operation of the rifle was of particular assistance to the inquiry.

[172] Staff Sgt V explained his understanding of various verbal commands, namely-

"With a magazine – load" – insert a loaded magazine into the rifle

"Make ready" – work the bolt of the rifle to cock it – an alternative to this command would simply be to give a range, for instance "500"

"Detail unload" – all firers to unload their rifles by removing the magazines, moving the bolts back and clearing the breaches

"For inspection – port arms" – leave the bolt to the rear so that the breach can be inspected to ensure it is clear

"Safety show clear" – safety staff to check that the breaches are clear

"Firers show clear" – the firer checks their own breach to make sure it is clear and indicates when they have done so by raising a hand, or in the case of a sniper who is much more frequently firing while lying prone, by lifting a leg.

Staff Sgt V said that he would anticipate “Safety show clear” being used until students were familiar with the rifle and then “Firer show clear” would be the appropriate instruction.

[173] In cross examination by Mr Webster KC Staff Sgt V gave a brief description of the operation of the SA80 weapon used by all British infantry soldiers. Unlike the sniper rifle, the SA80 is gas operated rather than bolt action.

Major W - 18 September 2023

[174] Major W took the oath. He confirmed that at the time he gave evidence he had served in the British Army for thirty five years, with three years left until retirement. He joined the infantry and rose through the ranks to his current position, Major, which he was promoted to in 2019. He is currently serving in the Small Arms School Corps. He detailed his extensive military experience and confirmed that he is qualified to carry out live fire tactical training. He demonstrated wide experience of planning and conducting live fire exercises in a variety of situations. He is currently in command of the training unit at Brecon, with four instructors and around two hundred students, mainly comprised of non-commissioned officers. He was previously in charge of training safety at the Small Arms School Corps. He was referred to his statement, which he adopted.

[175] Major W was referred to Crown production 39, an Army publication entitled Pamphlet 21 – Training Regulations for Armoured Fighting Vehicles, Infantry Weapon Systems and Pyrotechnics (hereafter referred to as “Pamphlet 21”). He confirmed that an updated version was still in use and is electronically available to soldiers on an Army

database. He also confirmed that Crown production 39 was the version of Pamphlet 21 in force as in November 2016. He confirmed that if any live firing marksmanship training or tactical training were being planned the instructions in the Pamphlet 21 require to be followed and that it is applicable to all small arms weapons ranges.

[176] He was then referred to Crown production 4, an Army publication entitled Operational Shooting Policy (hereafter referred to as “the Operational Shooting Policy”), which he advised was a multi volume document which details the practice to be adopted for the use of particular different weapons. In combination with Pamphlet 21 these documents provide the source guidance for anyone planning any form of range work. The Operational Shooting Policy provides the details of what activities are to be undertaken in particular shoots.

[177] He was then referred to Sniping – Part 1 and confirmed Staff Sgt V’s evidence that the first part of the document contained detailed lessons for the operation of the rifle. He explained that there is a second part to the document which refers to the tactical function of a sniper. By that he meant that the first part contained lessons in the mechanical skills of how to look after and fire the rifle and the second part dealt with the military skills necessary to be an effective sniper, rather than the mechanical operation of the weapon. He confirmed that these guidance documents are available to anyone providing training on the weapons covered by the documents, including the rifle.

[178] Major W explained that all training courses are required to have a course programme of syllabus which can be produced by the course provider or centrally. There will always be a set of joining instructions for students.

[179] He confirmed that he was aware of the incident resulting in LCpl Spencer's death. He had been instructed to investigate the setup of the course after the fatal incident. The course was split into three modules. The first took place at Barry Buddon in Dundee. The second took place at the aerial weapons range near Tain, where the fatal incident occurred. The third was due to take place at Otterburn training range in Northumberland. He explained that an officer would usually be in charge of the whole course with an NCO in day to day charge of each of the modules.

[180] Major W explained that the sniper operators' course LCpl Spencer was attending was an example of what the Army refer to as distributed training. He explained that distributed training meant training delivered by separate units rather than by a single central training unit. This allows more training to be provided over a larger number of students. Unit based training still has to follow the nationally mandated rules published in the guidance documentation and proposed courses are still centrally signed off by the Land Warfare Centre at Warminster.

[181] With reference to Sniping – Part 1, Major W went through the lessons that require to be taught to ensure competence in the use of the rifle. The Army refers to these as Skills at Arms lessons. A similar approach is used for teaching competence in each different weapon system. The Skills at Arms lessons built up to taking, and ideally passing, a Weapon Handling Test. That test is used to demonstrate competence to use the particular weapon system. Successful completion of a Weapon Handling Test is essential before a soldier can fire live ammunition from a weapon on a range. Once a soldier has learned to use a weapon system they must sit, and pass, a Weapon Handling

Test twice a year to remain current on the weapon and be allowed to carry out live firing with it. Therefore although competence on a weapon is checked every six months by means of a Weapon Handling Test, the Skill at Arms lessons taught to achieve that initial competence are only taught once. A record is kept in the training records, known as operational deployment records, of all soldiers of the results of all Weapon Handling Tests undertaken by them. These records are held electronically. Participation in Skills and Arms lessons is not recorded.

[182] Major W described Skill at Arms lessons and confirmed that there is a degree of repetition involved and that the lessons generally follow a pattern of explanation, demonstration and imitation. There are review periods built into the lessons to build up familiarity and muscle memory.

[183] Major W then went on to provide a detailed description of how he would expect a sniper training cadre to be set up, with reference to the documentation to be produced, the roles and responsibilities of the various participants and the requirements of the nationally produced documentation, such as Pamphlet 21, confirming that such documents are instructions, not guidance. The contents are directive and are to be followed. He went on to explain how he would expect such a course to be delivered and the various stages that would take place, with the progression that would take place as part of the training. He explained the difference between marksmanship training and tactical training. Marksmanship training is effectively shooting at a stationary target from a stationary position. LCpl Spencer was engaged in marksmanship training on the day of his death. Tactical training involves movement, whether that is movement

between firing positions, movement while firing or moving targets. It is more complex and potentially dangerous than marksmanship training.

[184] All of these activities are subject to detailed regulation and require the production of numerous standard documents, tailored to each individual course, to ensure successful and safe completion of the course. While there may be some variations in detail between courses certain core aspects must be the same, including the words of command used for the operation of the weapon system, in this case, the rifle. The course should start with the delivery of the Skills at Arms lessons for the rifle, as set out in Sniping – Part 1, leading to the successful completion of a Weapon Handling Test before students carry out any live firing on a range. Major W's position was that safety supervisors would check that the rifles were clear of ammunition up to the completion of the fifth live firing range exercise and that thereafter he would expect firers to show clear, by raising their hands. He explained that by that stage firers should be able to be responsible for their own weapons and that operationally it is essential that soldiers can be trusted to handle their weapons correctly.

[185] Major W went on to confirm the qualifications necessary to carry out the various roles involved in a training exercise. These roles are, from the most senior, Senior Planning Officer, Planning Officer, Range Conducting Officer, Safety Supervisor and Student. There is a mandatory ratio of one safety supervisor to four students for tactical firing exercises, but for marksmanship training it is up to the Senior Planning Officer and the Planning Officer to decide the appropriate ration of the particular range. Major W confirmed that while Tain is capable of use as a tactical range, and was to be used for

tactical training later in the course, on the day of LCpl Spencer's death the range was being used for marksmanship training.

[186] Major W described the targets which had been used for part of the marksmanship training at Tain, which were steel plates suspended from A frames, known as "falling plate" targets. These make a noise if hit by a round and the movement of the plate can be easily seen through the telescopic sight fitted to the rifle. However, he explained that these are not the targets which are required for these lessons, as per the instructions, and that the appropriate targets were in use by the time of the final shoot carried out by LCpl Spencer. The correct targets are electronic and are knocked down when successfully hit. They can then be raised electronically. The target also electronically records where the hit occurred. These are known as "Figure 11" targets.

[187] Major W explained that the training programme builds up to sitting the ACMT for the rifle. Failure to pass this test would result in the student leaving the course. The ACMT is an annual weapon test for each weapon system that a soldier is competent to use. Once that test is completed an individual should be competent to operate the weapon, in this case the rifle, at any time, anywhere, even after extreme physical exhaustion. Soldiers are required to operate competently, and safely, under extremely demanding conditions, particularly on operational deployments.

[188] Major W confirmed that in November 2016 it was permissible to have a single RASP to cover both day and night shoots but that currently a separate RASP is required for night shooting. By reference to Crown production 1 – RASP, Major W went through the contents of the document and explained the purpose and the documentary

instructions which underpin the information in the RASP. He explained how ammunition should be handled and issued during training.

[189] Major W reiterated that the range conducting officer is ultimately responsible for safety on the range. He understood that another soldier left the firing line, leaving his weapon loaded and with a magazine fitted. That should have been noticed by a safety supervisor. Safety supervisors should be on the firing line. They should not go away for a snack. He would expect that the correct words of commend would be given to unload the rifles and that if any safety supervisor became aware of an unsafe weapon the range conducting officer should be made aware and the exercise stopped and the students made aware of the consequences of failing to follow training.

[190] Major W stated that he presumed that LCpl Spencer had completed the Skills at Arms lessons for the rifle. His opinion was that a student would be disadvantaged if he had not completed the Skills at Arms lessons for the rifle. He thought it would be difficult to pass a Weapon Handling Test for the rifle without having done the Skills at Arms lessons. He stated that removing three days of Skills at Arms training from the sniper course syllabus was a change of such significance that it should have been reported to the Small Arms School for approval.

[191] In cross examination by Mr Webster KC Major W confirmed that there is a progression of training from Sniper – Part 1, to the Operation Shooting Policy to Pamphlet 21. Major W stated that for far as he understood matters LCpl Spencer had completed and passed a Weapons Handling Test in relation he rifle during the course. He confirmed this by reference to Crown production 57 – Record of Weapons Handling

Tests. LCpl Spencer is recorded as having passed all parts of the Weapons Handling Test. He confirmed that the unload drill is part of the Weapons Handling Test for the rifle. Major W confirmed certain revisions and updates made to the police documentation following LCpl Spencer's death.

[192] In cross examination by Ms Bone Major W confirmed that while there was nothing in the documentation requiring a RASP to be sent to the Small Arms School for reference it was prudent to do so. He agreed that preservation of life was of the most paramount importance in a RASP.

[193] In cross examination by Ms Watt Major W confirmed that a Weapon Handling Test is the test of compliance with Skill at Arms lessons. Weapon Handling Tests require to be undertaken every six months. He had not had the opportunity to read the transcripts of the witness evidence from the Service Inquiry.

[194] In cross examination by Ms McDonnell Major W accepted that there were no safety supervisors to check on things while soldiers were on operations. He stated that it was the responsibility of the firer to clear the rifle, not the spotter. A safety supervisor needs to keep an eye on the unload drills. He is not required to check each or any weapon himself, but could choose to do so. A firer could indicate a problem by raising a hand. By the stage reached in the shooting on 1 November 2016 the safety supervisors would know that they did not need to inspect each rifle at the unload drill. An order to unload applies to everyone on the firing line. Safety supervisors may not be able to see everything, but if they can't see they should move.

[195] In re-examination by Mr Glancy Major W confirmed that actions would only be carried out by a soldier after receipt of specific words of command. The words of command for the unload drill of the rifle are contained in the third Skill at Arms lesson for the rifle. The range conducting officer needs to give the correct words of command.

Major X - 19 September 2023

[196] Major X took the oath. He stated that he had joined the Army in 1993 and transferred to the Small Arms School Corps in 2004. He was commissioned as captain in 2017 and is currently the officer commanding the 3 Division Training Team at the Divisional Headquarters at Bulford. During his service he has been involved in a number of training roles. He gave evidence to the Service Inquiry and adopted the transcript of his evidence to the Service Inquiry as part of his evidence.

[197] Major X stated that in 2016 he was working in the Distributed Training Cell team under the command of the Head of Combat - Ground Manoeuvre, who holds the rank of Brigadier. He explained that while distributed training was common in the Army in 2016 at the time sniper training was being carried out centrally. Given the operational commitments the Army was involved in at the time there was a need to increase the training capacity for snipers due to an operational need for more trained snipers. Accordingly, a decision was made that sniper training should be carried out at unit level as distributed training. Training was provided to those who would deliver the training. The training objectives, what had to be delivered and the resources required were determined centrally. The logistic support was to come from Units who would also

provide the staff to carry the training out. Major X attended planning meetings to maintain standards when the sniper training was distributed. The contents of the courses should be the same, and consistent. In effect an “off the shelf” training course is delivered at unit level. Units can add things to the course programme, if they wish, but cannot remove things from the programme. The core programme has been signed off by a one star general, the Brigadier, and cannot be deviated from. Any significant departure from the programme would require to be negotiated with the Small Arms School Corps.

[198] The first distributed sniper course was run in 2016. The second course was the course attended by LCpl Spencer in autumn 2016. Major X was referred to Crown production 29 which he confirmed was the programme for the course. The course was due to start on 3 October 2016 with the first four weeks at Barry Buddon, weeks five to seven at Tain and weeks eight to ten at Otterburn. The course programme was put together after consultations between the units running the course and the Distributed Training Cell, Major X’s team. He commented that the programme made sense and appears fit for purpose.

[199] Major X was referred to the second inventory of productions lodged by the Ministry of Defence, production 89, which he identified as the course programme for the first distributed sniper course run earlier in 2016. He noted differences but identified that both programmes had the Weapons Handling test for the rifle flowing the delivery of all the Skills at Arms lessons for the rifle but that in both the Skills at Arms lessons

and Weapon Handling Tests were to be conducted before any live firing of the rifle on a range.

[200] Major X stated that any change to the course programme should be referred back to the Distribute Training Cell for approval. Such changes often related to alterations in the availability of the ranges due to be used for the live firing sessions. He discussed the time allocated to particular exercises in the programme with reference to the time each Skill at Arms lesson is supposed to require and noted that while these should be checked at the Distributed Training Cell workload pressures made this level of scrutiny difficult in practice.

[201] Major X was referred to productions showing that Weapon Handling Tests had been carried out for LCpl Spencer's course on 4 October 2016 despite only being programmed into the course programme for 7 October 2016. He could not explain this and stated that the Service Inquiry had suggested to him that the Skills at Arms lessons might have been delivered at unit level prior to the commencement of the sniper operators' course. He stated that Skills at Arms training should only require to be delivered once (per weapon system) in a soldier's career and that they must be carried out in order in advance of the Weapon Handling test. They are a mandatory part of the programme for the sniper operators' course, now and in 2016. As they must be taught as part of the sniper operators' course he could see no need or point in carrying it out before the course.

[202] Major X did not recall if there was any direction on pre-course training in 2016. There was no approved pre-course training. There is now for certain courses, such as

the section Commanders' Battle Course. He supposed that there were certain desirable skills which it might be useful for candidates to brush upon in advance of the sniper operators' course to get the most out of the course, such as general fitness, navigation and fieldcraft.

[203] He stated that from an instructor's point of view carrying out the Skills at Arms lessons as part of the sniper operators' course gave confidence that all the students were competent to operate the rifle, which is assessed and confirmed by successful completion of the Weapons Handling test.

[204] Major X stated that he visited the sniper operators' course attended by LCpl Spencer while they were at Barry Buddon. He could not recall the date but remembered that live fire training was taking place. He spoke to some of the students but he could not remember who. Major X explained that Barry Buddon is a purpose built, or gallery, range. It is suitable for marksmanship training. He had attended the first distributed sniper operators' course carried out earlier in the year too. His purpose in attending the courses was to get feedback from the instructors and the students to ensure that the courses were fit for purpose. He recalled asking how the course was going and if there were any issues with the course but could not recall whether he asked if the course programme was being followed. He stated that he would not have specifically asked whether the Skills at Arms lessons had been carried out. From his recollection the feedback on the course was fairly positive.

[205] Major X explained that a Convening Order is the formal request from a unit for permission to carry out a training course which is submitted to the Distributed Training Cell for approval.

[206] At this point at my request Major X gave a helpful summary of the organisational structure of the field army, from Division down to Fire Team level, with the general number of troops in each. In particular he explained that a sniper platoon would typically include fifteen soldiers plus a commander, either an officer or NCO depending on circumstances. This is approximately half to two thirds of the size of an "ordinary" rifle platoon.

[207] Major X then returned to the detail of the issuing of the Convening Order for this particular course. He confirmed that other than a visit from the Distributed Training Cell fairly early in the course, which he carried out, the only other outside interaction would be in the final week of the course when staff from the sniper division would attend to carry out the final testing. He confirmed that the content of any pre-course training carried out would be up to individual units and the Distributed Training Cell did not specify the need for any pre-course training to be carried out. He confirmed that any decision to bypass or cut out Skill at Arms lessons from the sniper operator course programme would, and in his view should, have been referred to the Distributed Training Cell for approval.

[208] Major X was taken through the programmed timings for 31 October 2016 and 1 November 2016 in comparison with the actual timings of events and commented that best use should be made of the time actually on range. He also noted that each of the

three phases of the course was run by a different unit from 51 Brigade, which was unusual.

[209] Major X also confirmed that the sniper operators' course had been subject to a major review after LCpl Spencer's death. It continues to be run as a distributed training course. The directions relating to the course are, and were, to be followed, not bypassed or circumvented. If there was any doubt, it is now very clear post November 2016 that all the component parts of a training course must be delivered.

[210] In cross examination by Mr Webster KC Major X provided more detail in relation to the work of the Distributed Training Cell in checking course programmes. He could not recall anything in his visit to the course at Barry Buddon which gave him any concern. He also provided some details of the operation of the SA80 rifle.

[211] In cross examination by Ms Bone Major X confirmed that his visit to Barry Buddon was to check that the course was fit for purpose, as the second distributed course being run, rather than to check on what the instructors were doing. He would have spent longer than two days at the course if he could but operational commitments did not allow him to do so.

[212] In cross examination by Ms Watt Major X was referred to sections of his evidence to the Service Inquiry. He recalled speaking to Colour Sgt 2 during the course. He accepted that there was nothing in writing at the time to confirm that changes to the course programme required to be referred back to the Distributed Training Cell. He expected that if any pre-course training had been carried out there should have been programmes for that training.

[213] There was no cross examination by Ms McDonnell.

[214] In re-examination by Mr Glancy Major X stated that there was no point carrying out Skill at Arms lessons in pre-course training as these lessons are a mandatory part of the course itself and it would be pointless to have carried the training out in advance. While the content of the sniper operators' course is controlled by the Distributed Training Cell the content of any pre-course training is not.

Sergeant Y – 20 September 2023

[215] Sgt Y took the oath. He stated that he is currently a serving soldier in an infantry battalion in the British Army. He had fifteen years' service at the time of giving evidence. He is a fully qualified sniper, having completed the distributed sniper operators' course in 2020. He explained that a sniper platoon generally contains about fifteen soldiers, a platoon sergeant and a platoon commander, the latter often being a senior NCO, such as a Staff Sergeant. He explained that he was the platoon sergeant for his platoon but at the time of giving evidence he was acting up as platoon commander. He confirmed that he had given a statement to the police which he adopted as part of his evidence.

[216] Sgt Y advised that his battalion usually run one sniper operators' course per year, although that depended on operational commitments. A course run at battalion level might include soldiers from other battalions. A course run at brigade level (the next organisational grouping up from a battalion) would include soldiers from multiple

battalions. He stated that he had been involved in training courses at both brigade and battalion level.

[217] Sgt Y stated, it appeared to me with some understatement, that snipers needed to be physically fit, mentally robust and of strong character. Sniper operator courses generally last ten to twelve weeks, but can be done in a minimum of eight weeks if necessary. He confirmed that his battalion run a pre-course, or pre cadre course, although this is not a prescribed course and depends on operational commitments. If it runs it takes one or two weeks. The first phase is a fitness test. The second phase is navigation.

[218] He confirmed that completing the relevant Skills at Arms lessons and successfully completing a Weapons Handling Test on the rifle were essential prerequisites before a soldier could carry out any live firing with the rifle.

[219] Sgt Y stated that there was no need to teach the Skills at Arms lessons for the rifle in the pre cadre course because these lessons had to be delivered during the sniper operators' course, regardless of the previous experience of the students. It was not possible to not teach the Skills at Arms lessons in the sniper operators' course. His understanding was that the position was the same in 2016. In 2016 he was in a reconnaissance platoon and had not served in a sniper platoon at that time.

[220] Without exploring operational matters Sgt Y made it clear that the physical firing of the rifle is not the challenging part of being a sniper. The need for such high calibre recruits for the sniper platoons is due to the tactical and operational duties they are required to perform.

[221] Sgt Y confirmed that soldiers in a sniper platoon who had not yet had the opportunity to undertake the sniper operators' course might be taught the Skills at Arms lessons and take the Weapon handling Test for the rifle so that they could safely handle it and carry out live firing, if necessary. However, he would expect that once on the sniper operators' course they would undertake the Skills at Arms lessons again as part of the course. Indeed, he confirmed that this was the exact position in relation to one of the soldiers from his platoon who was on the sniper operators' course while Sgt Y was giving evidence. He accepted that repeated exposure to the Skills at Arms lessons could build up muscle memory in relation to the operation of the rifle.

[223] Sgt Y then went on to describe the sniper operators' course, confirming that the first phase contained two weeks of live firing, after the Skills at Arms lesson, which are generally classroom based. The ACMT is carried out at the end of the first phase. The second phase covers fieldcraft. The third phase is a sniper exercise with a week of testing at the end, which concludes the course. The course instructors carry out the test, but at some point later in the course, either during fieldcraft or the final test week, sniper division staff will attend to "authenticate" the course – that is to say that the course is being run properly.

[224] He explained that the results of the Weapon Handling Tests are recorded by the instructors and that on successful completion of the course the "badge" goes into the soldier's Operational Deployability Record – in effect the human resources records for the army. So far as Sgt Y was aware not all Skills at Arms lessons were recorded in these records.

[225] Sgt Y confirmed that he had known LCpl Spencer briefly. LCpl Spencer had been in a different platoon but served briefly in a platoon where Sgt Y was a corporal. Sgt Y recalled that when LCpl Spencer was promoted to lance corporal he was transferred to a sniper platoon. He thought that was probably in August 2015. He said that it was quite a long time between then and LCpl Spencer's attendance of the sniper operators' course in October 2016, but explained that attendance on the course was dependant on a number of factors including the availability of suitable courses and the operational commitments of the potential student's unit. He could not recall LCpl Spencer's unit running any sniper operators' courses between August 2015 and October 2016.

[226] Sgt Y described LCpl Spencer as a "more than useful" member of the battalion. Given the professional, restrained and understated manner in which Sgt Y expressed himself throughout his evidence I understood this remark to be high praise indeed. He also explained a little about the "Chosen Man" competition, which had been won by LCpl Spencer one year. It is a competition to establish the top rifleman. Sgt Y described the competition as "fierce".

[227] In cross examination by Mr Webster KC Sgt Y accepted that in 2016 he was not familiar with sniper training. He is now very familiar with distributed training and the Distributed Training Cell. His recollection was that when sniper training was centrally delivered the operational tempo of the army, i.e. the combat commitments in Afghanistan and elsewhere, were such that it was difficult to make soldiers available to go on the central courses. The pass rate was also relatively low. He described training

as being a progression, with a number of key points on the way such as completion of the Weapon Handling Test and the ACMT. The latter is the authorising qualification of a soldier to use the particular weapon operationally and is carried out in Unit annually. Sgt Y explained that after successful completion of the sniper operators' course a soldier is referred to as a "badged" sniper and can be operationally deployed as a sniper in any situation. He referred to being a qualified sniper as being a member of a fairly exclusive global club. He confirmed that operationally snipers work in pairs, one to shoot and one to spot. The spotter is generally the more experienced of the pair as spotting is far more challenging than pulling the trigger of the rifle.

[228] Sgt Y stated that a Weapons Handling Test is only valid for six months and you have to carry out the appropriate test twice a year for each weapon system that you are certified on. There can be Skill at Arms training in advance of the six monthly Weapon Handling Tests depending on circumstances. If you had not had occasion to use the weapon system for six months you might well want to refresh yourself by going through the Skills at Arms lessons again in advance of sitting a Weapons Handling Test. He stated that soldiers in a sniper platoon who had not yet had the opportunity to complete the sniper operators' course would carry out the same training as the other members of the platoon and would probably be up to standard in the physical use of the rifle. Sgt Y stated that weapons training could be every two to three weeks but it depended very much on the other duties required of the unit. He was clear that normal safety procedures, that is to say a full unload drill, should be carried out every time the rifle is taken out of or put into its carry case.

[229] There was no cross examination by Ms Bone.

[230] There was no cross examination by Ms Watt.

[231] In cross examination by Ms McDonnell Sgt Y confirmed that he was familiar with the words of command for the unload drill for the rifle and familiar with the difference between firers show clear and safety show clear. In his experience the change to firers show clear would come after sniper students had been on the range for a couple of days, had passed the Weapons Handling Test and had built up experience. All of this would be carried out on a static, gallery, range. It shows the Range Conducting Officer delegating responsibility to the firers, and the words of command would change accordingly.

[232] In re-examination by Mr Glancy Sgt Y confirmed that the ACMT results are recorded in a soldiers' Operational Deployability Records but clarified that it is only test passes which are recorded. If a student failed the ACMT twice on a training course they would fail the course and be returned to their unit. ACMT's carried out in Unit can be sat more than twice, if necessary.

Major Z – 21 September 2023

[233] Major Z took the oath. He stated that he has served with the army for twenty four years, having joined up in 1989 as an infantryman. He rose through the ranks and was commissioned in 2014 and promoted to Major in 2019. He joined the Small Arms School Corps in 2001 and has extensive experience in the delivery of training in the army, including thirteen years' experience in delivering "train the trainer" courses

including range management training. He is not a qualified sniper although he is familiar with the sniper rifle weapon system. In April 2022 he succeeded Major W as in his post in Training Safety in the Small Arms School Corps. Major Z was referred to his police statement which he adopted.

[234] Major Z gave detailed evidence in relation to the Army policies in place in October 2016 in relation to conducting live firing range work, particularly the delivery of the sniper operators' course. He confirmed that he had read the Service Inquiry report. He advised that he had been to the range in Tain as an infantryman many years ago.

[235] Major Z listed certain of the failings identified in the Service Inquiry report in relation to the sniper operators' course LCpl Spencer was a student on. These included:

- a) The course syllabus was not followed in the first phase and the Skills at Arms lessons for the rifle were not delivered per the course programme. It was mandatory to do so.
- b) A RASP with a Range Danger Area trace and sketch map should have been prepared as the Tain range was, and is, a Live Firing Tactical Training Area, meaning an open area of moorland, not a Live Firing Marksmanship Training Area, namely a gallery range like Barry Buddon. This was not done.
- c) The RASP did not properly deal with personal protective equipment, the clothing to be worn by safety staff, covered more than one firing activity, incorrectly specified the safety angles to be used and was not submitted to the Tain range safety officer 72 hours in advance of the firing activity, as it should have been.

- d) Delays due to weather and incorrect use of targets reduced the time available to properly complete the live firing exercises necessary before the ACMT.
- e) The Senior Planning Officer was not advised of a swap between Range Conducting Officers, as he should have been.
- f) There were defects in carrying out range safety briefings.
- g) Safety supervisors did not fully carry out the duties mandated of them.
- h) There was poor control of ammunition and ammunition was not issued in the amounts and at the times that it should have been.
- i) Unload drills were not carried out correctly.
- j) Inappropriate handling of weapons was not challenged.
- k) Emergency procedures following LCpl Spencer's death were not correctly followed (which is an issue outwith the competence of this inquiry)
- l) There were issues with the progression of students through the training programme, with Skill at Arms lessons apparently being missed out.

[236] Major Z commented that it was unacceptable for safety staff to leave the firing line while firing was ongoing. Safety supervisors should be there to oversee the unload drills at the conclusion of firing. Ammunition should only be issued to the detail actively firing and not to all details. Soldiers to whom ammunition has been issued should be supervised by an NCO at all times thereafter. At the end of the exercise the words of command for unloading the rifle, contained in paragraph 0478 at page 4-21 of Pamphlet 21 must be used, without departure. Major Z also insisted that any unsafe

handling of a weapon, such as pointing it in an unsafe direction should immediately be challenged.

[237] Major Z stated that he was, at the time of giving evidence, responsible for updating Pamphlet 21. He confirmed that all of the recommendations made by the Service Inquiry in that regard had been fully implemented. Many of the recommendations were not to alter the existing policy but to reinforce it, making certain sections clearly mandatory and prescriptive where the previous instructions, while intended to be directive did not spell that out sufficiently starkly. A warning was added to Sniping part 1 to highlight the potential dangers of an un-demanded discharge of the rifle if the trigger of a loaded weapon were to be snagged by clothing or foliage.

[238] Major Z was firmly of the view that there was no requirement for any pre course or pre cadre training in advance of a sniper operators' course as all the training needed to pass the course is contained within the course itself. Basic infantry training should bring soldiers up to the standard necessary to begin the course. Skill at Arms lessons should not be provided before the course itself. If any pre course work was thought to be required it should be confined to physical fitness training and basic fieldcraft.

[239] Major Z stated that a good potential sniper should have skills in marksmanship, be physically fit and have good skills in navigation and fieldcraft. He considered these skills essential for a sniper and the basic foundation skills of any infantryman, which general annual training covers.

[240] Major Z confirmed that currently participation in individual Skill at Arms lessons are not recorded in the records of soldiers but that it was not necessary to do so

as Weapon Handling Test passes are recorded and Weapon Handling Tests are only conducted after completion of Skill at Arms lessons.

[241] He was very clear that the prescribed means of conducting training courses were to be followed, not deviated from.

[242] In cross examination by Mr Webster KC Major Z was referred to his statement and to the Service Inquiry report and the recommendations contained therein. He explained that he only referred to policy updates carried out in compliance with eight of the recommendations made as those were the only recommendations which sat directly with him, namely the policy matters in the shooting documentation.

[243] In cross examination by Ms Bone Major Z accepted that he had not seen the RASP and had worked on the basis of the information in the Service Inquiry report. He was referred to Crown Production 1, the RASP, and the second inventory of productions for the Ministry of Defence, production 8, the trace, and accepted that a trace had been annexed to the RASP but not previously shown to him. He stated that the guidance in this regard had now been made clearer.

[244] He confirmed his view that during the night shoot only the detail about to fire should have been issued ammunition, although the next detail to fire could potentially be issued ammunition if then segregated and supervised by an NCO. He was sure that the safety staff should know not to leave the firing line without advising the Range Conducting Officer. That is explained to them during training and the position was the same in 2016.

[245] He stated that he would expect all firers engaged in a Live Firing Marksmanship Training to be firing simultaneously.

[246] There was no cross examination by Ms Watt.

[247] There was no cross examination by Ms McDonnell.

[248] In re-examination by Mr Glancy Major Z confirmed that the timings given for the time taken to complete the Live Fire 9 exercise are based on the exercise being carried out on a gallery range, which the Tain range is not. Individual shooting is slower than simultaneous shooting.

Senior Planning Officer – 22 September 2023

[249] The Senior Planning Officer (hereafter referred to as “the SPO”) took the oath. He confirmed that his rank at the time of giving evidence was Lieutenant Colonel but that he had been a Major in October 2016. He stated that he had been commissioned in 2004 and went straight from Sandhurst to the Platoon Commanders’ Battle Course in Brecon, in Wales. He has been trained in conducting range exercises for both blank and live firing. He confirmed that he was familiar with Pamphlet 21, which he described as the bible for conducting range work.

[250] He explained that the Platoon Commanders’ Battle Course provides the skill set for commanding a platoon. He completed the course in 2005. The use that is made of the qualification depends on the unit you are assigned to. At that time many young officers went straight to operational duties, with less opportunity for blank or live firing range work but plenty of tactical opportunities. He explained that if on barracks duties a unit was more likely to have opportunities to carry out range exercises. He explained that he might only conduct a couple of range exercises a year, or if abroad on a training exercise the intensity might increase significantly. If posted to a staff role the training qualification might not be used for some time. He had received specific training in order to carry out the duties of Senior Planning Officer.

[251] The SPO explained that as part of pre deployment training in 2016 he did refresher training as a Senior Planning Officer before taking command of a Company.

[252] The SPO was referred to Pamphlet 21, paragraph 0206 which details the responsibilities of a Senior Planning Officer. At the time he was a Major in command of

an infantry company. He had recently completed refresher training in relation to conducting exercises. He considered that he was well aware of his responsibilities as Senior Planning Officer and had the appropriate qualifications to execute those responsibilities. He was referred to Pamphlet 21, page 2-6 which contains the Senior Planning Officer's Checklist. He had not specifically been trained to use the checklist but he was aware of it and keen to utilise it to ensure that the course was planned properly, particularly given a recent incident at the range at Otterburn. The checklist is to be used for any live fire training that is to be carried out.

[253] The SPO stated that the Planning officer and Range Conducting Officer for the course was to be his Company Colour Sergeant, C/Sgt 1. He confirmed that he had utilised the SPO Checklist and answered "Yes" to all the questions. He stated that marksmanship firing is the lowest level of risk for live firing training and that the risks are greater with tactical training. The highest risk involves simulated combat tactical training.

[254] He stated that C/Sgt 1 seasoned, competent and experienced. Indeed he was more experienced in range work than the SPO himself was. He considered that the safety supervisors available were all qualified and competent, which he stated was confirmed by the Service Inquiry findings. He considered a ratio of one safety supervisor to four students to be entirely appropriate for the type of live firing being carried out at Tain. He stated that all safety supervisors required to have, and did have, current weapon handling tests for the rifle.

[255] He advised that he would not give any direction to the Range Conducting Officer or the Safety Supervisors as to what to do with the firers at the end of a shoot. People do not have to be told how to do their jobs. That is built into the plan and the training they have been given to carry out their roles. He also advised that it was not unusual for the Planning Officer and Range Conducting Officer to be the same person. He would not and did not provide advice to C/Sgt 1 on how to run the range. They both held the same qualification in conducting range exercises. C/Sgt 1 knew how to run the range. He stated that the role of a Senior Planning Officer is to provide assurance on the safe planning of the exercise or course. The detail of that is reflected in the RASP. He had seen C/Sgt 1 run ranges on more than one occasion and he was fully qualified to do so. This shoot was the simplest of exercises.

[256] The SPO stated that swapping in one safety supervisor for another, as long as qualified to carry out the role, was a minor change that he would not expect to be consulted on. All the safety supervisors and supernumeraries at Tain were properly qualified. He was advised that the final week of the programme intended to be at Barry Buddon had been moved to Tain, due to range availability issues. The swap was able to be accommodated and remain policy compliant for the course. Paragraph 36 of the RASP confirms what is to happen at the conclusion of each detail, including normal safety procedures, namely a full unload drill. What normal safety procedures are is contained in other operational guidance and instructions. The transition from "safety show clear" to "firers show clear" is covered in Pamphlet 21. Safety show clear is a greater level of assurance. Firers show clear puts the responsibility on the firers. The

SPO made the point that students on a sniper operators' course are not soldiers in training. They are all trained and competent infantry soldiers. Even new recruits using the SA80 should progress to firers show clear after the fourth or fifth live fire exercise. The students on the sniper operators' course were all qualified in and experienced in handling the standard SA80 rifle. He accepted all of the safety supervisor duties as set out in Paragraph 5(a) of the RASP.

[257] The SPO confirmed that he had given evidence to the Service Inquiry and adopted the transcripts of this evidence provided to the Service Inquiry as part of his evidence to this inquiry. He gave evidence in relation to the general operational structure of a Company and the particular duties and specialisms of the Company he commanded in 2016.

[258] The SPO confirmed that the sniper operators' course which for which he was SPO arose from a brigade level symposium in April 2016. A need for a sniper operators' course was identified. This was given the seal of approval at Brigade level, but organised at Battalion level. At this time sniper training was moving from centralised to distributed training. He was aware that C/Sgt 1 had done the train the trainer training for conducting sniper training at the central training unit in Warminster. C/Sgt 1 had been trained how to train snipers by the sniper division. Although C/Sgt 1 took the lead it was a Brigade level course involving the involvement of different Battalions. The staff at Brigade level took no part in planning or running the course although it was to be carried out across the Brigade and the Brigade training officer was aware of the course. With hindsight he thought there could have been more oversight at Brigade level.

[259] The SPO confirmed that a Brigade generally contains four Battalions, each Battalion containing five Companies, each Company containing three or four Platoons. The complement of a Company is around one hundred soldiers. The course was to be run at three locations, involving three Battalions, based in three separate locations. Separate phases of the course were to be run by different units.

[260] The SPO stated that while having different sections of the training delivered by different units did not contravene policy at the time and no one raised any issues with it, with hindsight it might have been better if a single Senior Planning Officer had been appointed from beginning to end. An SPO is generally of at least the rank of Major. The SPO was C/Sgt 1's commanding officer but a different Colour Sergeant dealt with Phase 1 of the course, C/Sgt 1 dealt with Phase 2 and a third Colour Sergeant was due to deal with Phase 3. He accepted that a Brigade officer could have overseen the entire course, but offered the view that a Brigade staff officer might have limited experience of sniper training. There were sufficient appropriately qualified instructors at Battalion level in 1 SCOTS and 3 RIFLES. The very experienced sniper platoon commander from 1 SCOTS was involved.

[261] The SPO stated that the issue was not that the Brigade were not involved because there was an appropriate plan in place. However, he stated that, in this case, people did not follow the plan. He stated that the sniper operators' course was the longest course he had been involved in delivering at Field Army level. He stated that the training centre carry out longer courses, probably with a Course Director and Exercise Director, who would probably be the Commanding Officer. He stated that there is more

continuity of staff involved in delivering central training and less distractions than there are in a frontline unit in the Field Army.

[262] He stated that C/Sgt 1's plan was policy compliant and there were enough safety supervisors to do it properly. Those involved from the other units were more than properly trained to do their task. He confirmed that if 3 SCOTS had carried out sniper training in the new cascade fashion, namely distributed training, he would have been the SPO for the whole course, with his people doing all the training for his people. But that was not the way that this course was set up. He accepted that someone at Brigade level could have been the SPO but stated that no one had thought of that at the time. He reaffirmed that the plan was fine but that people did not do what they were supposed to, including, in his view, LCpl Spencer. He was adamant that the planning of the course was quality compliant, even with three separate phases. He accepted that there were economies of scale in running a multi-unit course. He stated that the policy compliance was more than paper deep. He referred to various communications exchanged during the planning process. This included correspondence to LCpl Spencer's company commander in 3 RIFLES. In the SPO's view, that Officer was experienced, had training experience, and had a good handle on things. The SPO stated that it was logical enough to split the course over three units, even if it did not appear so with the benefit of hindsight. He confirmed that C/Sgt 1 had sent the plan to the subject matter experts in training for validation. He confirmed that, as a company commander, his Operations Officer would make sure that he was aware of what the unit was up to.

[263] He stated that, even although he was not the SPO for the whole course, he tried to provide as much support as he could to a Brigade level training exercise for snipers. The SPO confirmed that, although he was not a qualified sniper himself, he could recognise that the plans put in place were relevant and appropriate. He referred to the convening order for the Sniper operators' course, explaining that this confirmed to headquarters that they were in a position to deliver the required training. He also indicated that, at the time, the unit was very busy. The Sniper operators' course needed to be fitted in with the other commitments the units faced. He stated, at the conclusion of a training course, the course Convening Officer submits the roll of successful candidates so that their records can be updated on the computer system. He accepted that sometimes this step was forgotten.

[264] The SPO stated that in advance of the course, there was a possible issue with the availability of ammunition. This was noted and dealt with by C/Sgt 1. He took appropriate steps to escalate the issue and Brigade managed to get sufficient ammunition reallocated. The problem was identified and fixed.

[265] The SPO advised that there was the possibility of the Brigadier coming to view the training at Tain. He was referred to some correspondence in that regard.

[266] The SPO stated that contact had been made with the Small Arms School adviser at divisional level to discuss the course program. He stated that 3 SCOTS had a death on the Otterburn ranges about two months before this course. As SPO, he sought to support the course as best he could and seek assurance, as he was aware of the previous issue. He wanted to avoid any such issue arising again. He wanted to do the best he

could. He accepted that it was unusual for an SPO to contact a division level Training Officer in relation to a training course. He confirmed that he had seen the RASP, which he considered needed more work. He revised the document and then sent it to the divisional Training Officer. He felt that he had gone above and beyond what would ordinarily be expected but this was in his desire to avoid any possible repetition of what had happened six weeks before.

[267] He confirmed that Sgt 1 is second-in-command of the sniper platoon in his company. He stated that Sgt 1 was also a qualified sniper and qualified trainer. He was helping C/Sgt 1 to update the RASP after the SPO's concerns. Adjustments were made to reflect the SPO's views and the feedback from the divisional Training Officer.

[268] The SPO confirmed that the plan for the Sniper operators' course was submitted to and signed off by the School of Infantry at Warminster. He stated that, as SPO for phase two of the course, he did not see the RASP for phase one or phase three. The respective SPOs for those phases did not ask to see the RASP for phase two. He again repeated that the training program was policy compliant. He was also aware that C/Sgt 1 had been in close liaison with the other Colour Sergeants running the other two phases. He was aware that C/Sgt 1 had a face-to-face handover from the Colour Sergeant running phase one of the course. He could not recall when he became aware of the need to swap the weeks at the end of phase one/beginning of phase two due to scheduling difficulties at the ranges. However, he stated that he did not recall any concerned reaction to that news. He stated that the original intention had been for most

of the training at Tain to be directed towards field craft, but that there had always been the intention that there would be some live firing requiring a RASP.

[269] The SPO referred again to the earlier fatality at Otterburn. He explained that, as far as he knew, that involved one of his Battalion's rifle companies, after he was serving in the Battalion, but that it did not involve any of the same personnel as the sniper operators' course attended by LCpl Spencer. He stated that, to his knowledge, the exercise in which the fatality occurred was a category three exercise, meaning it was the most complex level, and he stated that lessons had certainly been learned. He explained again that this is why he had been so keen to get advice in the planning stages and why he was determined to make sure that the course ran successfully.

[270] The SPO confirmed that the first morning of phase two was Monday 31 October 2016. He confirmed that the sniper operators' course was only one of a number of matters which the unit were dealing with. He himself had been abroad for a week on a training reconnaissance. He confirmed that he had signed off on the final version of the RASP and returned it to the Range Control Officer, C/Sgt 1. He accepted that he was not a qualified sniper, nor an expert in delivering training on sniping. However, he stated that he had been SPO for training delivered by C/Sgt 1 at Otterburn. Acting as an SPO was described by him as being only one of the roles an infantry company commander is required to fulfil. He described the role as being a "jack of all trades."

[271] The SPO stated that, in his assessment, C/Sgt 1 was one of his best NCOs. He had not met him before taking over as company commander of D Company. He had seen C/Sgt 1 running ranges in Tain in May of 2016. His assessment of him was across the

range of his duties, not just training. He explained that, at the time, he had not had a second-in-command for the company and had not had a Commanding Officer for eight months.

[272] The SPO confirmed that he had found out that LCpl Spencer had died at Tain. He stated that live fire marksmanship training is not without risk, but it is at the lower end of the risk spectrum. Had the training been carried out on a gallery range, like Barry Buddon, it would not even be necessary to write a RASP. Because this training was carried out in a tactical live fire exercise area, a RASP was necessary and was completed, and was fit for purpose.

[273] He confirmed, once again, that he had not been involved in the planning of phases one and three. He stated that whether or not a RASP was required or a Range Action Map (herein after referred to as RAM) would depend on the nature of the range. A RASP was essential for a tactical live fire range but not necessarily required for a gallery range. He was referred to the army guidance, in particular the operational shooting policy, volume 2. He agreed that the operational shooting policy provides full details of how to run live fire practice and does not need to be replicated in full in a RASP. He stated that where the training was to take place would determine whether a RASP or a RAM was needed. All the necessary prompts are contained in the operational shooting policy. The SPO confirmed that he was aware of the type of firing that was to be carried out at Tain. The directions for live firing nine are contained in the operational shooting policy. The format is fixed. It is essential to carry out a range reconnaissance during the planning stage to make sure that the range is suitable for the exercise. He

stated that he would not expect to see the contents of the operational shooting policy repeated in the RASP. He would only expect to see the normal safety procedures. He saw no point in repeating policy from other documents which were available.

[274] The SPO confirmed that, had any of the training elements been missed in phase two, he would have let the SPO or company commander involved in phase three know about that, so that any catch up of training could be carried out. There was an end-to-end plan for all three phases of the training that had been submitted to the distributed training cell. The SPO confirmed that he had seen that. The SBO stated that if something was missed from the training in phase one, he should be notified of that. He was not advised of anything being missed, either by the company commander for phase one or by C/Sgt 1 telling him that anyone had told him, namely C/Sgt 1, that phase one had missed anything.

[275] The SPO confirmed that he had seen and was aware of the overall plan for the sniper operators' course. That course program had been submitted to the distributed training cell and approved. He stated that he would probably seek advice from the distributed training cell if there were to be any changes to the course program. This was only the second distributed training course for sniping that had been run. He confirmed again that had anything been missed in phase two, those responsible for phase three would have been advised and he would have consulted with the distributed training cell. He explained that he would take advice if it involved live firing, but if it was a matter of low issue or low risk, he might take a view himself. For anything substantive, he would have consulted with the distributed training cell. His assumption was that the

course program would be followed. He stated that you have to trust people to follow the course program properly. He explained that trust exists in the military at all levels but there are still checks and assurances. Trust is supported by checking. The SPO stated that a reasonable starting assumption is that everyone would follow the plan. He accepted that the location of the ranges had been changed, but did not consider this to be of major significance. This did not involve a change of content for the course, only a change of order. He said he could live with that. He did not consider that to be a deviation from the policy approved plan. He would have taken a different view if he had been advised that a whole section of the program was to be cancelled or missed.

[276] The SPO stated that he was still of the view that with the benefit of hindsight, it would have been better to have a single SPO or course director for the whole course, although he did not think that would have made any difference in the actual circumstances. Notwithstanding the lack of a single director, the plan was policy compliant. It was clear who was responsible for doing what. His view was that the issue was that the plan had not been followed as it should have been.

[277] The SPO stated that it had been his intention to visit the sniper operators' course at Tain at some point, possibly on day two or three. He stated that he wanted to go to show moral support for the staff and in his capacity as SPO. He stated that there was no requirement for him to be present on day one. He stated that he would certainly have been present if the Brigadier had decided to turn up, as would the Company commander.

[278] The SPO stated that everything had been done properly in the planning process and that he had done everything that he should. He was at a loss to explain how the fatal incident had still been able to happen. He accepted that requiring firers to “show clear” to the safety supervisors was a possible control measure. However, he went on to state that all the safety staff were from sniper platoons. His students had all been through pre-course training prior to selection. They were experienced soldiers. Despite the fatal consequences on this particular day of training, the training which the students were engaged in was at the lower end of the risk spectrum of live firing. He confirmed that by that stage of the training, firers showing clear was (and is) policy compliant. Even then, that does not negate the roles and responsibilities of the safety supervisors who should be there at all times, especially during conduct on the range. He thought that when he was last running ranges, which he accepted was about twenty years ago, the instruction was for safety supervisors to show clear. He confirmed that he had provided a statement to the Service Inquiry but had not been required to provide a statement to Police Scotland. He confirmed that he had seen the Service Inquiry report when it was published. He contacted the president of the Inquiry to make certain representations in regards to one particular section of the report.

[279] The SPO stated that his understanding of current Army policy for what should happen at the end of live firing practice is that the command “Detail unload” should be given. He confirmed that the firer could show clear in those circumstances. He also stated that the process of clearing an SA80 and the sniper rifle are in principle the same. That is to say, the magazine is removed, the chamber is checked to be clear, and the

action is fired off to confirm that. For normal safety procedures, there would be the addition of the command "For inspection, port arms." Were that to be carried out, the safety supervisor can check the breach. If that is done, there is no way that a live round could be in the breach of an SA80 or a sniper rifle. He thought that the instruction was now that safety supervisors should show clear during normal safety procedures. He explained, that by normal safety procedures, he meant the last unload drill of the day, prior to leaving the range. He accepted that he was going from memory and would have to check to be sure. He was not sure whether or not that had been a change of practice. The SPO stated that these two actions, namely "Detail unload" and "For inspection, port arms" should ensure that there was absolutely no possibility of the rifle being loaded. He accepted that, if the wrong words of command were given, or if the words of command were not given, there was a risk that firers would not carry out the correct drill.

[280] There was no cross examination by Mr Webster KC.

[281] In cross examination by Ms Watt the SPO was referred to Crown production 29, the joining instruction for the sniper operators' course attended by LCpl Spencer and in particular to paragraph 11 which stated that all students should arrive having had suitable pre course training and relevant exposure to sniper training prior to attending the course. The SPO explained that in his experience as a platoon commander pre course training was carried out to provide familiarisation and refresher training. He understood that was what the joining instruction referred to. He described the sniper operators' course as a demanding course and that it would be of assistance to students

to understand the mechanics of the rifle and have an understanding about what sniping is about. He made it clear that he was not suggesting that there should be any deviation from the sniper operators' course training plan. That should include the Skill at Arms lessons for the rifle. However some familiarity with the use of the weapon system in advance of the sniper operators' course would be advantageous.

[282] In cross examination by Ms McDonnell the SPO stated that his understanding was that from the Live Firing 4 lesson on the rifle the unload drill would switch from "safety show clear" to "firers show clear". He stated that the firer should always be responsible for the state of his rifle. Safe handling of a weapon is paramount at all times. The Range Conducting Officer has the discretion to go back to "safety show clear". If the instruction was for "safety show clear" all the time it would take the responsibility away from the firers. That would not be desirable.

[283] In cross examination by Ms Bone, acting on his behalf, the SPO stated that he had seen C/Sgt 1 running range exercises. He could not recall him ever giving the words of command incorrectly or badly. In his opinion C/Sgt 1 ran ranges in a professional and diligent manner. He confirmed that the arcs and firing lines are specified in the RASP and the sketch plan is annexed to it. The trace is also annexed to the RASP. The trace had been endorsed by the Range Warden at Tain. He considered that the criticisms in regard to the RASP in the Service Inquiry report were erroneous. He stated that Sgt 1 had helped C/Sgt 1 with some of the contents of the RASP. Sgt 1 was a qualified sniper and would have been qualified to be the Range Conducting Officer himself.

[284] The SPO was referred to Crown production 24 and the course programme contained therein. He confirmed that the programme for Tuesday 1 November was for Live Firing 9 to continue from 9:30 hours until 12:10 hours and from 13:10 hours until 15:30 hours that day. He confirmed that he was aware that Live Firing 9 started late. He stated that how long it takes to do things can be variable and can take less time. For two details of eleven firers there should have been plenty time to carry out Live Firing 9 over two days. He stated there was scope in the programme for timings to slip. There was no need to rush the live fire practice.

[285] The SPO stated that he did not receive a reply to his e-mail to the Service Inquiry.

[286] There was no re-examination by Mr Glancy.

Student A – 23 January 2024

[287] Student A took the oath. Student A stated that he was still in the army. He initially joined a rifle company in 3 RIFLES and served six years in the same company. He then left the army and joined a reserve battalion. After a year or so, he signed up again and re-joined 3 RIFLES, coming back to A Company, also a rifle company. He confirmed that the standard infantry weapon for a rifle company was the SA80 infantry weapon. Prior to 2016, he was a rifleman. He stated that he had expressed interest in becoming a sniper. After he re-joined the army and had been back for three or four weeks, he was seconded to a fire support company. As a result, he was sent on a pre-selection course and then on a sniper operators' course. The pre-selection course was an internal course within his unit. He did six weeks training in Brecon as part of the pre-

selection. The pre-selection course was run by the battalion and there were two sections on it, one from 3 RIFLES and one from Scots Dragoon Guards. He thought there were about eight to ten students from each of the units. The training was run by 3 RIFLES, by a Colour Sergeant. It was a stripped-back training course. He stated that he then went on to do the sniper operators' course in late 2016. There were to be three phases, with the first at Barry Buddon, the second at Tain, and third at Otterburn. He was on the sniper operators' course with four others from 3 RIFLES. One of those was LCpl Spencer. The other three were students E, H and I. He stated that some of the course staff were from 3 RIFLES as well, including DS 7 and Colour Sergeant 3.

[288] Student A confirmed that a Colour Sergeant from 1 SCOTS ran the part of the course at Barry Buddon. He did not know the Colour Sergeant's name. Student A stated that he successfully completed the first phase of the course, as did all the students from 3 RIFLES. After that, they moved to Fort George for the Tain phase of the course. The first day at Tain was Monday 31 October 2016. LCpl Spencer died on Tuesday 1 November 2016. That stopped the course. Student A advised that he had later completed the sniper operators' course in February 2017. The course had been paused and was recommenced. The second and third phases were both carried out at Otterburn. After completion of that course, he was a qualified sniper. He returned to the sniper platoon in 3 RIFLES. After attending certain promotion courses, he transferred to another company and qualified as a Sergeant. At the time of giving evidence, he was waiting for his annual report to be completed to formalise his promotion to Sergeant. He had, at that time, transferred to the training unit at Catterick.

[289] Student A was referred to a police statement which he gave on 3 November 2016 at Fort George. He recalled giving the statement. He stated that he had told the police the truth. He confirmed that he also gave a statement at Redford Barracks in Edinburgh to the service inquiry. He was referred to a transcript of his evidence to the service inquiry and confirmed that he had told the truth to the best of his ability.

[290] Student A confirmed that a core part of the course function is teaching the skill at arms training. He recalled that C/Sgt 3 did that part of the training. He stated that he himself demonstrates skill at arms lessons for the SA80. The skill at arms lessons for the SA80 are broken into eighteen separate lessons, over forty minute periods, some of them double. The weapons handling test is carried out once, at the end of all of the skill at arms lessons.

[291] He stated that they were just given basic handling lessons for the sniper rifle. This consisted of a quick tour of the weapon and its basic handling. He stated that all the students were class 1 soldiers, explaining that a class 3 soldier would be someone fresh from basic training. All the students were very used to the SA80. He stated that, during the sniper operators' course, he did not receive skill at arms lessons and was shown the general basics of the sniper rifle. At the time of giving evidence, he recalled two periods of familiarisation with the rifle. He could not recall how long these periods lasted but thought they were maybe mid-morning until the lunch break. Then they had another two hours after lunch. He was sure that they did not fire the rifle at that time and did not do any live shooting. He confirmed that these familiarisation periods were during the pre-course training. It concentrated on field craft, navigation, and fitness. He

confirmed that LCpl Spencer was on the same pre-course training that he attended. The 3 RIFLES and Scots Dragoon Guards were all mixed up together in the pre-course training. However, he was sure that LCpl Spencer was with him. He stated that he went to the medical centre for three days during the pre-course training. He fell and split his knee. His recollection was that he had passed the pre-course training anyway, prior to his injury.

[292] Student A then went on to describe phase 1 of the sniper operators' course at Barry Buddon. He stated that they carried out a Weapons Handling Test in the middle of the first week. The first day was spent doing fitness and navigation. Student A stated that, personally, he could not recall going through the whole Skill at Arms training before doing the Weapons Handling Test during phase 1 of the course. He stated that LCpl Spencer was more experienced than he was and had been a member of the sniper platoon, albeit not as sniper, for a year. He stated that the Weapons Handling Test at Barry Buddon was carried out before any Skill at Arms lessons. Start to finish, the Weapons Handling Test took about twenty minutes per person to do on the sniper rifle. He stated that a Weapons Handling Test is repeated to keep up certification for a weapon system but that Skill at Arms lessons are only taught once. However, if you fail a Weapons Handling Test for a weapon system, you would get remedial training to bring you up to scratch, which would effectively be repeated Skill at Arms lessons. Weapons Handling Tests are carried out twice annually for the weapons that you are currently certified to use. He stated that, at the time of giving evidence, he had not used a sniper rifle for eighteen months.

[293] Student A was referred to the course program for the sniper operators' course and could not recall having seen it before. However, he accepted that it was the course program for the course he attended. He confirmed he was familiar with the general terms of the program. His recollection was that, for this course, the activities for the next day were written up on a whiteboard. He had a clear recollection of the eight-mile combat fitness test on day one of the course. He confirmed that the program stated that day two would involve navigation and judging distance, that day three would involve seven Skill at Arms lessons, with lessons eight to twelve the following day and lessons thirteen to fourteen and the Weapons Handling Test on Thursday. He was sure that, in fact, they did the Weapons Handling Test on Tuesday afternoon, the second day of the course. He thought they had done some Skill at Arms lessons on Wednesday and Thursday. He thought that they had carried out some live firing on the range during the first week. He did not recall spending two full days in a classroom doing Skill at Arms lessons. He was referred to a document showing that, on 5 October, three details carried out live firing, and confirmed that his name appeared on that document. He accepted that no range work was planned for week one in the program. He was quite sure that a Weapons Handling Test was not carried out on the Friday of week one, as it had already been done. His recollection was that they did not receive all eighteen Skill at Arms lessons on the sniper rifle at Barry Buddon but did receive some of them in the course, not in the right order and after they had done the Weapons Handling Test.

[294] He referred back to the pre-cadre course which he attended in August or September. He stated that he not handled a sniper rifle during his first period of service

in the Army. His recollection was that C/Sgt 1, who was to be running phase two of the course at Tain, came to Barry Buddon and gave a briefing on the Friday afternoon. He had not seen C/Sgt 1 before. Student A's recollection was that they travelled to Fort George on the Friday afternoon and had a night out in Inverness. He remembered seeing people in Halloween fancy-dress costumes, confirming the date to be at the end of October. He stated that this was the first time he had attended the range at Tain. In contrast, Barry Buddon is a purpose-built gallery range. In contrast, Tain was an open field looking out onto the sea. It was very different. This was the first time he had been on a field firing range.

[295] He stated that, at Tain, they initially used "falling plate" targets. The students were only allowed two shots per target on the sniper operators' course. The "falling plate" targets were used on the Monday of the first day of the course at Tain. He remembered assisting in putting out the "falling plate" targets. That process took some time. The timings for the course program on the first day at Tain were not able to be complied with. It took longer to get there than expected and it took longer to set up the targets. The targets also needed to be set up again after the shoot, as they fell down when hit. The force of the round hitting the steel plate split the wires they were hanging from. He could not recall whether he did any shooting on the Monday. He found it difficult to separate the events of 31 October and 1 November in his mind. It was all a bit muddled up. He thought he had been a bit clearer when he gave evidence to the Service Inquiry some years ago. The shooting at Tain was challenging.

[296] Student A recalled the Tuesday morning at Tain being more productive than Monday had been.

[297] Student A stated that at Barry Buddon the standard words of command were used. The range commander first shouted "Stop" and then asked if anyone was not finished. After that, the command was "Unload" and then "For inspection, port arms." At that final command, the firer would pull the bolt to the rear and check the chamber and the bolt face. He said that, after a few lessons, the firers carried out that check themselves. After that, the command would be "Firer, show clear", which they would do by lifting a leg if lying prone to shoot. The bolts would be pulled back. If the safeties were showing clear, they would check the bolts and then say "Bolts clear." At Barry Buddon, the safety supervisors physically checked the chamber and the face of the bolts at the end of the full practice session. At the end of the shoots, the firers showed clear. He stated that at Tain, they carried out a self-check. The firers showed clear.

[298] Student A recalled that on the afternoon of Tuesday 1 November 2016, there were two shoots. A night shoot was also scheduled. He was paired with LCpl Spencer. LCpl Spencer shot first and Student A shot second. They were on the extreme right of the firing point. There were eleven pairs of firers and spotters. C/Sgt 1 was the Range Conducting Officer. Student A stated that the spotter would usually be on the right-hand side of the pair. LCpl Spencer was on his left-hand side. They swapped position when they swapped duties. He then stated that the spent round ejects from the right-hand side of the rifle, so they then went for the spotter being on the left, to avoid the ejected cartridge. He explained that the safety supervisors stood behind the firing pairs

and the RCO stood behind the safety supervisors. The firing point at Tain was not a formal one like the gallery range at Barry Buddon. At Tain, there was grass and gorse which had to be cut back to give them line of sight. There were a series of craters, from the aerial bombs, water, and a prominent gorse bush between pairs seven, eight and nine. LCpl Spencer fired first, then they swapped. At Barry Buddon, the pairs had been mixed up and mixed up between units. There was quite a lot of swapping of partners at Barry Buddon. At Tain, Student A only worked with LCpl Spencer. He estimated the length of the firing line from the extreme left pair to LCpl Spencer and himself to be about the same length as the court room at Tain Sheriff Court. He recalled the safety supervisor on the right-hand side as being DS 1. He appreciated the significance of that particular exercise. It was in preparation to sit the ACMT at Tain later that week. He knew that if the students failed that test, they would fail the whole course.

[299] Student A stated that LCpl Spencer fired at ten targets. LCpl Spencer was the only one of them to be issued with ammunition. The ammunition point was at their back left. They were told to double-time to the ammunition point, which was manned by an NCO who issued the rounds to them. They physically took the rounds out of the ammunition tin themselves. The procedure had been slightly different at Barry Buddon. He stated that firers were allowed to reengage five times against ten targets, so only fifteen rounds of ammunition were required. He could not remember how many rounds were issued. On being advised that twenty rounds had been issued, he accepted that was possible. He stated that one round might have been used to warm the rifle up, known as a cold bore shot. He could not remember whether they were using "falling

plate" targets or "Figure 11" targets. Figure 11 targets are an outline of a soldier running towards you. He explained that they pop-up and can be raised again when hit. He could not remember which targets they were shooting at. It was more difficult to count hits on the "falling plate" targets. He thought that someone had made a comment about losing light. He could not remember who. He was sure it had been a comment made by one of the range safety staff and not one of the students.

[300] Student A stated that, at the conclusion of LCpl Spencer's shoot, LCpl Spencer went to get ammunition for Student A. Student A was getting his rifle out of its protective bag and getting his notebook out, getting organised to carry out his shoot while LCpl Spencer spotted for him. He stated that LCpl Spencer used his own spare ammunition to fill up Student A's magazines. He stated that he had four magazines. He was wearing webbing, which can be used to store the magazines, but he recalled that his magazines were lying on the ground. LCpl Spencer gave him one of his magazines. Student A therefore had ammunition given to him by LCpl Spencer and ammunition collected from the ammo point. Student A did not collect LCpl Spencer's ammunition for him prior to his shoot. As spotter, Student A's job was to read the fall of shot and keep track of LCpl Spencer's rounds fired. Student A was certain that LCpl Spencer hit the last target with his first shot. He explained that LCpl Spencer would not have known that he was going to hit the target with that shot, and he speculated that LCpl Spencer would naturally chamber a second round for an additional shot, if necessary. As he hit the target with the first shot, such a second shot was not necessary. Student A was certain that there were no ejected live cartridges on the ground.

[301] Student A stated that the changeover between LCpl Spencer's shooting detail and his own shooting detail was unremarkable at the time. If LCpl Spencer had been firing from a full magazine at the last target, Student A thought that one round had been fired, one round chambered, and there would still be three rounds left in the magazine. He could not recall seeing LCpl Spencer doing his unload drills. He had taken his eyes off LCpl Spencer. He could not remember seeing anyone doing their unload drills. He accepted that it was possible that the correct words of command were given for the unload drill and he simply could not remember them. Student A confirmed that if the working parts, namely the bolt, had been pulled to the rear on LCpl Spencer's rifle, any live round in the chamber would have been ejected. If for any reason that was not done, and the command "Ease springs" was given and carried out, the live round would discharge from the rifle muzzle, safely down the range. This would be a negligent discharge and would be frowned upon, but no one would be hurt. Student A stated that he had thought about the situation many times, particularly in advance to giving evidence to the service inquiry, and had tried to fill in the blanks in his memory.

[302] He confirmed that LCpl Spencer was due to carry out a shoot in the evening. He also confirmed that if the bolt were pulled to the rear, ejecting any live round in the chamber, the only way that a further live round could end up in the chamber, realistically, was if the magazine was still attached to the rifle. He could not imagine that LCpl Spencer would carry out an unload drill and neglect to remove the magazine first. If LCpl Spencer removed the magazine and pulled the bolt back, it should have ejected the live cartridge. LCpl Spencer should also have looked into the chamber to

confirm it was clear and check the face of the bolt. If LCpl Spencer had not done any of that, and a round remained in the chamber, it should have discharged when the "Ease springs" section of the unload drill was carried out and the trigger was pulled. He accepted that, if a round was chambered in the rifle, the weapon was in a very dangerous condition.

[303] He explained that LCpl Spencer went to get ammunition for Student A, so that he had more time to set up. He was not sure what time he started shooting as part of the second detail but he thought that the light was beginning to go. He noted from the training program that, if they had been on schedule, the last shot down the range in the afternoon should have been at 15:30 hours. He stated that he had no idea that LCpl Spencer's rifle had a round chambered when he started his practice. His recollection was that he shot in about half the time that LCpl Spencer had been given. Firing was done at a rapid pace. These were the final practices in advance of the ACMT, which was a critical point in the course. Failing the ACMT meant failing the course. Only two attempts were allowed at the ACMT.

[304] Student A stated that ammunition was not taken off the students at the conclusion of the afternoon shoot. He thought the rounds should have been collected and a check of magazines and rifle bolts been carried out. His recollection was that matters were more methodical and safe at Barry Buddon. The Tain range was a free for all. There was no designated waiting area. Food had been brought in. No normal safety procedures were carried out on the transition from day shooting to night shooting.

[305] Student A thought that if normal safety procedures had been carried out, that would have involved all the firers from both details with their weapons out for inspection at port arms. That would provide a safety check and the RCO should then order the bolt forward and the action to be fired off, namely "Ease springs." If they had done normal safety procedures, the live round in LCpl Spencer's rifle would have been picked up or safely discharged down the range. From that, he worked out that, logically, the normal safety procedure drill could not have been done because, if it had been, the live round could not have remained undiscovered in LCpl Spencer's rifle.

[306] Student A stated that on the afternoon of 1 November 2016, it was raining heavily and very windy. Their kit became saturated in a matter of minutes at the end of his detail's shooting.

[307] Student A was referred to his Service Inquiry evidence and confirmed that he received evening Skill at Arms lessons at Barry Buddon from a Colour Sergeant. He confirmed that LCpl Spencer was present for the Weapons Handling Test at Barry Buddon. He stated that the students were all trained to instinctively chamber a second round after firing the first round, in case the target was not hit first time. He did not remember being recalled to give evidence at the Service Inquiry on a subsequent occasion. Having been shown the transcript, he accepted that he must have been. He could not remember anything about that appearance. He stated that he would have tried to tell the truth to the Service Inquiry.

[308] Student A stated that he was in the medical centre during the Skill at Arms training which was carried out in the pre-cadre course at Brecon. Looking back, he felt

that he was shown how to pass the Weapons Handling Test rather than being taught the full Skill at Arms training at Barry Buddon. He said this with hindsight and greater familiarity of delivering Skill at Arms training himself. He stated that the training at Barry Buddon was aimed to allow him to pass the Weapons Handling Test but conceded that the training he had received included the normal safety procedures for the rifle, how to strip and assemble the rifle, and how to load and unload the rifle. He confirmed that it was not permissible to fire a weapon unless you had passed the relevant weapons handling test.

[309] He stated that he was not sure who the safety supervisor was behind LCpl Spencer and himself. He did not think that DS 1 would have been there the whole day. There would have been a relief. He was sure that, when they finished shooting, it was DS 1 to the best of his recollection. He did not know DS 1 and would not recognise him. He stated that he had met him for the first time at the course at Tain and had only seen him for two days seven years ago. He stated that after any unload command, there should be a command to "Port arms" and, thereafter, to show clear. He had a recollection of the words of command being given in sequence, but too fast to allow the steps to be completed.

[310] Student A advised that he has now completed the Section Commanders' Battle Course which teaches how to deliver Skill at Arms training. It should be delivered in classrooms. That is where he does all Skill at Arms lessons which he provides. This should be the first exposure to the weapon system. The weapon is stripped, and the instructor explains, demonstrates, and allows the students to imitate and practice. All

Skill at Arms lessons are delivered in that way. The later parts of the Skill at Arms lessons involve the firing positions for the weapon system and that can be done out with a classroom setting.

[311] He stated that at the end of LCpl Spencer's shoot on 1 November 2016, he could definitely remember the command "Stop" being given. After that, he would anticipate the commands "Unload", "Port arms", and "Show clear." His recollection was not consistent in relation to this point. He was unable to explain the differences in his recollection. He stated that the only thing he could remember clearly at the time of giving evidence to the inquiry was the command "Stop." He stated that the RCO gave the command and that this was repeated by the safety supervisors behind the firers. There was more than one safety supervisor on duty. He could not actually remember anyone shouting "Unload." He could remember nothing beyond "Stop." At the time, there was nothing remarkable about the shoot.

[312] There was no cross examination by Mr Webster KC.

[313] In cross examination by Ms Bone Student A confirmed that he had attended a pre-cadre course at Brecon. The students on that course were experienced soldiers. They were familiar with the SA80 rifle. He described the SA80 rifle as being gas operated with a recoil spring. He explained that the unload procedure involved cocking the handle to the rear, pressing a button to keep the breach open, checking it, pressing the button again and the bolt springs back. He stated that the same words of command are used for the unload drill for the rifle and for the SA80 rifle.

[314] He stated that the unload drill for the rifle was covered in the classroom at Barry Buddon during the first week of the sniper operators' course. He also stated that the students went through the unload drill for the rifle after every live firing exercise at Barry Buddon. He explained that the unload drill would be carried out after every five round magazine was empty but that "fires show clear" would only be carried out after a change of detail. He stated that normal safety procedures would be carried out at the start of the detail, at the end and when leaving the range. He accepted that would be carried out three times over eight drills and this would build up muscle memory. He explained that muscle memory meant that you knew what to expect. He confirmed that LCpl Spencer was present during each of these drills carrying out the same drills.

[315] Student A stated that Tain was his first experience of a field firing range but confirmed that they are all much the same. He stated that he has acted as a safety supervisor on Live Firing Marksmanship Training ranges. He stated that if doing so he would move about on the firing point. He also stated that if carrying out safety supervisor duties at a Live Firing Tactical Training it was necessary to move as the firers would be moving too.

[316] He stated that for Live Firing Marksmanship Training when acting as a safety supervisor he would move about up and down the firing line to see what he wanted and needed to see. He would not tell anyone that he was going to be moving about.

[317] Student A stated that safety supervisors will repeat words of command. Firers can look for a safety supervisor if they need guidance or assistance and can speak to them if they are not clear about what words of command have been given.

[318] He stated that he was not sure if it was required in terms of Pamphlet 21 but that any range he has been on since LCpl Spencer's death there has been normal safety procedures in the transfer from day shoots to night shoots. He thought that a Range Conducting Officer could confirm the position. He is not qualified to act as a Range Conducting Officer.

[319] In cross examination by Ms Watt Student A confirmed that he had missed some of the pre-cadre course at Brecon. He did not know what had been taught when he was not there. He did not think any live firing of the rifle had been carried out at Brecon but accepted that it may have occurred when he was not there.

[320] He confirmed that DS 7 gave him one to one lessons. His recollection was that at Barry Buddon they shot through the day and Skill at Arms lessons were taught at night. His recollection was that different units did the same lessons in different classrooms. He stated that at the start of Phase 2 of the sniper operators' course at Tain he was comfortable that he could carry out the unload drills for the rifle safely and assess the safety of his weapon.

[321] There was no cross examination by Ms McDonnell.

[322] In re-examination Student A re-iterated that in Live Firing Marksmanship Training he could walk up and down the line as a safety supervisor to see what he wanted to see and not tell anyone that he was doing so. He stated that in those circumstances if he had to withdraw from the firing line he would have to be replaced and he would let the Range Conducting Officer know before he went. His experience was that he would be equipped with a radio if it was not possible to speak directly with

the Range Conducting Officer. He explained that in a gallery range safety supervisors and the Range Conducting Officer would never be far away from each other anyway.

[333] If a safety supervisor left the firing line the Range Conducting Officer could allocate someone else to take over, step in himself or pause the shoot until the safety supervisor came back. Student A stated that he would not leave the firing point without letting someone know.

Directing Staff 4 – 24 January 2024

[334] Directing Staff 4 took the oath. He stated that he was now a Sergeant. At the time of giving evidence he was still a serving soldier with 2 SCOTS. He had fifteen years' service. He stated that he was currently a Sergeant in the sniper platoon. The platoon is commanded by a Colour Sergeant. He passed his sniper course in 2011. At that time, he was a Lance Corporal. He has passed the Section Commander Battle Course and is qualified to deliver Skill at Arms lessons. He had also carried out the sniper section commanders' course in 2015 and was therefore qualified to instruct on a sniper operators' course. The sniper operators' course he attended was run by the Small Arms School and was in two parts. The sniper section commanders' course was also run by the Small Arms School. In 2016, sniping training was devolved to unit level. The sniper operators' course which LCpl Spencer attended was the second course run as a distributed training course. The sniper operators' course is still run as a distributed training course. DS 4 stated that he has been involved in sniper operator courses since 2016. He was involved in a Brigade level course in November 2023. That course was

carried out at four separate locations and ran for eight weeks. He was the Exercise Planning Officer. He attended all four phases of the course. The Senior Planning Officer was above him.

[335] DS 4 confirmed that he knew why he had been called to give evidence. He confirmed that he had provided a statement to the police on 3 November 2016. He was a Corporal at that time. He told the police the truth to the best of his ability and adopted his statement. On 24 November 2016, he provided a further statement to the police, again doing his best to tell the truth. He stated that he had given evidence to the service inquiry on 10 February 2017 and adopted the transcripts of his evidence. He had endeavoured to tell the Service Inquiry the truth.

[336] DS 4 stated that, in advance of the sniper operators' course in the autumn of 2016, he organised a pre-cadre course for 2 SCOTS. No guidance was given as to what should be covered in the pre-cadre course but fitness, map-reading by day and night, and general military knowledge all needed to be up to scratch, so that students were not wasting their time or that of the instructors in the full sniper operators' course. His unit only had four places on the course and they had eight soldiers who were interested, so the pre-cadre course was a useful way to whittle them down. He stated that the Skill at Arms lessons for the sniper rifle were carried out with the prospective students. He stated that in 2 SCOTS, they had carried out the Skill at Arms lessons in advance of the pre-cadre course. He could not recall when the lessons were taught. He did remember that it took a full week to teach the lessons. He was aware that the sniper operators' course would have time set aside for the skill at arms lessons. However, the pass-rate

for the sniper operators' course can be around fifteen to twenty percent, so it was considered useful to carry out the pre-cadre course to ensure only the best students were sent on the full course. After the Skill at Arms lessons had been taught, a Weapons Handling Test was carried out before the students would get near the ranges with a rifle. All eight candidates did the Weapons Handling Test at the end of the week of skill at arms lessons prior to the pre-cadre course.

[337] DS 4 confirmed that he was an instructor on the sniper operators' course and was due to attend all three phases of the training. Phase one was run by C/Sgt 2 from 1 SCOTS. DS 4 had seen a course program in advance. The program was due to start with an eight-mile fitness assessment and a navigation exercise. By reference to the program, DS 4 confirmed that the Weapons Handling Test was scheduled to take place on the Friday of the first week. The Skill at Arms lessons for the rifle were programmed for Wednesday, Thursday and Friday of the first week.

[338] DS 4 confirmed that Skill at Arms lessons are only undertaken once. Weapons Handling Tests are repeated twice annually to maintain certification on the weapon system. He reiterated that he had included Skill at Arms lessons before the pre-cadre course for his unit. The pre-cadre training was carried out by the individual units. He was aware that the Scots Dragoon Guards had no instructors available and did their pre-cadre training with the RIFLES. He did not recall any discussion about the content of the pre-cadre courses. For his unit, he carried out a Weapons Handling Test at the start of the pre-cadre course, after the week of Skill at Arms lessons.

[339] DS 4 stated that all the students sat and passed a Weapons Handling Test on the rifle on the first day of the sniper operators' course. On day two, there was a navigation exercise which one of his students failed and he was thrown off the course. So far as DS 4 could remember, no range work was carried out with the rifle during the first week. He remembered there being a discussion about the students' state of knowledge. C/Sgt 2 asked if the students had done pre-cadre training and if they were up to Weapons Handling Test standard. He stated that if all of them passed the Weapons Handling Test, they could get on to the ranges earlier. DS 4 was able to confirm that the 2 SCOTS students had been through the Skill at Arms lessons. As far as he remembered, 3 SCOTS and the combined RIFLES and Scots Dragoon Guards had all done pre-cadre training. During the sniper operators' course, time was spent in the first week with each student setting up their telescopic sights on their rifles and calibrating them properly.

[340] DS 4 confirmed that the required shooting practice is documented in the army guidance, Operational Shooting Policy volume 2. He stated that he was familiar with that documentation. He confirmed that for live firing exercises one to nine, the guidance specified what targets, what rounds, and how long each session should take. Shoots should all be uniform.

[341] DS 4 stated that there had been a double-booking of the ranges in week four and, accordingly, the first week of phase two at Tain was brought forward at Barry Buddon. This involved field craft exercises. Thereafter, the course moved to Fort George where the students were accommodated. The second phase of the course was to be carried out at the Tain Air Weapons Range. The second phase was run by C/Sgt 1. DS 4 had not

met him before and did not know him. He did not recall having seen C/Sgt 1 at Barry Buddon. He accepted that there might have been someone from the Small Arms School at Barry Buddon but, if there was, he did not notice. He advised that at the course he had just completed running, someone from the Small Arms School had been present for the entire course.

[342] DS 4 stated that he had never been at the Tain range before. The shooting carried out in the first week at Tain should have been carried out at Barry Buddon, but on the field range at Barry Buddon rather than the gallery range. The shoot at Tain was with a view to the students sitting the ACMT. Each student had a maximum of two attempts to pass the test. If they failed to do so, they would be expelled from the course. The final firing exercise was live firing nine, which was to be carried out at Tain in advance of the ACMT. This was all originally scheduled to take place at Barry Buddon.

[343] DS 4 was referred to the course program and confirmed that the program suggested shooting would start at 09:00 am on Monday 31 October 2016. He explained that a 09:00 am start meant that the first shot should be fired then. He confirmed that, at Barry Buddon, the students were accommodated on site. That was not the position at Tain. They were accommodated at Fort George which is some distance from the Tain range. Travel time needed to be factored in. Live Firing 9 involved both day and night activities. He stated that it was important for them to make the best possible use of the time on range. He could not remember when they arrived at Tain on the Monday morning. On being referred to the login sheet for the range, he noted that the start time on the range was given at 11:30, which would be the start of firing, not the arrival time.

That had been noted by C/Sgt 1. The time off range that date was recorded as 16:30. He accepted that the programmed timings had slipped. He stated that it was easier to stick to the timetable at Barry Buddon.

[345] At Tain, the students and safety supervisors set up the targets themselves. DS 4 confirmed that he is qualified to act as a Range Conducting Officer. He accepted that the Army operational shooting policy specifies the number of rounds that should be used and the time that should be taken for various live fire exercises. He stated that, if running a range, you would try to stick to those timings.

[346] DS 4 stated that, although he had never attended the Tain range before, he was aware that C/Sgt 1, the RCO, had carried out a range reconnaissance there. DS 4 was acting as a safety supervisor at Tain. He combined those duties with a degree of instruction and coaching. He confirmed that there is only ever one Range Conducting Officer on the range. All the instructors from the first phase of the course at Barry Buddon went to Tain. As far as he recalled, there were two from each unit and 3 SCOTS provided extra staff at Tain. He explained that, once on the range, his duties related more to safety than to instruction.

[347] The targets used on the first day were "falling plates". The operational shooting policy specifies that Figure 11 targets should be used. A Figure 11 target is a much bigger target to hit. It looks like the outline of a person. On Monday, each student should have fired twenty-four rounds. It was suggested to DS 4 that the Monday session was a bit of a washout and the students were not hitting anything. He could not recall that. He stated there were about twenty students on the course. To his

recollection, the Tuesday morning was much the same as Monday. The “falling plate” targets kept coming off their chains. These were transferred for Small Arms Pop-Up (SAPU) targets using the Figure 11 targets. Firing started at 10:00 am on Tuesday 1 November 2016. It was important to get all the students through live firing nine on 1 November 2016, with the correct targets, in preparation for the ACMT. The students and staff were involved in replacing the “falling plate” targets with the SAPU targets. The SAPU targets needed to be sandbagged down. A night shoot had been scheduled for Monday evening but was moved to Tuesday evening because of the prevailing weather.

[348] DS 4 stated that, on Tuesday afternoon, two details carried out Live Firing 9 and the intention was then to carry out the night shoot. The ACMT would commence the next day.

[349] DS 4 confirmed that, during firing, the Range Conducting Officer would walk up and down behind the firing point, keeping an eye on things. There were more people there than were needed as safety supervisors. They were hanging about the ISO containers. He stated that they would not have stayed there, they would have helped out. They could easily have swapped in for a safety supervisor to relieve them if necessary.

[350] DS 4 recalled being on the range for the first detail that shot. He was acting as a safety supervisor. Each firer had a spotter. He was between firers seven and nine on the line, towards the right of centre of the firing line. His recollection was that DS 1 from Scots Dragoon Guards was on his right. On his left, there were more safety supervisors,

maybe three or four. He thought there were six safety supervisors in total. They swapped in and out with other qualified staff who were there and were surplus to requirements. He was sure that DS 1 was the only safety supervisor to his right. DS 4 stated that there was not a specified ratio for firers to safety supervisors but the usual rule of thumb was one supervisor to four firers, so a total of eleven firers would need four safety supervisors. He was not sure if DS 1 was on his own the whole time or not. He reiterated that there was no shortage of people to carry out safety supervisor duties.

[351] DS 4 could not recall when the first detail started firing in the afternoon. He did remember that the SAPU targets had been set up by then. He did not particularly remember doing so. The safety supervisors and students remained on the range in order to carry out the night shoot. He confirmed that according to Army guidance, the Live Firing 9 should take an hour to complete. He stated that there was nothing remarkable about the shooting of the first detail or the second detail. The intention was to carry out the night shoot after that.

[352] DS 4 could not remember a change of Range Conducting Officer over the course of the day on 1 November 2016. He accepted that a Sergeant might have done the morning before C/Sgt 1 returned in the afternoon but his memories of 31 October 2016 and 1 November 2016 were a bit blurred together. He could not remember exactly. He recalled that the spotters collected ammunition and shot in the second detail.

[353] DS 4 stated that he could not say whether or not DS 1 was still on the firing line at the end of the first detail's shoot. He presumed that he was but he could not recall. He could only recall the words of the command being slightly different between the first

detail and the second detail. He did not think there was a need for the second detail to go faster due to the light fading. He did remember that it was pouring rain. He confirmed that live firing nine needs to be completed in daylight. Live Firing 11 is the night-time exercise.

[354] He stated that C/Sgt 1, the Range Conducting Officer, would have given the full words of command. He remembered him saying "Unload." The first detail were finishing their shooting and the second detail were going for ammunition. He stated that he had a clear memory of C/Sgt 1 saying "Unload" at the end of the first detail's shoot. He accepted that it was possible that the firer from the first detail could go up to collect ammunition for his spotter, who was due to be the firer on the second detail, but that that should not really happen. DS 4 stated that the sniper rifle needs much more setting up prior to firing than the standard SA80. It takes between two to five minutes to get ready to fire. The spotter has more to do at swap-over between details in order to get ready to shoot as the second firer. He supposed that the first firer could collect ammunition on their behalf but that they really should not, as they should be doing the unload drill.

[355] He could not recall seeing the unload drill happening. The night shoot was only out to four hundred metres and the targets needed to be brought closer to the firing line. Once the weapons were cleared on the line, they started to do that. He went out to do the targets. DS 4 stated that when he came back, the transition had been done. He stated that there should have been normally safety procedures carried out on the firing line. The first detail had cleared their weapons and their rifles were lying at the back of

the firing point when the details swapped over. The first detail's weapons are cleared at the end of their shoot. The second detail's weapons are cleared at the end of their shoot. Best practice would be for normal safety procedures for both details to be carried out at the transition from day shooting to night shooting. If normal safety procedures had been carried out, that should have cleared the round by ejection or by a negligent discharge. There were no normal safety procedures at the transition from day shooting to night shooting on 1 November 2016. However, he was sure that both details had cleared their weapons at the end of their respective shoots. C/Sgt 1 was also the Range Conducting Officer for the night shoot. DS 4 stated that there are usually two safety briefings, one for the safety staff and one for everyone. C/Sgt 1 just did one briefing for everyone in advance of the night shoot.

[356] DS 4 stated that he is qualified to plan and conduct live fire exercises. He stated that for a night shoot, there should be a clear pen and a dirty pen. Ammunition should be provided to the students who then fire and are placed in the dirty pen, just in case they still have ammunition. Ammunition should only be issued just before firing. He thought that, on 1 November 2016, everyone got their ammunition at the start at the same time. He confirmed that he is familiar with RASP's. He had not seen the one for this particular course before. On viewing it, he considered it to be a fairly typical RASP. The duties for the ammunition NCO noted in the RASP are standard for any RASP. On 1 November 2016, there were three details for the night shoot and they were all allocated their ammunition at the same time. DS 4 stated that, at the end of a night shoot, safety supervisors should check the breaches of the rifles using a white light. He stated that,

with hindsight, C/Sgt 1 could have delegated better on the night of 1 November 2016.

At the start of the night shoot, DS 4 was on the firing point of the range. The first detail were on point but had not fired.

[357] DS 4 heard the sound of a rifle discharge from somewhere behind the firing point. He stated that everything stopped very abruptly. He and DS 3 spoke to some of the students, including Student A. He confirmed that safety supervisors are there to observe the safety drills and ensure that they are carried out. The sole function of safety supervisors is to ensure safety.

[358] DS 4 stated that he was a safety supervisor every day the course was on the range at Barry Buddon. He stated that, in general, the drill is for firers to show clear. It would only be in a training establishment that you would have safeties showing clear. He stated that his own practice was that once he saw the feet raised by the students he was supervising, he would raise his hand and that would let the Range Conducting Officer know that the weapons were clear. The order would then be given to ease bolts or springs. That should clear any chambered round safely down the range, not that there should be any round chambered at that stage. He stated that, at Barry Buddon, the firers showed clear by raising a hand or a foot.

[359] DS 4 confirmed that skill at arms lessons were not fully done at Barry Buddon. If weapons handling tests had been passed, carrying out skill at arms lessons after that would be a waste of time. The decision not to carry out skill at arms lessons was C/Sgt 2's.

[360] He confirmed that he gave evidence to the service inquiry on a number of occasions.

[361] DS 4 stated that he was unaware at the time that Student D had failed to unload his weapon. He remembered the command "Unload." He had a clear memory of that. He stated that the unload drill could not be carried out without a command first having been given to "Stop." He could not remember hearing the command "For inspection, port arms."

[362] DS 4 stated that a firer should not leave the firing point until his weapon had been cleared.

[363] He stated that DS 1 did not ask him to cover for him while he left the firing point. He was quite clear about that. DS 4 stated that he and DS 3 had been interchanging. There was a gap between where they were and where DS 1 was, because of a bush. He recalled there only being two pairs of firers at the far side of the bush. That was on the right-hand side of the firing point. He never went to the right of the bush. The pairs on that side were covered by DS 1.

[364] In cross examination by Ms Bone DS 4 accepted that by 1 November 2016 the students were used to doing unload drills and then getting ammunition. He could not remember hearing the command, "Port Arms" but presumed that it had been given and that if it had not been someone would have picked up on that at the time.

[365] He confirmed that two weeks of the sniper operators' course had been swapped. Live Firing 9 was to take place over two days at Tain, beginning on 30 October 2016. He estimated that each detail would take sixty minutes to shoot, giving a total of two hours.

The course programme would allow for Live Firing 9 to spill into Thursday, if necessary.

Live firing 9 is an unknown distance shoot. The shooters had to work out the distances and engage the targets at three distances. A night shoot was scheduled for the Tuesday evening, 1 November 2016. In his experience courses do spill into subsequent days.

[366] He stated that he had used falling plate targets at a course in 2023, but for extra practice and the correct targets had been used for the shots.

[367] On 1 November 2016 he was happy that he had all the information he needed as a safety supervisor from the briefing conducted by C/Sgt 1. He stated that he would never abbreviate the words of command and had never heard anyone abbreviate them.

[368] In cross examination by Ms Watt DS 4 was referred to the course joining instructions. He stated that these had been written by C/Sgt 1. They were sent to the platoon commanders of the students. The joining instructions were complied with. He had not seen that himself and he would not have expected his platoon commander to show him the joining instructions. His platoon commander simply passed on the information that DS 4 needed to know. He expected that information to have been cascaded in other units too.

[369] He confirmed that his recollection of the sniper operators' course in the first phase at Barry Buddon was that it had been really well run.

[370] In cross examination by Ms McDonnell DS 4 confirmed that he was a safety supervisor during the afternoon shoot on 1 November 2016 and was also taking scores. He shared the safety supervisor role with DS 3. He and DS 3 were positioned to cover the students from their unit. In his view there were more than enough safety

supervisors available. The safety supervisors were left to sort out for themselves which shooting pairs to oversee. The RCO, C/Sgt 1, was walking up and down the firing point which he estimated as being a bit longer than the Court room in Tain Sheriff Court. DS 4 stated that he did not move off the firing point.

[371] At the end of the shoot DS 4 walked up to the person doing the targetry to give him the scores. He could not recall C/Sgt 1 allocating safety supervisors to shooting pairs although he thought he was allocated to a shooting pair on the previous day. He confirmed that in his view Live Firing 9 could have been carried out at Barry Buddon. He confirmed that he had done his Platoon Sergeant's Battle Course but not the Platoon Commander's Battle Course.

[372] DS 4 stated that he was an assistant instructor on a Brigade sniper course in 2012.

[373] He explained that on 1 November 2016 he was carry out the dual roles of scoring and safety supervisor. To give the scores he just had to turn round, he did not have to leave the firing point. He only had to walk a couple of metres to give the scores. He was sharing safety supervising duties at the time.

[374] In cross examination by Mr Webster KC DS 4 stated that at the conclusion of the shoot by the first detail on the afternoon of 1 November 2016 he could recall C/Sgt 1 giving the command, "Unload". He could not remember any other words of command. He accepted that he had stated in his police statement dated 24 November 2016 that he could recall the command "Port Arms" being given by C/Sgt 1 although he had not seen that carried out as he was walking away. He could not recall that at the time of giving evidence.

[375] In re-examination by Mr Glancy DS 4 explained that in a sniping pair the firer shoots and the spotter observes the fall of the shot. If the firer misses he has five seconds to cock the rifle and re-engage the target. Some firers might re-engage straight away. Some wait to see the fall of the shot. He stated that would be up to the individual firer. If he missed he would cock and re-engage straight away. He explained that a lot of firers will cock the weapon immediately after firing, in case it is necessary to re-engage, especially if it is a test situation.

[376] He confirmed that two days had been set aside to conduct Live Firing 9 but due to various problems most of it was done on the afternoon of 1 November 2016. He stated that it would have been possible to spill into the following day. DS 4 stated that C/Sgt 1 was walking backward and forwards across the firing line, behind the firers, during the shoot. As RCO it was necessary that C/Sgt 1 did so. DS 4 stated that at the end of a shoot the RCO should position himself in the middle of the firing line so that everyone can hear the words of command.

[377] DS 4 stated that he was carrying out scoring as well as being a safety supervisor. DS 3, a corporal in 2 SCOTS, was interchanging with him. They both stayed on the firing point, but could step back. DS 3 is well known to him. They would never both withdraw from the firing point at the same time.

Directing Staff 7 – 25 January 2024

[378] Directing Staff 7 (hereafter “DS 7”) affirmed. He stated that he is still serving as a soldier, currently based at Salisbury. He is now a Colour Sergeant in the RIFLES. He

enlisted in 2006 and has served continuously since. He described his career which had predominantly been with 3 RIFLES. He confirmed that he has passed the section Commanders' Battle Course. He is trained to deliver Skill at Arms training. He qualified as a sniper in 2011. He has completed the Platoon Commanders' Course for snipers, although he was not engaged in those duties at the time he gave evidence. He confirmed that LCpl Spencer was also in 3 RIFLES. DS 7 did not know him personally. DS 7 stated that he had been in the sniper platoon from 2010 until 2013 and then returned a couple of years later. He was a Corporal in 2016 and was serving as a Section Commander.

[379] He confirmed that he had given a statement to the police on 2 November 2016. He confirmed that he had told the police the truth and adopted his statement. He remembered providing a further statement to the police. Again, he confirmed that he had told the truth and adopted his statement. He was referred to the transcripts of his Service Inquiry evidence, which he also adopted and confirmed that he had done his best to tell the truth. He stated that he had attended refresher training for instructors to ensure that he was current and competent to deliver training to snipers. He was aware that the sniper training courses were going to be distributed out to units, as they had previously been in the past. He was aware that 3 SCOTS were going to run a sniper operators' course. His unit, 3 RIFLES, had five places on the course. He confirmed that the five students from 3 RIFLES were LCpl Spencer, Student A, Student E, Student H, and Student I. It was to be a three phase course run at Barry Buddon, Tain and

Otterburn. There were no other staff from 3 RIFLES on the course, just himself and the five students. He was a safety supervisor and provided some coaching to his students.

[380] The 3 RIFLES students, and some others from another unit, were taken to Brecon for five weeks of pre-cadre training. He stated that C/Sgt 3 was the Platoon Commander of the 3 RIFLES sniper platoon. 3 RIFLES initiated the pre-cadre course. He could not recall how many students there were in total, but stated that it was more than the five that were sent on the sniper operators' course. The pre-cadre course operated as a selection course. He thought that the other unit involved was the Scots Dragoon Guards. One of the instructors on the pre-cadre course was from Scots Dragoon Guards. He thought that was DS 8. DS 7 confirmed that LCpl Spencer was present at the pre-cadre course at Brecon. As far as he could remember, DS 7 was present for the duration of the training. The program for the pre-cadre training was devised by C/Sgt 3.

[381] DS 7 explained that the pre-cadre course was a selection process. He stated that a sniper, or a successful candidate for the sniper operators' course, needs to be a really good standard soldier first. He confirmed that he was familiar with the army guidance in relation to the provision of Skill at Arms lessons. He stated that there are different Skill at Arms lessons for each weapons system, about eighteen or twenty lessons for the sniper rifle. He said that it would take several days to do the full Skill at Arms lessons for the rifle. Skill at Arms lessons are based on the principle of explanation, demonstration, imitation by the student, and practice by the student. He confirmed that he has taught Skill at Arms lessons for the SA80 standard infantry weapon.

[382] DS 7 stated that, during the pre-cadre course at Brecon, familiarisation was provided to the students on the rifle but not the formal Skill at Arms lessons. To the best of his recollection, the students had been given the Skill at Arms lessons before the Brecon pre-cadre course, apart from one student. That student was not LCpl Spencer, so far as he was aware. He thought the exception was Student A. He stated that all the Skill at Arms lessons were given in a classroom. LCpl Spencer was a member of the 3 RIFLES sniper platoon at the time. Familiarisation with the sniper rifle weapons system occurred prior to the pre-cadre course and took the students up to weapons handling test standard. He could not recall if Scots Dragoon Guards carried out their own training prior to the pre-cadre course. He thought perhaps not, but explained that it was eight years ago and he was not sure. He was able to confirm that the focus in the pre-cadre course at Brecon was not on the weapons system but was on other essential sniper skills.

[383] DS 7 stated that none of the candidates for the sniper operators' course were qualified snipers. LCpl Spencer had been in the sniper platoon for a year or two before the sniper operators' course. The delay in putting LCpl Spencer forward for the sniper operators' course was occasioned by an injury which he suffered. DS 7 stated that, at the time, it was not uncommon for half the soldiers in the sniper platoon not to be qualified as snipers.

[384] The training in advance of the pre-cadre course at Brecon, the delivery of Skill at Arms lessons on the rifle, was drive by DS 7 and by others. He stated that he took the candidates through the full Skill at Arms lessons. He was one-hundred percent sure that

LCpl Spencer had been one of those candidates. He confirmed that there was, and is, no system in place to record the delivery of Skill at Arms lessons, only the completion of a Weapons Handling Test. Successful completion of Weapons Handling Tests are recorded in a soldier's personal record.

[385] During the pre-cadre course at Brecon, the emphasis was on basic infantry skills. Student A was new to the 3 RIFLES sniper platoon which was why he had not received Skill at Arms lessons. DS 7 did not know whether or not any records were kept at unit level in relation to the delivery of Skill at Arms lessons.

[386] In relation to the sniper operators' course itself, DS 7 confirmed that he was present during phase one at Barry Buddon. He was sure he had seen a program for the course. On being referred to the course program, he confirmed that the contents rang a bell with him, although the document itself did not. To his recollection, the Weapons Handling Test on the rifle was carried out on the Monday or Tuesday of the first week at Barry Buddon. He noted that the program stated that the Weapons Handling Test should be carried out on the Friday of week one. He confirmed that the two days of Skill at Arms training were not delivered at Barry Buddon in accordance with the course program. His position was that the decision not to do so was taken by C/Sgt 2. He could not recall the students carrying out live firing on the ranges during the first week, but accepted that it may have happened if others remembered it. He was a safety supervisor at Barry Buddon. He did some instructing too, including some extra instruction to Student A to get him up to a position where he could pass the Weapons Handling Test for the rifle. So far as he knew, Student A had not received the full Skill

at Arms lessons in relation to the rifle but, with some familiarisation training, was able to pass the Weapons Handling Test. He took it upon himself to give Student A some extra tuition. DS 7 stated that all the students from 3 RIFLES passed the Weapons Handling Test at Barry Buddon.

[387] DS 7 and all five students from 3 RIFLES went to Tain. DS 7 was to act as a coach/mentor and as a safety supervisor. C/Sgt 1 took the lead at Tain. DS 7 could not remember if C/Sgt 1 had been at Barry Buddon or not. DS 7 had never been to Tain before. He described it as a less formal range than Barry Buddon.

[388] He stated that, on the first day, they had to set targets up. He confirmed that these were of the "falling plate" type. He said there was a full day of shooting on day one at Tain. He thought he had heard that there had been a booking conflict for the ranges, and that was why the first week at Tain contained live firing nine, which should have been carried out at Barry Buddon. He stated that he accepted that such a swap had occurred, but that he could not particularly remember it. They only managed to achieve a couple of hours firing at Tain on day one. C/Sgt 1 was the Range Conducting Officer at Tain. DS 7 was not acting as a safety supervisor on day one at Tain because there were so many people available who were qualified to act as safety supervisors. He stated that he had dipped in and helped out occasionally. There were twenty-two students in total, giving eleven pairs of firers and spotters. There were safety supervising staff there from Scots Dragoon Guards, 3 RIFLES, 1, 2 and 3 SCOTS, so they were well off for safety supervisor staff. At Barry Buddon, C/Sgt 2 had decided on a day-to-day basis who was to be a safety supervisor. DS 7 thought that at Tain there was

less clarity among the non-students as to whether they were actually acting as a safety supervisor or not. There were not so many non-students at Barry Buddon, so they all had a job to do there. At Tain, there were too many of them to really act as safety supervisors, but they all felt that they should be doing something.

[389] DS 7 could not state how long the Live Firing 9 exercise should take. He confirmed that he was aware of the Army operational shooting policy which sets out how long shoots should take. He was referred to the instructions for carrying out Live Firing 9. This exercise was programmed for the Monday and Tuesday at Tain as a precursor to the students carrying out the ACMT. That was a vital qualification. Failure to pass the test on a maximum of two attempts would result in the student being expelled from the course. Live Firing 9 is a progression and preparation for the ACMT. Wednesday and Thursday had been set aside for carrying out the ACMT.

[390] DS 7 stated that he had a vague memory of timing, light and the weather being a bit of an issue on Monday. They had to set up in the morning. They travelled from Fort George to Tain, then set up and then were able to start shooting. He did not recall it being a particularly successful day. On Tuesday, 1 November 2016, they were still using "falling plate" targets. He could not remember switching over to the Figure 11 targets. He was coaching/mentoring and generally helping out. He was given a certain area to operate in, on the far left-hand side of the firing line. He assisted the pairs in front of him. He stated that he was in the vicinity of pairs one to five, hanging around behind them and doing a bit of coaching. The non-students sorted themselves out where to go. There was not much direction. He stated that, on the afternoon of the Tuesday, they

managed to get back on track with the shooting. Two details were going to shoot before the light went. The pairs of firers and spotters would swap so that everyone fired. He was still over towards the left side of the firing line. The Range Conducting Officer on the afternoon of 1 November 2016 was C/Sgt 1. DS 7 recalled that, nearing the end of the daylight shooting, he and another went to a shop in Tain. He remembered being on the range at lunchtime. There was to be an afternoon shoot and then a night shoot. He thought the afternoon shooting started at about 12:30 or so. During the first detail's shooting, he was mentoring or coaching and carrying out safety supervisor duties if required on the left-hand side of the firing line.

[391] DS 7 stated that, from memory, he recalled where LCpl Spencer and Student A were. As far as he could recall, they were on the extreme right of the firing line. He remembered there being a bush on the firing line. They were beyond the bush. It was difficult to see them from where he was. LCpl Spencer and Student A were being covered by DS 1 as safety supervisor. He thought it was unlikely that DS 1 was on his own, given the number of people who were there, but he could not remember who else might have been with him.

[392] DS 7 stated that he was on the range when the first detail finished firing. He thought that LCpl Spencer had been firing in the first detail. He stated that C/Sgt 1 would have been positioned slightly behind the safety supervisors. DS 7 confirmed that he holds the appropriate qualifications to conduct ranges. He stated that the appropriate words of command to come off the range were "Stop, Unload, For Inspection, Port Arms, Firers (or Safeties), show clear." At Barry Buddon, C/Sgt 2 had

been the Range Conducting Officer. Weapons were shown clear at Barry Buddon initially by the safety supervisors and then by the firers showing clear. DS 7 stated that it is good practice, if staying on the range, for firers to show clear. If coming off the range completely, safety supervisors would show clear. Safety supervisors should show clear at the end of the day. His recollection at Tain was that it was mainly firers showing clear. He confirmed that that was a self-declaration by the firers, and was different from safety supervisors showing clear.

[393] DS 7 stated that he did not have a clear memory of what C/Sgt 1 said at the end of the first detail shooting. It all ran fine, so far as he was aware, so he didn't remember much about it. After that, the second detail shot. They intended to do a night shoot. The firers had the ammunition on them for the night shoot. During the afternoon shoot, the second detail had to go and get their ammunition for their turn to shoot between the first detail shooting and them shooting. He did not remember anything out of the ordinary about the transition from the first detail shooting to the second detail shooting. He remembered being on the range when the second detail started shooting. Student A was shooting in that detail. He was pretty sure that LCpl Spencer had shot first and that Student A was shooting second, although he accepted he might be wrong. He remembered speaking to LCpl Spencer that afternoon, just after the swap-over from the first detail firing to the second detail firing. He did not speak to LCpl Spencer during the first shoot. After the swap around, DS 7 asked LCpl Spencer, and everyone else from 3 RIFLES, if they wanted anything from the shop. LCpl Spencer wanted biscuits. DS 7 got them for him when he went to the shop.

[394] DS 7 said that he left to go to the shop in Tain while the second detail were shooting. He could not recall who else was standing where he was on the range. He was not really acting as a safety supervisor so he had freedom to move. He was sure that one other person went with him to the shop. He was pretty sure that was DS 3. He thought that DS 5 may have come as well, but was not so sure. He stated that they told C/Sgt 1 that they were going. C/Sgt 1 was fine with that. There were ample people there to carry out the safety supervisor duties. He went to the nearest shop, which he thought was in Tain.

[395] DS 7 stated that, on their return to the range, the shooting had finished for the day and the students were all in a gaggle for the start of a briefing, which he and the others who had gone to the shop joined. He thought it was about four or five o'clock in the afternoon when they got back. They were waiting for it to get dark to carry out the night shooting. It was expected to be an hour, no more than an hour and a half, before shooting began again. DS 7 confirmed that he was not present at the end of the second detail's shooting, so could not confirm what did or did not happen then.

[396] DS 7 stated that, for the night shoot, he was up on top of a truck with a night-sight to be able to spot the fall of shot. He was directed to do that by C/Sgt 1. There were going to be three shooting details at night. The first detail were out on the firing line. He went up on to the truck. The other details were in the ISO containers. They would move up to the firing line when the other detail was finished. The three details were kept separate. He could not remember whether there had been a night shoot at Barry Buddon. He was not sure of the time but he thought it was about 17:40 hours or

something like that. He heard a noise. The truck he was standing on was behind the firing point to the left of the ISOs, slightly in front of them. He was on top of the cab of the truck. C/Sgt 1 was in front of DS 7, then the safety supervisors were in front of him, and then the firers in front of them. There were no spotters for the night shooting. The two details waiting to shoot were to his right in two ISO containers. He could not recall where the ammunition point was.

[397] DS 7 stated that, at approximately 17:41 hours, a noise came from the ISO container to the right. It was the sound of a shot.

[398] He reiterated that the pre-cadre course at Brecon had provided familiarisation with the rifle, not formal skill at arms instruction. He thought weapons handling tests had been carried out at Brecon, possibly. He was referred to LCpl Spencer's personal records and confirmed that there was no record of him having passed the weapons handling test in relation to the sniper rifle.

[399] DS 7 was referred to a Weapons Handling Test record sheet dated 19 August 2016. He thought that this was before the Brecon training, which had lasted five weeks. He could not recall exactly when the Brecon training was. The test sheet was from before the Brecon training. He could see his name on it. He had carried out the Weapons Handling Test and passed on the sniper rifle. It usually takes about ten minutes per person to do the weapons handling test. The soldiers listed on the test were all in the sniper platoon of 3 RIFLES at the time. Five of them were qualified snipers. One of them was Student H. He accepted that LCpl Spencer's name did not appear on

the list. DS 7 stated that Weapons Handling Tests need to be carried out every six months for each weapons system that a soldier is competent to use.

[400] DS 7 accepted that there was no record of LCpl Spencer having carried out Skill at Arms lessons in relation to the rifle. He stated that, at the time of giving evidence to the inquiry, he was one-hundred percent sure that he had provided LCpl Spencer with the Skill at Arms lessons for the rifle. There was no requirement to record that. At the time, records were kept on paper. They are all computerised now.

[401] DS 7 stated that there had been sniper training at Otterburn in 2015. He thought that LCpl Spencer was in the platoon then. DS 7 was involved in the training at Otterburn in 2015. His recollection was that it was a pre-cadre course, not a sniper operators' course. At that point, the sniper operators' courses were still centrally run. He stated that LCpl Spencer was present at the Otterburn training. It was six weeks of sniper specific training.

[402] DS 7 confirmed that he was on top of a truck at the time of the un-demanded discharge during the night shoot. He stated that night shoots do not inevitably follow day shoots in exercises. He confirmed that he was familiar with the normal safety procedures for the rifle. He stated that these were carried out as soon as you come on the range in the morning and when you leave the range at night. On leaving the range, the normal safety procedures are carried out and a declaration is given by each soldier to the Range Conducting Officer that he has no ammunition on his person, no empty cartridges, and no pyrotechnics. That is a standard thing that happens every time

anyone leaves a range. It is a court-martial offence not to comply fully with that declaration.

[403] DS 7 stated that now when he carries out a transition from day shooting to night shooting, he does a normal safety procedure after the day shooting, given everything that's happened, in particular what happened on 1 November 2016. His position was that such an action was not mandatory, but he considered it sensible. He stated that it does not take long to do normal safety procedures. For twenty-two students, it would take about ten minutes. Ammunition also has to be handed back at the end of the day.

[404] DS 7 stated that if normal safety procedures had been carried out during the transition from day to night shooting, the cartridge in LCpl Spencer's rifle would have been ejected or, worst case scenario, would have been negligently discharged safely down the range. The safety supervisors check the breaches after the firer during a normal safety procedure. The breach is checked by the firer and the safeties. It gives extra assurance. His experience was that, if soldiers were moving off the range, the safety supervisors would check that the breaches were clear, as they would at the end of the day.

[405] In cross examination by Ms Bone DS 7 was referred to the transcript of his Service Inquiry evidence and a reference to normal safety procedures. He confirmed that the reference was to carrying out that drill when leaving the range at the end of 31 October 2016. His practice, now, is also to do normal safety procedures between and day and a night shoot. That was based on his own experiences and not required by Army policy or instruction.

[406] DS7 stated that there was nothing remarkable about the daytime shoot on 1 November 2016 at the time. If he had seen any issue he could have raised it, although he was not sure if it would be acted on as the course was run by different unit, namely 3 SCOTS.

[407] There was no cross examination by Ms Watt.

[408] In cross examination by Ms McDonnell DS 7 stated that there was no real timetable for who was doing what, when as far as the safety supervisors were concerned. He left the range to go to the shop. He assumed someone took over his role. He thought the second detail shoot lasted hour or an hour and a half. He was absent at the shop for about forty five minutes. He was not clear when he went to the shop. He thought that he was present for the transition from detail one shooting to detail two shooting.

[409] There was no cross examination by Mr Webster KC.

[410] In re-examination by Mr Glancy DS 7 explained that all firers are required to give a declaration, on pain of sanction, at the beginning of the day and at the conclusion of all the shooting for the day, essentially bookending arrival and departure from the range. The declaration is to confirm that they have no live rounds in their possession. The RCO does a declaration too.

[411] DS 7 stated that it is now his practice, when conducting ranges, to carry out a normal safety procedures if firers are leaving the firing pint or transitioning between details. Normal safety procedures are only mandatory when arriving at and leaving the range and the beginning and end of the day. Although not mandatory, he stated that ne

now carries out normal safety procedures any time there is a significant pause in shooting.

Directing Staff 1 – 25 January 2024

[412] Directing Staff 1 took the oath. I warned him that he could choose to answer questions if he wished to do so but that the law requires that he does not have to answer any question that may incriminate him or show that he was guilty of a crime or criminal offence. He was not obliged to answer any question beyond confirming his identify and his age. Mr Glancy asked questions to establish the identity of the witness and his age, which Directing Staff 1 answered. He thereafter declined to answer any more of Mr Glancy's questions.

[413] Directing Staff 1 was not asked questions by any of the other parties.

Colour Sergeant 2 – 25 January 2024

[414] Colour Sergeant 2 affirmed. I warned him that he could choose to answer questions if he wished to do so but that the law requires that he does not have to answer any question that may incriminate him or show that he was guilty of a crime or criminal offence. He was not obliged to answer any question beyond confirming his identify and his age. Mr Glancy asked questions to establish the identity of the witness and his age, which Colour Sergeant 2 answered. He thereafter declined to answer any more of Mr Glancy's questions.

[415] Colour Sergeant 2 was not asked questions by any of the other parties.

Directing Staff 2 – 19 February 2024

[416] Directing Staff 2 (hereafter “DS 2”) took the oath. DS 2 stated that he was no longer in the Army. He left in August 2020. He served for eleven and a half years. His rank at the time he left was Corporal. He was also a Corporal in November 2016. At that time, he was a Corporal in 3 SCOTS. He served most of his service with 3 SCOTS.

[417] DS 2 indicated that he knew why he was present at the inquiry. He stated that he was on the range when LCpl Spencer died. He spoke to the police and apparently also the Health and Safety Executive, although he could not remember doing that.

[418] He stated that he was present at the Barry Buddon phase of the sniper operators’ course as a trainer. He could not remember whether they did much range work at Barry Buddon. He confirmed that he told the truth in his statement to the police and he adopted that statement. He recalled that C/Sgt 2 was in charge at Barry Buddon. C/Sgt 1 was the sniper platoon commander for 3 SCOTS. At that time, DS 2 was a section commander in the sniper platoon. He could not remember C/Sgt 1 being at Barry Buddon at all. At Barry Buddon, C/Sgt 2 was in charge with a cohort of Corporals drawn from the units that had students on the course. He did not think that 1 SCOTS sent any Corporals. He thought DS 3 and DS 4 were from 2 SCOTS. He thought DS 1 was from Scots Dragoon Guards. He and DS 4 were from 3 SCOTS. He confirmed that Sergeant 1 was the Platoon Sergeant for the sniper platoon. He could not recall ever seeing a program for the sniper operators’ course at Barry Buddon. He stated that he did not do any Weapons Handling Tests at Barry Buddon. He did not remember the students doing Skill at Arms training at Barry Buddon.

[419] He confirmed that the second phase of the sniper operators' course was at Tain. He could not remember whether that was supposed to mainly be fieldcraft. He had no recollection of the ranges being double-booked. He remembered that Tuesday 1 November 2016 was the second day at Tain. He could not remember if there had been live firing at Tain on 31 October 2016. He was a range safety supervisor at Tain. He could not remember being at Tain on the first day. Nor could he remember anything about the targets being used. He was referred to a photograph of the "falling plate" targets which he recognised. However, he could not recall if these were the type of targets being used at Tain, although he accepted they may have been. He did not remember having issues with the plates falling off the securing wires. He reiterated that he really had no memory of anything at Tain on Monday 31 October 2016.

[420] He described the firing point at the Tain range as being a ridge looking out to the sea. He could not remember the particular details for the Live Firing 9 exercise. He thought that the targets may have been set out at nine hundred metres. He accepted that the targets may have been swapped but he had no memory of that. He also accepted that it was Tuesday afternoon, 1 November 2016, before the shooting really got underway.

[421] He stated that he was the second safety supervisor from the right. The Range Conducting Officer was C/Sgt 1. The safety supervisors were between him and the firers. The firers were furthest forward. The Medical Corporal was furthest back. Pair number one were on the left and number eleven on the extreme right. He was positioned behind pair four/five to eight, he thought. He was not covering the far right

of the firing line. On his right was DS 1. He could not remember who was on his left. He could not remember if the firers on the line were all visible to him or not. He did not remember there being a gorse bush. He could not recall who LCpl Spencer's spotter was. He accepted that, in his statement, he had been sure that C/Sgt 1 had gone through the unload procedure. He could not say, at the time of giving evidence, why he had been so sure of that. He could not remember whether there had been any urgency to the afternoon's shooting due to fading daylight. He stated that he was standing on the firing point during the evening firing when he heard the shot. A detail was about to fire and he was a safety supervisor. C/Sgt 1 was behind him. He could not remember who the other safety supervisors on the range with him at that time were.

[422] DS 2 confirmed that he had not met LCpl Spencer before the course. He did not know Student E. He did not know whether Student E and LCpl Spencer were friends or from the same battalion. He did recall that after hearing the shot, Student E was inconsolable and very upset.

[423] DS 2 was referred to his statement which he provided to the Health and Safety Executive. He had no recollection of giving that statement at all. He confirmed that he gave evidence to the service inquiry and was referred to the transcript of his evidence. He adopted the transcripts and confirmed that he told the service inquiry the truth. He was referred to a plan showing the firing line and the positions during the afternoon shoot. He saw that his name was behind lanes one to three. DS 1 was behind firers ten and eleven. LCpl Spencer and Student A were at firing point eleven.

[424] DS 2 confirmed that normal safety procedures are when you clear weapons at the end of the shooting, when leaving the range. He was referred to his statement where it stated that he had cleared Student J's weapon. Being referred to his statement did not particularly refresh his memory. At the time of giving evidence, he had no recollection of clearing a rifle. He was not aware of any other rifles being cleared or checked. He could not remember whether he moved position as safety supervisor. As he gave evidence, he began to recollect that he was towards the right of the firing line, although he had previously given different evidence. He could not recall whether he had been in the firing point for both details firing in the afternoon.

[425] He stated that he could not really remember Barry Buddon at all. He could not remember whether or not firers showed clear at Barry Buddon or safeties showed clear. He could not recall when in the course progression firers would move from safeties show clear to firers show clear.

[426] DS 2 stated that he had spent a lot of time on ranges during his Army service. His experience was that, on arrival on the range, you do a full normal safety procedure to check that the weapon is clean and that there's no ammunition in anyone's magazines or pouches. The soldiers have to show that their weapons and pouches are clear. You do exactly the same thing when you leave the range. On leaving the range, soldiers are also required to complete a declaration to the effect that they have no live rounds or empty cases. You leave the range with no ammunition, as you arrived at it.

[427] He noted that in previous statements he had said that normal safety procedures were carried out after detail two completed their afternoon shoot. Normal safety

procedures were therefore only done for half the course, detail two, not detail one.

Having seen that in his statement, it did not jog his memory.

[428] He was referred to further evidence provided to the Service Inquiry. He had no recollection of giving that evidence. He stated that he would have told the truth. He could not remember whether he delivered any Skill at Arms lessons at Barry Buddon. He could not really remember what he had done during the training.

[429] He confirmed that Student J was a soldier in 3 SCOTS. He still could not remember clearing Student J's weapon or why he cleared it. From his previous evidence, it appeared that he had found the rifle unattended, cleared it, but that it had, in fact, already been unloaded. He stated that by "clearing" he meant checking to make sure there were no rounds in the chamber of the weapon, not that there had been a round which he had removed. He said that he would use the phrase "cleared" whether the weapon was initially loaded or not. It is the same expression for making a rifle safe, whether it had already been safe to start with or not. He noted that nowhere in his previous evidence did he say that a round had come out of Student J's weapon. It could have been, and probably was, clear to start with.

[430] His recollection was that Weapons Handling Tests were carried out once a year to stay current on any weapon systems a soldier was certified for. He did not remember doing any Weapons Handling Tests with his students at Barry Buddon. He confirmed again that, when coming off a range, weapons should be shown as clear, with the breaches clear and no rounds in the chambers. Firers would raise a hand or a foot to signal that their weapon was clear with no round in the chamber. That is a visual signal

to the safety supervisors who then pass that on to the Range Conducting Officer by lifting their arm. The Range Conducting Officer would then give the command to fire off the weapon, either "Ease bolts" or "Ease springs." Those both mean the same thing. As safety supervisor, you would check to make sure that the firers had cleared their weapons, but by making sure they had raised their hand, not physically checking the weapon itself. It would only be during normal safety procedures at the end of the day that a safety supervisor would physically check that the weapon itself was clear.

[431] He confirmed that he had told the Service Inquiry that normal safety procedures were carried out after detail two finished shooting in the afternoon but not including detail one. If everyone had done normal safety procedures, there could not have been a round in the chamber, it would have been found at that time.

[432] DS 2 stated that his memory had diminished with the passage of time but that he had tried to tell the truth in his previous statements.

[433] In cross examination by Ms Bone DS 2 confirmed that he was a qualified sniper, having qualified in about 2013. By 2016 he had been on a range as a sniper about twenty times. He had been a safety supervisor on about half of those occasions. He could not remember anything unusual about the way the Tain range was run on 1 November 2016. He had worked with C/Sgt 1 as a Range Conducting Officer before and never saw any issues. C/Sgt 1 struck him as a professional soldier. He did not consider that C/Sgt 1 was a person inclined to cut corners. He felt that anyone on a range would want to do their best. His view was that if a safety supervisor was not giving his best he would be removed from the range.

[434] DS 2 stated that as far as Student J's rifle was concerned, it was unattended on the firing point and therefore had to be checked, but it was in a safe condition.

[435] There was no cross examination by Ms Watt.

[436] There was no cross examination by Ms McDonnell.

[437] In cross examination by Mr Webster KC DS 2 confirmed that on 1 November 2016 at the end of the shoot for the second detail, that detail carried out normal safety procedures, although he did not have a clear recollection. He recalled finding Student J's rifle unattended. He checked it and the rifle was safe. He stated that all weapons get cleared for normal safety procedures, which are carried out by the firers, with all the firers lined up so that the safety supervisors can check.

[438] In re-examination by Mr Glancy DS 2 stated that he had checked Student J's rifle. Student J was somewhere else. The rifle was unattended on the firing line. He accepted that therefore full normal safety procedures could not have been carried out. He stated that it was not unusual for a rifle to be left unattended after normal safety procedures had been carried out.

Colour Sergeant 1

[439] It had been Mr Glancy's intention to call Colour Sergeant 1 at this point.

However, his solicitor, Ms Bone, advised me that Colour Sergeant 1 was medically unfit to give evidence. She provided information to confirm that position and which also confirmed that there was no reasonable prospect of Colour Sergeant 1 being medically fit to attend the inquiry in the future. She lodged an affidavit sworn by Colour Sergeant

1 to supplement the statements already provided by him at various stages of the investigation. The medical position was shared with parties to the inquiry and in the circumstances I excused Colour Sergeant 1 from attendance as a witness.

Air Commodore 1 – 19 February 2024 (in person) and 31 May 2024 (by webex)

[440] Air Commodore 1 took the oath. He was examined in chief by Mr Webster KC. Air Commodore 1 explained that he was on loan to the Army from the Royal Air Force. His current post is Head of Army Safety. He has been in that post since August 2023. The Army Safety Group was formed at that time and brought together all Army safety functions under one organisation. The Air Commodore explained that it is not unusual for senior roles in the armed services to be opened to members of other services who possess the required qualifications and experience. His immediately previous role was as the Royal Air Force Inspector of Flight Safety. Part of the remit of the Army Safety Group is to track and manage all Service Inquiry recommendations. In advance of giving oral evidence, Air Commodore 1 stated that he had prepared a written statement which was lodged with the court. He adopted the contents of that statement and the annexes thereto. The Air Commodore provided a résumé of his previous service and experience, which included a number of safety related postings. He confirmed that all three armed forces, namely the British Army, Royal Navy, and Royal Air Force, all now have a safety group. Air Commodore 1 accepted, at the very beginning of his evidence, that there had been failings in the way that the 51 Brigade sniper operators' course had been conducted in 2016. He advised that, from what he had learned, LCpl Spencer had

been a most capable and promising junior non-commissioned officer with the prospect of a successful career ahead of him. He apologised, on behalf of the Army, for these failings.

[441] Air Commodore 1 highlighted that a significant part of his current function is to track recommendations made by Service Inquiries. He confirmed that a Service Inquiry had been convened in relation to LCpl Spencer's death and that the Service Inquiry report contained a number of recommendations. He highlighted five areas of particular concern to this inquiry. These were (a) Conduct of range activity at Tain Air Weapons Range – phase two of the sniper operators' course, (b) Lack of challenge to unsafe behaviour, (c) Planning for the sniper operators' course, (d) The experience of the directing staff, and (e) The competence of the students. Air Commodore 1 expanded on these as follows.

(a) Conduct of range activity at Tain Air Weapons Range – phase two of the Sniper Operator's Course.

[442] Air Commodore 1 advised that non-compliance with the policy in force in 2016 in relation to conducting the unloading and clearing of the weapons used by students from the firing point, and a lack of communication to the Range Conducting Officer, were problems that had been identified. Certain issues in relation to the delivery of the range activity had been identified, such as the use of incorrect targets and the compression of the time permitted for practice firings to take place. A lack of Skill at Arms training, inadequate safety supervision, poor command and control, and

incomplete unload of the rifle, had been identified by the service inquiry as causal factors in the fatal outcome.

(b) Lack of challenge to unsafe behaviour.

[443] Air Commodore 1 noted that LCpl Spencer had reportedly been holding his rifle vertically with the barrel pointing under his chin, which he described as an unorthodox manner, immediately prior to the fatal incident. The other students had noted this behaviour and failed to challenge it. The Service Inquiry considered this to be a contributory factor in the fatal outcome.

(c) Planning for the Sniper Operators' Course.

[444] Air Commodore 1 advised that the planning conducted for the sniper operators' course in 2016 was considered by the Service Inquiry panel to be disjointed, lacking a formal approach or sufficient supervision and oversight. The assurance activity that was conducted on the course was reported to have been focused on process rather than the quality of the training delivery. Unplanned changes to planning and activity resulted in the compression of the time available to carry out activities, due for instance to limited daylight, and accordingly, students were likely to rush their drills to complete the activity in daylight hours. The Service Inquiry had identified these matters as contributory factors in the fatal outcome.

(d) The experience of the directing staff.

[445] Air Commodore 1 stated that many of the directing staff delivering the sniper operators' course lacked instructional experience in an Army training unit and had not worked together previously. These differences and shortfalls, combined with the ad hoc nature of the sniper operators' course training team and lack of assurance, likely contributed to the identified deviations from standard procedures for range activity. These were also highlighted by the Service Inquiry as being contributory factors to the fatal outcome.

(e) The competence of students.

[446] Air Commodore 1 noted that the students started the sniper operators' course at variable levels of experience and standards in relation to sniping. Incomplete training records compounded the problem and made it more difficult for the directing staff to correctly assess student competence, especially regarding correct weapon handling on the rifle. He stated that these factors likely manifested in inadequate instruction and supervision of the students by directing staff on the sniper operators' course. The Service Inquiry had identified these matters as contributory factors in the fatal outcome.

[447] Air Commodore 1 also provided evidence in relation to areas of concern, which had been highlighted by the Service Inquiry, in connection with post-incident actions. Air Commodore 1 hoped that explaining these matters, and the Army response to them, might be of some assistance to LCpl Spencer's family and friends. However, he conceded that they were outwith the statutory scope of this inquiry.

[448] Air Commodore 1 advised that the Army response to critical incidents came in two parts. Initially, there was what was known as a Learning Account. He described this as a relatively quick look at the circumstances of an incident to see if anything could be done immediately to avoid further incidents of a similar nature. These are carried out to capture learning points as swiftly as possible so they can be implemented. A Learning Account was carried out in relation to LCpl Spencer's death and produced nine recommendations. Air Commodore 1 went on to explain that a Service Inquiry is a more formal response to a critical instance. Service Inquiries are carried out by the Defence Safety Authority, headed by a three-star general. At the conclusion of their inquiries, the Service Inquiry panel produce a written report with recommendations. Those recommendations are aimed at the appropriate sections of the army who can deal with the recommendations. Only the general in command of the Defence Safety Authority can sign off, that is close as dealt with, the recommendations of a service inquiry. Service Inquiry reports are generally publically available on the Defence Services Authority website, unless there are on-going court procedures in relation to the subject matter of the inquiry.

[449] Air Commodore 1 explained that a Learning Account report is reviewed by a senior officer. It must be done very quickly, within a matter of days of a critical event. A Service Inquiry investigation is more time consuming to set up and conduct. The Learning Account in relation to LCpl Spencer's death was dated 17 November 2016 and included immediate learning points and an acknowledgement of certain failures. The Air Commodore stated that the failures noted by the Learning Account which were

relevant to this inquiry were that each phase of the sniper operators' course had a different exercise director and planning officer. It was considered that, although this had not caused immediate issues, the practice should be discouraged and it was recommended that, when conducting distributed training events across multiple units, a single exercise director and single senior planning officer should be appointed for the whole course. Air Commodore 1 advised that the guidance in force in 2016 was in fact that there should be a single exercise director and senior planning officer. The distributed training cell should ensure that advice reflecting that guidance is provided when considering course training plans.

[450] Air Commodore 1 confirmed that the Service Inquiry panel produced a report containing twenty-three recommendations. Each of the recommendations have had the necessary supporting activities completed and each has now been signed off by the Director General of the Defence Safety Authority.

[451] Air Commodore 1 gave a very detailed description of the reasons for the move to distributed training and the benefits of using that training model. The move to distributed training had allowed the army to respond much more dynamically to both routine and operational commitments which place significant training demands on army personnel. Distributed training provides the flexibility to manage these training needs. Distributed training is still a core part of the army's training response. In particular, the move to distributed training for sniper operators' courses had followed a detailed external review and implemented the findings of that review.

[452] Air Commodore 1 went on to describe the army's response to the recommendations of the Service Inquiry report. He gave a detailed account of this. Certain of those recommendations are directly relevant to this inquiry. He stated that more clarity has been provided in relation to the responsibilities of those undertaking training activity. The course convening order, authorising a training course to be carried out, now places overall responsibility for an activity with the unit's Commanding Officer. The Course Officer is responsible for the delivery of the training on behalf of the unit's Commanding Officer. Preparation for and delivery of live firing training is still overseen by a Range Conducting Officer, who may or may not be the Course Officer. The completed course convening order includes a statement by the Course Officer confirming that they are using the issued course program. The convening order is sent to the relevant distributed training cell at least fifteen working days before the start of the course to enable it to be reviewed and authorised.

[453] Air Commodore 1 went on to explain that, if changes were required to be made to an issued course program, then there must be an email from the unit to the distributed training cell listing those changes with a justification for each pending endorsement by the distributed training cell. Short notice large scale changes would only be anticipated in very extreme circumstances. Air Commodore 1 advised that there was now clearer guidance on the minimum number of safety supervisors necessary. There was much clearer emphasis that an unqualified student is not to operate a weapons system that they have not been fully trained on. There is now a minimum time period of thirty working days for the submission of a course convening order prior to

the course delivery. There is a clear direction that only the endorsed program content is to be delivered and any deviation that will impact course outputs or training standards must be authorised in advance by the distributing training cell.

[454] Air Commodore 1 stated that there is now a very clear policy that training in the use of support weapons, which includes sniper rifles, is only to be delivered on approved training courses. No lessons towards qualifications in the use of such weapons systems are to be delivered to personnel outside of an authorised and approved training program. An interest period or demonstration of the capability of a weapons system might be provided to unqualified personnel in advance of a formal training course. However, this activity would not be considered as formal training and would not involve any live firing on the part of the potential students. Weapons handling tests continue to be carried out routinely to ensure that personnel remain trained, qualified, current, and competent on weapon systems. The position remains that it is mandatory for all firers to have completed Weapons Handling Tests prior to live firing of a weapon system, including the rifle, in order to ensure a minimum standard of safety. Range Conducting Officers must confirm that all snipers firing any weapon have completed the relevant weapons handling tests prior to firing. If the appropriate Skill at Arms lessons have not been taught to the students, they should not participate in a Weapons Handling Test until those skill at arms lessons have been delivered.

[455] Air Commodore 1 went on to consider the recording of Skill at Arms lessons. He stated that a Weapons Handling Test is the culmination of the conduct of Skill at Arms

lessons for a particular weapons system prior to further progression to any firing of the weapons system. As a Weapons Handling Test is not to be attempted unless all Skill at Arms lessons have been completed, the conduct of a Weapons Handling Test, which if successfully completed is recorded in a soldier's personal records, is confirmation that the Skill at Arms lessons have been completed. Referring particularly to the sniper rifle, the Skill at Arms lessons for the rifle are a core, mandatory part of the sniper operators' course program. These all require to be delivered prior to the completion of a Weapons Handling Test. Weapons Handling Tests and Annual Combat Marksmanship Tests are both recorded in personnel records. Completion of Skill at Arms lessons is a prerequisite for carrying out a Weapons Handling Test. Recording the completion of a Weapons Handling Test, therefore, confirms that the Skill at Arms lessons have also been completed.

[456] Air Commodore 1 went on to consider safety supervisor activity. He stated that the responsibility for clearing and declaring that the rifle is safe moves from the safety staff to the individual firers on completion of live fire lesson four in basic training. That relates to the SA80 standard issue infantry rifle. If soldiers are subsequently trained on an alternative weapons system, the fundamentals of safe weapons handling remain, requiring the firer to be responsible for the unload and inspection of whichever weapon system they are operating. All students undertaking, or safety supervisors delivering, the sniper operators' course are trained soldiers and, therefore, responsible for the unloading and inspection of their weapon system. If, at the end of a practice, firers are to leave the firing point or to move forward, for instance to examine targets, then

weapons are to be unloaded and inspected before the order to move is given by the Range Conducting Officer. Once rifle live fire lessons one, two, three and four have been delivered in initial training, this check is to be carried out by the firer. Safety supervisors must know the safe handling and firing drills of the weapon which they are supervising. They must have passed weapons handling tests for those weapons. They must know the state of readiness of the weapons on the firing point and be positioned to observe and correct errors of weapons drills, including muzzle clearance, and be able to intervene swiftly is required.

[457] Air Commodore 1 reiterated that pre-cadre training activity was not a requirement prior to conducting a sniper operators' course. A sniper operators' course was sufficient, if delivered as designed, to meet all the appropriate standards for sniping. Any pre-training or preparation for a sniper operators' course should be confined to ensuring that students are at the required level of fitness and navigational ability. These are core skills for soldiers but snipers require above average fitness and navigational ability. Pre-training should not involve training on the operation and use of the sniper rifle itself.

[458] Air Commodore 1 advised that, other than on a static gallery range, it was extremely difficult for safety supervisors to physically check the chamber of a rifle, particularly if the exercise involved movement. The responsibility must lie with the firer. Firers must be trusted to operate their weapons safely. In an operational environment, safety checks are likely to be impossible and sole responsibility will fall on the shoulders of the firer.

[459] Air Commodore 1 stated that guidance has been clarified to make it very clear that a range safety document is required for all live fire training. That includes almost all weapons training done by the Army. Marksmanship training takes place in a controlled environment. Tactical training is battlefield situation training. The troops will be in movement. He stated that the Tain range is primarily an Air Weapons Range and ground use is secondary.

[460] Air Commodore 1 advised that the policy in place in 2016 was fit for purpose but it has been beefed up to provide greater clarity as to what needs to be done and to emphasise those aspects which are mandatory rather than discretionary. For instance, a separate RASP was, and still is, required for a night shoot as these are different activities. A day shoot and a night shoot are not the same thing. The policy was fine but fell down, somewhat, in the execution. The wording has been clarified to make it clear that separate RASP's are needed for both. Guidance is more clearly mandatory than it used to be.

[461] Air Commodore 1 stated that a practice had crept into use, particularly among snipers, to raise a leg instead of a hand when showing clear. The supposed justification for this was that raising a leg was less disruptive to maintaining the firing position than raising a hand. That was never an officially approved practice. It has been reinforced that when showing that a weapons system is clear, it is a hand that is to be raised, not a leg. The previous policy was clear but it is now much more obviously mandatory rather than simply guidance. Air Commodore 1 explained that the army encourages a "challenge culture." Every promotion course or leadership course is a formal process.

Encouraging challenge is part of that process right from initial entry to the army. Challenges that are timely and appropriate are encouraged through training and any briefings or debriefings. Safety is to be thought of as an enabler, not a constraint. This follows right through training and equipment procurement. Air Commodore 1 described safety as the Golden Thread which flows through all of that. He explained that appropriate challenge is not simply looking up the chain of command. It includes access to peers and subordinates. He advised that a completely redacted factual description of the circumstances surrounding LCpl Spencer's death is used to highlight missed opportunities for challenging the behaviour of others on certain training courses. He stated that there was significant value when teaching safety related concerns in using realistic scenarios. An actual occurrence has far more impact than a theoretical construct.

[462] He stated that in the Royal Air Force, they used to look at five case studies over five days, all deriving from real fatal incidents, and he found that this had the most impact of any training.

[463] Air Commodore 1 stated that he had attempted to acknowledge the failings, demonstrate the improvements made and provide further information in relation to the use of distributed training. He stated that significant changes to policy and practice had been made as a result of LCpl Spencer's tragic death. He acknowledged that there is always more to do by way of continuous to improvement to training and safety in the Army. Air Commodore 1 stated that the exceptional circumstances of military service required the identification, management, and acceptance of necessary risk in the widest range of possible situations both at home and on deployed overseas operations.

Adhering to the policies and guidance which govern that process is, therefore, all the more important. He concluded his evidence by offering the family and friends of LCpl Spencer his sincere condolences and expressing his deepest sympathy for them.

[464] In cross examination by Air Commodore 1 accepted that the family of LCpl Spencer were watching the evidence both in person in the court room in Tain and virtually while he gave evidence by webex. He accepted that using LCpl Spencer's death as a training scenario could be considered upsetting to the family but stated that the army needed to learn lessons from LCpl Spencer's death. If doing so prevented a repeat of such a tragedy over the coming decades, then that was a good thing. He confirmed that when the circumstances were used as a training scenario, all names were removed. He had been assured that neither the names of individuals, nor the names of units, were used in training. The information used in the training scenario is purely factual and derived from the service inquiry report. The Air Commodore confirmed that, ordinarily, the service inquiry report is in the public domain. He could not confirm which training courses the scenario was used on. He believed that there may be a photograph of the range at Tain in the training materials but no other photographs were used.

[465] Air Commodore 1 confirmed that the Service Inquiry had found that there had been a deviation from the course program in the first week of the sniper operators' course. The service inquiry found that the Skill at Arms lessons had not been delivered in accordance with the training program. He reaffirmed that the service inquiry

considered the failure to complete the Skill at Arms training in advance of carrying out live firing on the rifle was a contributory factor in the accident.

[466] Air Commodore 1 confirmed that the Service Inquiry had found that there was a failure in the supervision of the unload drill conducted at the end of LCpl Spencer's firing on the afternoon of 1 November 2016. Air Commodore 1 accepted that the timings in the course program had not been adhered to on days one and two at the Tain range. He confirmed that the service inquiry had found that the words of command used by C/SGT1 to order the students to unload their rifles were not clear. The Service Inquiry had noted discrepancies in the words of command used. He confirmed that there are two distinct drills. An unload drill requires the commands "Stop" followed by "Detail unload." For normal safety procedures, these words of command are to be followed by "For inspection, port arms", followed by "Firers, show clear." He accepted that the Service Inquiry had concluded there had been a "blending" of the words of command used. These issues had conspired to lead to the situation where LCpl Spencer's rifle was not properly unloaded.

[467] Air Commodore 1 confirmed that the Army remains committed to the delivery of distributed training. He described the distributed training module as being essential for the efficient delivery of training within the armed forces. Robust safeguards have been built in at every level. With hindsight, LCpl Spencer's course should not have been split into separated phases. The course is designed as an end-to-end product. An officer should have been in overall command of the entire course. It really should not be split in parts. The guidance is now very clear that a Course Officer should have ownership

from beginning to end and needs to obtain authority for any deviation from fixed policy.

Occasionally, that is unavoidable but should be properly thought out and considered.

[468] Air Commodore 1 was quite adamant that pre-cadre courses were unnecessary and undesirable. Properly planned training courses contain all the training that is required to pass that course. There is no need for pre-course training to be carried out and doing so simply leads to the possibility of confusion as to the abilities and knowledge of different students, as LCpl Spencer's tragic death demonstrates. Air Commodore 1 explained that Skill at Arms lessons are not recorded. It is mandatory that they should be completed before a Weapons Handling Test is carried out. The results of weapons handling tests are recorded. The Weapons Handling Test is a summative process. That is why it is recorded. There is no need to record Skill at Arms lessons.

[469] He stated that safety supervisors need to be in visual line of the firing point and close enough to observe any failings on the firing point. He stated that the Service Inquiry investigation had been very detailed. The resulting report had been studied carefully by the Army and the recommendations of the Service Inquiry implemented. The Army, along with all the armed services, seeks to continually improve. However, Air Commodore 1 was unable to think of any additional steps that the army could take to prevent a similar tragedy occurring in the future. A great many changes have taken place since 2016. He felt that the army was in a much better position that it had been at that time.

[470] In cross examination by Ms Bone Air Commodore 1 confirmed that he took up his current role in August 2023. He advised that the Service Inquiry into the circumstances of LCpl Spencer's death had reported, and the recommendations of the Service Inquiry had been actioned, well before that. His role is not to analyse the Service Inquiry findings but to track the recommendations and make sure that the owners of those recommendations, namely those responsible for implementing them, are doing something to close the recommendations off. The findings of the Service Inquiry are accepted at face value.

[471] In cross examination by Ms Watt Air Commodore 1 stated that the current discouragement of pre-cadre training courses was a significant change from 2016. He could understand that individual units would want to give their students the best possible chance of passing any formal courses, including the sniper operators' course. However, pre course training is simply unnecessary. The training courses themselves are designed to ensure that they provide all the training a student needs to pass the course. Air Commodore 1 felt that with the benefit of hindsight, pre-cadre courses were actually unhelpful. Air Commodore 1 confirmed that he had the opportunity to sit through some of the evidence given earlier to this inquiry but stated that he had not seen DS 7 giving evidence.

[472] There was no cross examination by Ms McDonnell.

[473] In re-examination by Mr Webster KC Air Commodore 1 stated that there had never been a policy in relation to pre cadre training. They were an unofficial thing.

Submissions

[474] All parties provided detailed written submissions which were very helpful. I summarise those submissions hereunder. I thereafter deal with my approach to those submissions in the final section of this Determination, entitled Discussions and Conclusions, beginning at paragraph [508].

Crown Submissions

[475] Mr Glancy made formal submissions in respect of sections 26(2)(a), (b) and (c) of the 2016 Act. These were largely adopted by the other parties and my statutory Determination in relation to those matters, noted at the beginning of this document, is based on these submissions.

[476] In his submissions in relation to the cause of the accident resulting in LCpl Spencer's death in respect of section 26(2)(d) of the 2016 Act Mr Glancy took a narrow approach to the effect that the cause of the accident that resulted in the death of was the un-demanded discharge of a single round from the rifle, then in possession of LCpl Spencer.

[477] In relation to reasonable precautions in respect of section 26(2)(e) of the 2016 Act Mr Glancy referred me to alterations to the sniper operators' course programme for the first week of training at Barry Buddon; the manner in which the live firing training was carried out at Tain on 31 October 2016 and 1 November 2016, with particular emphasis on the manner in which the first shooting detail, including LCpl Spencer, completed their firing on the afternoon of 1 November 2016; the absence of DS3 from the firing

point during that period and finally to LCpl Spencer's failure to carry out a full unload of his rifle.

[478] In relation to systems of work in respect of section 26(2)(f) of the 2016 Act Mr Glancy did not seek to criticise the system of work which was in place, namely the approved course programme for the sniper operators' course, but rather the implementation of it, in particular by C/Sgt 2, C/Sgt 1 and DS 1.

[479] Mr Glancy invited me to make two findings in relation to other circumstances relevant to the circumstances of LCpl Spencer's death in respect of section 26(2)(g) of the 2016 Act. These were in relation to the decisions taken by the military prosecutors, namely the Service Prosecuting Authority, and the recording, or lack thereof, of participation in Skill at Arms lessons in the personnel records of soldiers.

[480] Mr Glancy did not invite me to make any formal recommendations in respect of section 26(1)(b) of the 2016 Act.

[481] Mr Glancy expressed his condolences and those of the Crown to LCpl Spencer's friends and family.

Submissions on behalf of the Ministry of Defence

[482] Mr Webster KC made formal submissions in respect of sections 26(2)(a), (b) and (c) of the 2016 Act, echoing those of Mr Glancy.

[483] In respect of the cause of the accident resulting in the death of LCpl Spencer in respect of section 26(2)(d) of the 2016 Act Mr Webster did not dispute that the cause of the accident relating to the death was an un-demanded discharge of the rifle. However,

he supplemented that narrow approach by focussing in some detail on how and why LCpl Spencer's rifle came to be loaded at the time of discharge and how the un-demanded discharge occurred.

[484] His submissions included a detailed summary of the evidence relating to the Army training policy in relation to the rifle, LCpl Spencer's actions, the mechanisms by which the un-demanded discharge of the rifle may have occurred and the position in which LCpl Spencer was holding the rifle.

[485] Mr Webster KC drew these threads together with an invitation that I should find that there were three causes for the accident. These were (1) that LCpl Spencer had failed to properly perform an unload drill at the end of the afternoon detail, leaving the rifle loaded and dangerous, (2) that LCpl Spencer carried his rifle in an unorthodox and dangerous manner and (3) the rifle discharged due to inadvertent trigger operation as a consequence of equipment snagging on the trigger.

[486] Mr Webster KC took a more narrow interpretation to reasonable precautions in relation to section 26(2)(e) of the 2016 Act and submitted that had the unload drill been fully adhered to the accident and death might realistically have been avoided.

[487] In relation to section 26(2)(f) of the 2016 Act Mr Webster KC submitted that the evidence before the inquiry was that there were no defects in that system which contributed to LCpl Spencer's death. With the benefit of hindsight the Service Inquiry had identified improvements and refinements to the system of work, which have since been implemented, but that these should be seen and indicative of continuous

improvement and refinement, not as evidence that the system in place at the time had been defective or inadequate.

[488] Mr Webster submitted that there were no other relevant factors in terms of section 26(2)(g). He strongly disputed Mr Glancy's suggestion that the actions of the Service Prosecuting Authority should be mentioned, as they could not possibly be relevant to the death, having only arisen after the death had occurred. He also disagreed that there was any utility in recording Skill at Arms lessons and provided detail as to the Ministry Of Defence position in that regard. This issue is discussed in greater detail at paragraphs [592] to [600] below.

[489] Mr Webster KC submitted that it was not necessary for me to make any formal recommendations in respect of section 26(1)(b) of the 2016 Act.

[490] Mr Webster KC expressed his condolences and those of the Secretary of State and Ministry of Defence to LCpl Spencer's friends and family.

Submissions on behalf of Colour Sergeant 1 and Senior Planning Officer

[491] Ms Bone represented two of the parties to the inquiry, C/Sgt 1 and the SPO. She very properly submitted separate written submissions in relation to each party but understandably there was much overlap in those submissions. I deal with both of her submission here. Ms Bone provided an overview of the statutory regime in which inquiries operate along with a summary of the evidence pertinent to her clients. She made formal submissions in relation to sections 26(2)(a), (b), (c) and (d) of the 2016 Act, largely echoing those of the Crown and Ministry of Defence.

[492] On behalf of C/Sgt 1 Ms Bone submitted that in relation to reasonable precautions in respect of section 26(2)(e) of the 2016 Act that any alteration to the sniper operators' course programme on 31 October 2016 and 1 November 2016 should not be found to be causal factors in LCpl Spencer's death and that I should find that C/Sgt 1 had issued the correct words of command at the conclusion of the first detail's shoot on the afternoon of 1 November 2016. There were no reasonable precautions that C/Sgt 1 could have taken which might have prevented the death.

[493] On behalf of the SPO Ms Bone submitted that there were no precautions which he could have taken which might have prevented the death.

[494] On behalf of both her clients Ms Bone submitted that the reasonable precautions which could have been taken were that LCpl Spencer should have properly unloaded his rifle and should not have held his rifle in the way he did.

[495] In connection with systems of work in relation to section 26(2)(f) on behalf of C/Sgt 1 Ms Bone submitted that there were no defects in the system of work and the criticisms made in the Crown submissions were of individuals not the system and therefore should not be reflected under this section. She had no submissions on behalf of the SPO in relation to this section.

[496] Ms Bone made no submissions in relation to either sections 26(2)(g) or 26(1)(b) of the 2016 Act.

[497] Ms Bone expressed her condolences and those of her clients to LCpl Spencer's friends and family.

Submissions on behalf of Colour Sergeant 2

[498] Ms Watt provided an overview of the statutory regime in which inquiries operate along with a detailed summary of the evidence pertinent to her client. She made formal submissions in relation to sections 26(2)(a), (b), (c) and (d) of the 2016 Act, largely echoing those of the other parties.

[499] So far as reasonable precautions in relation to section 26(2)(e) of the 2016 Act are concerned, Ms Watt submitted that there was a convincing body of evidence before the inquiry that LCpl Spencer knew or should have known how to make his rifle safe. Accordingly, there were no reasonable precautions which C/Sgt 2 could have taken which might have prevented the death.

[500] Ms Watt submitted that the evidence before the inquiry did not demonstrate any defect in any system of work, in relation to section 26(2)(f), for which C/Sgt 2 was responsible. If the inquiry were to find that the departure from the course programme for the provision of Skill at Arms lessons in week one of the sniper operators' course was a factor to be considered this had been dealt with by the establishment of a "Course Officer" with responsibility for end to end adherence to the course programme, as spoken to in evidence by Air Commodore 1.

[501] Ms Watt made no submissions in relation to either sections 26(2)(g) or 26(1)(b) of the 2016 Act.

[502] Ms Watt expressed her condolences and those of her client to LCpl Spencer's friends and family.

Submissions on behalf of Directing Staff 1

[503] Ms McDonnell provided an overview of the statutory regime in which inquiries operate along with a detailed summary of the evidence pertinent to her client. She gave a summary of her client's service history and experience. She made formal submissions in relation to sections 26(2)(a), (b), (c) and (d) of the 2016 Act, largely echoing those of the other parties.

[504] In respect of reasonable precautions in relation to section 26(2)(e) of the 2016 Act Ms McDonnell accepted that it would have been reasonable for DS 1 to remain on the firing point to supervise the unloading of the rifles at the end of the first detail's shoot. She made reference to the evidence in relation to the completion of Skill at Arms lessons and the experience to that point of the students on the course. In her submission, while it was reasonable for DS1 to remain on the firing point there was insufficient evidence before the inquiry to show that had his presence would have realistically prevented the death, or the accident leading to it, from happening.

[505] Ms McDonnell submitted that there should be no findings under section 26(2)(f) as any failures by individuals to implement a system of work are not a defect in the system of work itself.

[506] Ms McDonnell made no submissions in relation to either sections 26(2)(g) or 26(1)(b) of the 2016 Act.

[507] Ms McDonnell expressed her condolences and those of her client to LCpl Spencer's friends and family.

Discussions and conclusions

[508] It would be easy and superficially understandable to view the circumstances of LCpl Spencer's tragic death as being a military matter of limited interest or importance to the rest of society, beyond LCpl Spencer's family, friends and the military. I do not agree with that assessment. The circumstances giving rise to LCpl Spencer's death have much to teach society and act as a reminder of the importance of good safety procedures.

[509] Firstly, although the rifle is a high specification military weapon, it is in essence a bolt action rifle. Bolt action rifles are not tanks, guided missiles, helicopter gunships or other exclusively military equipment. Bolt action sniper rifles are also used by police forces around the world, including within the United Kingdom. Bolt action rifles are used by appropriately licenced members of the public, particularly in the Highlands of Scotland. They are familiar tools for game keepers and deer hunters on sporting estates. They are used in certain sporting rifle clubs. The safe handling of bolt action rifles and safe training in their use is of considerably wider interest and concern than simply for the military. The importance of properly carrying out the unloading procedure for a rifle, or any other firearm, and always knowing the condition of any firearm in one's possession - that is to say, whether or not it is loaded - cannot be overemphasised. I can well understand the Lord Advocate's decision to instruct that this inquiry be held into the circumstances of LCpl Spencer's death.

[510] Second, although LCpl Spencer's death arose from the operation of a lethal weapon by a Crown servant, not an employee, the circumstances of his death in broad

terms related to the training of a worker, to use a vague legally neutral term, in the use of a piece of equipment that had the potential to cause injury or death but which was a routine piece of equipment for the worker concerned. A rifle is as familiar to a soldier as a forklift truck is to a factory worker or scaffolding is to a roofing contractor. Sadly, experience tells us that failure to properly train people in the use of, or of failure to follow safe systems of work in relation to, routine equipment can lead to serious injury or fatal results. There are no shortage of determinations from Fatal Accident Inquiries or sentences from health and safety related prosecutions dealing with forklift truck incidents, falls from height, failures to follow safe systems of work for the use of plant and machinery etc. LCpl Spencer's death is a further reminder, if such were needed, that safe systems of work are put in place for good reason and should be followed.

[511] I found that all of the witnesses who gave evidence to the inquiry were doing their best to tell the truth, to the best of their recollections and abilities. Mr Spencer's evidence was particularly moving. I found the evidence of Staff Sgt V and Sgt Y to be particularly helpful as background information in relation to the physical operation of the rifle, the way the sniper operators' course generally runs in practice and what it takes to be a sniper. Both presented as a credit to the Army and to their parent Units.

[512] A Sheriff's Determination following a Fatal Accident Inquiry is obliged to proceed in terms of section 26(2) paragraphs (a) to (g). The first four paragraphs are largely self-contained. The final three paragraphs, read short, relate respectively to reasonable precautions, systems of work and any other relevant facts. These three are somewhat more elastic and there may be matters which can properly be dealt with

under more than one heading. In their submissions parties identified broadly the same issues which they felt I should consider and gave me their perspective as to how I should do so. It does not matter greatly which paragraph those submission were made under nor which paragraph I deal with them under, as long as they are dealt with. The reasons for my statutory Determination, contained at the very beginning of this document, are explained in the immediately flowing paragraphs.

[513] So far as section 26(2)(a) of the 2016 Act is concerned there is agreement between the parties and it is clear from the evidence that LCpl Spencer died at approximately 17:41 hours on 1 November 2016 within an ISO container at the Air Weapons Range, Tain. The time of death is confirmed by the timing of the radio call raising the alarm.

[514] For the purposes of section 26(2)(b) of the 2016 Act the accident resulting in LCpl Spencer's death occurred at the same time and place as his death. Again, there was no dispute on this between parties and the evidence was clear.

[515] Section 26(2)(c) of the 2016 Act requires a medical cause of death to be determined. Again this was agreed by parties and derived from the report prepared by the pathologist who examined LCpl Spencer's body at Raigmore Hospital, Inverness on 3 November 2016. The pathologist certified the cause of LCpl Spencer's death to be a gunshot wound to the head and I adopt that evidence for this Determination. From the terms of the pathologist's report and from forensic examination of the rifle in the possession of LCpl Spencer at his death it is clear that the gunshot wound was both instantly and necessarily fatal.

[516] Section 26(2)(c) of the 2016 Act requires a determination as to the cause of any accident relating to the death. This is a rather more complex question. The accident resulting in LCpl Spencer's death was the discharge of the rifle in his possession. The cause of that discharge requires some further thought.

[517] The discharge of the rifle is clearly a mechanical consequence of the operation of the rifle. The evidence before the inquiry is that immediately prior to the discharge LCpl Spencer was holding the rifle vertically, possibly with the butt resting on his boot gently bumping the rifle up and down, and with his chin resting on the muzzle of the suppressor. That is confirmed by the forensic and pathological evidence. He and the other students were dressed for the exercise, wearing ghillie suits over their uniforms. A ghillie suit is an over suit with artificial foliage attached to camouflage the wearer. They are used not only by the military but by hunters and stalkers and various different types are widely commercially available. LCpl Spencer and the other members of the detail were within an ISO container. An ISO container is a large steel shipping container of the type seen on the back of articulated lorries, freight trains or on container ships. Old ones are used at the Tain range for storage and shelter. It was dark and there was no artificial light in the container apart from the glow from mobile telephone screens and some cyalumes – glow sticks. Equipment, including other rifles and rucksacks were on the floor of the container.

[518] The rifle in LCpl Spencer's possession was subjected to multiple, extensive examinations. No defects were discovered. While it was possible to cause an accidental discharge by dropping the rifle from a height there is no evidence that there

was such a drop before the fatal discharge and such a drop would not be consistent with the forensic and pathological evidence. I am satisfied on the evidence that it was necessary for the trigger to be activated to discharge the rifle.

[519] A number of theoretical methods for the operation of the trigger mechanism exist. While to some extent these stray into speculation they are properly considered in detail in the submissions by both Mr Glancy and Mr Webster KC, who reach the same conclusion.

[520] Firstly, the physical evidence is that it would have been impossible for LCpl Spencer to have manually discharged the rifle in the position in which he was holding it. Further, there is no evidence to suggest that he was contemplating suicide or self-harm. Quite the reverse. He had a positive attitude to life and was making plans for the future in both his personal and professional life. I am entirely satisfied that this was not an intentional discharge by LCpl Spencer. He did not commit suicide. Such a possibility has never, as I understand the evidence, been seriously contemplated although it is a possibility with the Crown must always consider unless and until excluded by the evidence, as in this case.

[521] Secondly, a third party might have operated the trigger intentionally, recklessly or negligently. There is no evidence from anyone in the ISO container that any third party was in close enough proximity to have operated the trigger on LCpl Spencer's rifle either intentionally, recklessly or negligently. Student E made certain unhelpful comments immediately after LCpl Spencer's death which might lead an observer to believe that Student E was in some way responsible. This has been thoroughly

investigated and his comments do not amount to evidence of any casual connection between his actions and LCpl Spencer's death.

[522] Thirdly, the trigger might have been operated due to inadvertent contact with some other object. This strays very close to speculation, which is not the function of this inquiry, but testing of the rifle showed that the trigger could be operated by 'snagging' on material such as a rucksack strap or similar. Both Mr Glancy and Mr Webster KC submitted that inadvertent snagging on some piece of equipment was the most likely mechanism for the operation of the trigger and the consequent discharge. There was certainly evidence that there was equipment and clothing in the ISO container which might easily have snagged the trigger. The conclusion appears to be entirely reasonable. It is for this reason that the discharge of the rifle is referred to as "un-demanded". The operation of the trigger was not due to intentional or reckless human action. It was an accident, albeit one with tragic consequences.

[523] Mr Webster KC dealt with training in relation to the use of the rifle, the position the rifle was being held in and the presence of ammunition in the rifle under this heading and logically these are all factors or potential factors in the cause of the discharge of the rifle. However, I take the view that it is more useful to consider these issues in the wider category of reasonable precautions under section 26(2)(e) of the 2016 Act. Mr Webster KC's submissions are equally helpful and apposite to that section.

[524] The issue of any precautions which could reasonably have been taken and had they been taken, might realistically have resulted in LCpl Spencer's death, of the

accident resulting in his death, being avoided, in terms of section 26(2)(e) of the 2016 Act are the most complex area of this inquiry.

[525] Part of the complexity arises from the fact that much of the most crucial evidence before this inquiry comes from the recollection of witnesses. Their recollections have been captured at various stages in statements taken by police officers, statements taken by Health and Safety Executive inspectors, evidence given before the Service Inquiry and in parole evidence to this inquiry. Human memory is variable and can be fallible. It can change over time. Witnesses may experience the same set of circumstances in very different ways. Events may be difficult to recall due to the speed at which events occur, their traumatic nature or the length of time that has passed since the event. It can be difficult to recall details of an event which at the time appears routine or ordinary but becomes significant due to subsequent events or with the benefit of hindsight.

[526] A further complicating factor is the fact that while it may be possible to establish certain facts from the evidence it is more complex to establish what effects those factual situations have on subsequent events or the subsequent actions of individuals. In other words it may be difficult to establish whether there is a causal link between different events. Inferences can be drawn from the available evidence, where it is reasonable to do so, but there is a fine line between inference and speculation.

[527] Finally, by far the most important witness, LCpl Spencer himself, is not here to be able to describe or explain his actions or the reasons for them.

[528] The starting point for my consideration of possible reasonable precautions is the use of pre-cadre courses in advance of the sniper operator course. All of the units

sending students to the sniper operators' course carried out some form of training in advance of the training course itself. Unlike the sniper operators' course itself there was no fixed programme or approved syllabus for the pre-cadre courses. In advance of the sniper operators' course C/Sgt 1 issued an instruction on 8 June 2016 that "all soldiers are to arrive on the course having had a suitable pre-course and relevant exposure to sniper training before attending."

[529] The basic components of the sniper operators' course are (1) operation of the rifle and marksmanship, (2) field craft and (3) navigation. As will be discussed below the sniper operators' course is designed to be self-contained so far as the operation of the rifle and marksmanship are concerned. It is reasonable to accept that students to the course should have an acceptable level of fitness, field craft knowledge and navigational ability before attending the sniper operators' course. None of these three core criteria can be taught from scratch in the sniper operators' course. Sending students who would fail the course due to a lack of fitness would clearly be a waste of everyone's time.

[530] The difficulty with the pre-cadre courses is that there was evidence of a varying approach to teaching Skill at Arms lessons for the rifle at the course. It is not necessarily clear what "*relevant exposure to sniper training*" might mean. Participation in Skill at Arms lessons was not recorded. Accordingly, it is not clear which students carried out exactly what level of Skill at Arms training in advance of attendance on the sniper operators' course.

[531] LCpl Spencer's unit was 3 RIFLES. That unit conducted pre-cadre training at Brecon and there is evidence which I accept that LCpl Spencer was present at that

training and that Skill at Arms lessons for the rifle were taught, at least to some extent. There is no evidence of LCpl Spencer having passed a Weapons Handling Test on the rifle at that time. There is no record of which Skill at Arms lessons he participated in.

[532] There was evidence, especially from Air Commodore 1, that pre-cadre courses were both unnecessary and unhelpful. The core syllabus for the sniper operators' course contains all the Skill at Arms lessons for the rifle and the associated Weapon Handling Test. There is no need to carry that training out in advance.

[533] A pre-cadre course should be seen as at best a supplement to the sniper operators' course and certainly not a substitute for it. Seen in that light there may be advantages to making sure that the fitness and general competence of students in relation to field craft and navigation are up to scratch in advance of attendance at a sniper operators' course. Familiarisation with the rifle may be useful, but not if that familiarisation is later taken for granted.

[534] I do not consider that the evidence in relation to pre-cadre courses would support the contention either that to hold such a course to a particular standard would be a reasonable precaution which might have prevented LCpl Spencer's death or that not holding such a pre-cadre course at all would have been a reasonable precaution which would have prevented LCpl Spencer's death. My impression of the evidence was that currently such pre-cadre courses are strongly discouraged by the Army.

[535] As a matter of fact, whatever level of Skill at Arms lessons in relation the rifle which LCpl Spencer was exposed to during the pre-cadre course did not prevent his death from occurring.

[536] I now move on to consider the sniper operator's course attended by LCpl Spencer.

[537] LCpl Spencer was a student on the 51 Brigade Sniper Operator Course 1601. A course programme was worked out and approved in advance. That programme took account of and complied with the Army guidance and instructions in relation to sniper training and the use of the rifle. All the prescribed Skill at Arms lessons for the rifle were programmed for the first week of the course, leading to the students undertaking, and ideally passing, a Weapon Handling Test in relation to the rifle. The first week of the course was administered by C/Sgt 2. The programme was not adhered to and Weapon Handling Tests were, successfully, undertaken at the beginning of the first week of the course, rather than on the Friday of the first week, as programmed. Successful completion of a Weapon Handling Test is an essential precursor to carrying out live firing with the rifle.

[538] The evidence of the students and instructing staff is not all consistent in this respect but what is clear is that the Skill at Arms lessons were not taught as programmed, reliance was placed on Skill at Arms lessons carried out in the pre-cadre training and the focus was on sitting and passing the Weapon Handling Test as soon as possible to allow the students to engage in live firing training with the rifle. Students with obvious need for additional training were given this to get them through the Weapon Handling Test. LCpl Spencer passed the Weapon Handling Test. There is no evidence that he received any additional support to allow him to pass the Weapon Handling Test.

[539] The only clear evidence that LCpl Spencer had participated in the full Skill at Arms training for the rifle came from the parole evidence of DS 7 at this inquiry. I accept his evidence as credible, that is to say he is telling the truth to the best of his recollection and ability. However, the most honest witness may yet get details wrong. When contrasted with the other evidence available I do not find DS 7's evidence to be sufficiently reliable to allow me to conclude, on the balance of probabilities, that LCpl Spencer did receive the full Skill at Arms training for the rifle prior to this death.

[540] Mr Glancy forcefully submitted that the lack of clarity in relation to Skill at Arms lessons may have prevented LCpl Spencer from building up the "muscle memory" which would have made the unload drill for the rifle such second nature that LCpl Spencer could have carried it out successfully virtually without thinking. The unload drill for the rifle forms lesson three out of twenty Skill at Arms lessons for the rifle.

[541] This was contradicted by other parties. My attention was drawn to the fact that LCpl Spencer did pass a Weapon Handling Test on the rifle during the first week of the sniper operators' course. Successful completion of such a test is indicative of competence to operate the weapon system safely, including unloading it. LCpl Spencer, although not qualified to use the rifle, had been in the sniper platoon for some time. He had certainly had some exposure to the rifle during that period and during the pre-cadre training. LCpl Spencer was an experienced and highly capable soldier. He was familiar with the standard infantry weapon, the SA80 rifle. Although by no means identical, there are similarities in the unload drill for the SA80 rifle and the sniper rifle. He and the other students had been using the rifle for live firing exercises for a several weeks of

the sniper operators' course prior to the date of his death. Muscle memory would have built up over that period and he had demonstrated, by passing the Weapons Handling test, that he was competent to use the rifle safely.

[542] I am satisfied that the decision to depart from the approved course programme for the sniper operators' course was misguided. No matter what previous experience the students had in handling the rifle time had been built into the course to undertake the full Skills at Arms lessons and that should have been done. Even if this was duplicated learning for some students multiple learning is better than missed learning. Had that been done there would have been no doubt as to the base line of training that all the students had benefited from. The course programme should have been adhered to.

[543] Adherence to the course programme is certainly a precaution which could (and should) reasonably have been taken. However, there is a second part to the test in section 26(2)(e) of the 2016 Act relating to the effect of any precaution.

[544] The effect of the departure from the course programme in week one on subsequent events is much more difficult to assess. That is because the reason for the critical failure in this case, that is the failure to unload the rifle at the conclusion of the first shooting detail on the afternoon of 1 November 2016, can only be determined by inference, or worse, speculation.

[545] There are merits to the arguments of all the parties in relation to LCpl Spencer's experience and competence with the rifle. On the evidence before me I am not satisfied that I can conclude that had the course programme for week one been adhered to that

might realistically have resulted in the death or the accident resulting in death being avoided, as section 26(2)(e) of the 2016 Act requires. Therefore I make no determination under that that section in relation to the departure from the course programme in week one, although I do consider that departure to be relevant to LCpl Spencer's death and therefore make a determination to that effect in relation to section 26(2)(g) of the 2016 Act.

[546] The second aspect of the sniper operators' course that requires consideration are the deviations from the course programme on 31 October 2016 and 1 November 2016. The inquiry heard evidence that the shooting programmed to take place at Tain on those dates, Live Firing 9, did not run to timetable. There were issues with travel time from Fort George to Tain, the initial use of inappropriate targets, loss of daylight and the weather. Mr Glancy submitted that the cumulative effect of these delays were that time pressure was placed on the students to complete the firing programme successfully. He drew the inference that this pressure had an adverse impact which contributed to the fatal outcome of the events of 1 November 2016. Mr Glancy submitted that the first two issues were as a result of decisions taken by C/Sgt 1.

[547] The distance between Fort George and Tain should have been a known factor to all concerned in the planning of Phase 2, including C/Sgt 1. With the benefit of hindsight it is surprising that travel time between the two locations was not factored into the course programme, at both the beginning and the end of the day.

[548] Given that the correct targets were available at the Tain range C/Sgt 1's initial decision to use the "falling plate" targets is hard to understand and not really explained

in the available evidence. The correct targets were in use by the time of the afternoon shoots on 1 November 2016.

[549] Anyone living or working in the Highlands of Scotland is well familiar with the vagaries of the available daylight and clemency, or otherwise, of the weather in autumn. Whatever the official timing for sunset there are many days where it is, charitably, dull all day, particularly when it is raining. There is a limit to what anyone can do to plan for adverse weather and certainly it is beyond anyone's control. From the descriptions in the evidence it is clear that the students and supervising staff stoically carried on in fairly miserable weather, as one might perhaps expect of seasoned soldiers.

[550] The statements of certain of the students suggest that they felt the afternoon shoot on 1 November 2016 was fast paced, or that they felt a degree of time pressure. In his affidavit C/Sgt 1 is adamant that there was no rush and that there was plenty time to complete the firing, which was, in fact, done. There is, of course, a difference between whether an activity is actually being rushed and whether some of the participants feel that they are in a rush.

[551] I am satisfied that it would have been better had the course programming taken proper account of the necessary travel time and that using the correct targets in the first place would, with the benefit of hindsight, have been a good idea. There is little that can be done about daylight and weather. However, all that being said I am not satisfied that the evidence is strong enough to bear the inference which Mr Glancy places upon it. I am not persuaded that had the issues with the travel and the targets not occurred, the

accident leading to LCpl Spencer's death would necessarily or even likely have been avoided.

[552] Accordingly, I do not find that adhering to the sniper operators' course programme for 31 October 2016 and 1 November 2016, although desirable, would have been a precaution that could reasonably have been taken and had it been taken, might realistically have resulted in the death, or any accident resulting in the death being avoided.

[553] I have considered whether the deviation from the programme on 31 October 2016 and 1 November 2016 requires to be highlighted under section 26(1)(g) of the 2016 Act and for the reasons highlighted in the foregoing paragraph I am satisfied that it does not.

[554] The appropriate words of command to carry out an unload drill for the rifle and to carry out normal safety procedures for the rifle here discussed at length during the inquiry with a number of witnesses. There was no dispute of substance between the witnesses as to the words to be used. That is to be expected as the detail of both drills is clearly set out in the Army instructions, Sniping Part 1. The issue before the inquiry is whether C/Sgt 1 properly issued either of those orders at the transition from the first shooting detail to the second shooting detail on the afternoon of 1 November 2016. On the available evidence I am satisfied that some form of command was given, but not satisfied as to what that command was.

[555] The following factors need to be considered:

- i. Giving the command to “unload” at the end of shooting should be second nature to experienced Range Conducting Officers, such as C/Sgt 1.
- ii. Listening for and complying with an “unload” command at the end of shooting should be second nature to experienced soldiers, as all the students on the sniper operators’ course were.
- iii. The human brain carries out fairly complex actions, particularly where they are familiar – such as changing gear in a car, or engaging the parking brake when leaving the vehicle – with very little conscious thought at all.
- iv. The transition from the first detail to the second detail on 1 November 2016 was perceived as entirely unremarkable at the time by all those involved. Only subsequent events and investigations made it significant.
- v. The recollections of different people to the same event, particularly if it is not noteworthy at the time it happens, can be variable and unreliable.
- vi. It is human nature in such situations to semi-consciously “fill in the blanks”. If asked about the circumstances answers are often based on what “would” have happened rather than what can actually be recalled as what did happen. That is simply an observation, not a criticism of those present on 1 November 2016 at Tain. It is observed in the evidence of very many witnesses in very many cases.

[556] There is significant variation in the evidence of the witnesses as to what words of command C/Sgt 1 issued at the relevant time. The effect of that confusion of evidence must be considered alongside the issue of the compliance with the words of command, whatever they were, that were given.

[557] From subsequent events it is clear that LCpl Spencer did not complete the unload drill at the conclusion of the firing for his detail. Nor did Student D. Student F, his spotter, swapped position with Student D, who went to the ammunition point, and noted that a magazine was still fitted to Student D's rifle, which he had left on the firing point. Student F removed the magazine, which contained ammunition, and made the rifle safe. He did not report this to any member of safety staff. It is not even clear if he told Student D. Student D gives no explanation for the situation.

[558] LCpl Spencer also went to the ammunition point during the transition. No magazine was fitted to his rifle but there is an overwhelming inference from the evidence available that there was a live round in the chamber of his rifle. Sadly, LCpl Spencer is not available to shed any light on that situation.

[559] No issue appears to have arisen in relation to the rifles of the other shooters.

[560] From this it can be inferred that some form of unload command was given, otherwise the other firers would not have unloaded their weapons. If the correct words of command were given, why did LCpl Spencer and Student D fail to comply with them? The confusion over what words of command were actually given is discussed above. The correct words of command certainly should have been given. If incomplete words of command were given why did the other firers nevertheless carry out the unload drill properly but LCpl Spencer and Student D did not? Unfortunately, this verges into the realms of speculation which it is not my function to engage in.

[561] The fact that two firers failed to properly comply with the unload drill and neither were picked up by the safety supervisors raises concerns about the adequacy of

the instruction the students received in the safe handling of the weapon, the diligence of the students in complying with instructions and the diligence of those engaged in range supervision in properly supervising the firing activity.

[562] With hindsight, it is unfortunate that Student F did not, in fact, report Student D's failure, which might have precipitated the first firing detail being required to carry out normal safety procedures for the rifle, which should have ejected the live round from LCpl Spencer's rifle or at the very least resulted in a negligent, but safe, discharge down the range.

[563] LCpl Spencer carried out part of the unload drill. He had removed the magazine from the rifle. But the evidence is compelling that having chambered a live round in anticipation of taking a second shot at the final target, which turned out not to be necessary, he failed to clear that round from the chamber of the rifle during the unload procedure.

[564] During my preliminary remarks at the beginning of this inquiry I commented that I am equipped with neither a crystal ball nor a magic wand. Perhaps the single greatest question in this inquiry, both from the public interest point of view, but I suspect even more so from LCpl Spencer's family's point of view is why he did not complete the unload procedure. The inquiry has looked at the circumstances leading up to LCpl Spencer's failure to complete the unload procedure, as detailed above, but none of the issues highlighted provide a definitive reason for his failure to completely unload his rifle. The evidence is that LCpl Spencer was a competent, conscientious and dedicated soldier, not someone who was cavalier about risks or who did not take his

responsibilities seriously. His failure to complete the unload drill cannot be explained by the evidence available.

[565] Nor do I consider that there is likely to be any evidence out there which the inquiry has not been provided with or which has not been unearthed by the extensive investigations into LCpl Spencer's death that would provide an explanation for that failure.

[566] The best explanation that I am able to provide from the evidence is that LCpl Spencer made a mistake. No one is infallible. Anyone can make mistakes. Indeed, everyone does. Even minor moments of inattention can have unintended and undesired catastrophic consequences.

[567] In so far as a precaution that could reasonably have been taken and had it been taken, might realistically have resulted in the death, or any accident resulting in the death being avoided is concerned, I take the view that the words of command issued and the response to them are inextricably linked. The evidence is confused as to what words of command were given. It is reasonable that the correct words of command should be given. However, that would only have prevented the tragic incident if the words of command had been given and executed correctly. Both of these factors are essential. While there may be some doubt as to the words of command issued, I am satisfied that there is no doubt that LCpl Spencer did not execute the unload drill correctly. Had he done so the events leading to his death would have been avoided. Both certainty that the correct word of command had been issued and complied with,

would have been a precaution what was entirely reasonable and would have prevented this tragedy.

[568] DS 1 was a safety supervisor during the afternoon shoot on 1 November 2016. He was positioned behind sniper pair 11, namely LCpl Spencer and Student A. DS 1 left the firing line to get warm clothing and food from his kit bag in one of the ISO containers. By the time he had returned the first detail, including LCpl Spencer, had finished shooting and swapped over to the second detail. DS 1 was not present and therefore could not and did not see LCpl Spencer at the end of his shooting. He was therefore unable to confirm whether or not LCpl Spencer had properly carried out the unload drill at the end of shooting. C/Sgt 1, who was the Range Conducting Officer was unaware that DS 1 had left the firing line. The Range Action Safety Plan required safety supervisors to ensure safe handling of weapons at all times, to intervene if a breach of safety is to occur and to stay alert at all times. By leaving the firing point without permission and without replacement DS 1 failed to fulfil those requirements.

[569] On behalf of DS 1 Ms McDonnell submitted that while it might be a reasonable precaution for him to have remained on the firing line it could not be said that his presence there might have realistically resulted in the death and the accident relating to the death being avoided. She stressed that by this stage of the course the firers were self-declaring that their weapons were clear. She submitted that if LCpl Spencer had shown clear it is unlikely that DS 1 would have identified that LCpl Spencer had failed to properly carry out the unload drill. However, there is no evidence as to what LCpl Spencer did. LCpl Spencer is not here to give evidence. His spotter, Student A, was not

paying close attention to LCpl Spencer during the unload drill. DS 1 was not there to watch him, and should have been. If he had been, he might have noted that something was wrong. And that might have prevented LCpl Spencer's death. I am satisfied that this should be included in relation to section 26(2)(e) of the 2016 Act.

[570] Whatever deficiencies occurred with the words of command for, the execution of and the supervision of the unload drill at the conclusion of the firing by the first detail those could have been remedied had a normal safety procedure been carried out for all firers in both details at the point they left the firing line at the conclusion of the day shooting, or at any point prior to the night shooting beginning. Clearly, the earlier that process occurred the shorter the time that LCpl Spencer's rifle would have been in a dangerous condition. The evidence is that such a drill could have been completed in around ten minutes or so. I consider that it would have been reasonable to carry out normal safety procedures for all firers when leaving the firing point and, assuming proper compliance by all firers and due diligence by the safety instructors, that would have prevented the subsequent un-demanded discharge of LCpl Spencer's rifle.

Although such a drill should not have been necessary, it would have provided a secondary assurance that all the rifles were safe before moving from the firing point and does not appear to be a requirement that would be unduly onerous to carry out.

[571] At the time of the fatal discharge LCpl Spencer was holding his rifle vertically, resting his chin on the muzzle of the suppressor. There was no evidence of any of the other students holding their rifles in a similar manner. This manner of holding the rifle was adversely commented on both in evidence and in submissions. It was described as

unorthodox and unsafe by Mr Webster KC. As a matter of fact, there is no evidence that anyone challenged LCpl Spencer at the time about the way he was holding the rifle.

[572] It is to be hoped that the danger of holding a loaded rifle vertically under one's chin would be obvious to anyone and certainly it would be obvious to experienced soldiers. However, there is nothing in the evidence to suggest that anyone knew that the rifle was loaded. Quite the reverse. I am satisfied on the balance of probabilities that neither LCpl Spencer nor anyone else was aware that his rifle was loaded. An unloaded rifle is inert and other than being hit with it, tripping over it or banging into it presents little danger. LCpl Spencer's decision to hold it in the manner he did and the failure of any of the other students to challenge him about it must be seen in that context.

[573] The rifle should not, under any circumstances, have been loaded at that point.

[574] Nevertheless, had LCpl Spencer not been holding his rifle in that particular way this particular incident could not have occurred. There might still have been an undemanded discharge, potentially with serious consequences, but this particular accident mechanism could not have occurred and LCpl Spencer's death would certainly have been avoided. I am satisfied that it would have been a reasonable precaution for LCpl Spencer to have been holding his rifle otherwise than vertically in close proximity to his body.

[575] Section 26(2)(f) of the 2016 Act relates to any defects in any system of working which contributed to the death or any accident resulting in the death. The system of work involved in this inquiry is the means of carrying out sniper operators' training. The system of work has been discussed in detail above, with particular reference to how

the system was implemented and carried out by individuals and whether alterations to their actions would have been reasonable precautions which might have avoided LCpl Spencer's death. I am satisfied that the system of work in place was appropriate and adequate. None of the parties submitted that there were defects in the system itself, rather than potentially in its implementation.

[576] Nevertheless, the Service Inquiry considered the system of training and while finding it to be fit for purpose made a number of recommendations for improvements, all of which were considered by the Ministry of Defence and had already been adopted by the time of this inquiry, as spoken to by Air Commodore 1.

[577] In his submissions under section 26(2)(g) of the 2016 Act Mr Glancy urged me to comment on the fact that the Service Prosecuting Authority did not give immunity from prosecution in advance to witnesses to this inquiry, particularly C/Sgt 2 and DS 1. As a consequence both witnesses were given a warning and refused to answer questions put to them at this inquiry. This is discussed at paragraphs [45] – [52] above.

[578] That submission was forcibly opposed by Mr Webster KC on two grounds. Firstly, the decision whether or not to take criminal proceedings arising from a death cannot be relevant to the circumstances of death and secondly the decision to prosecute is within the discretion of the Service Prosecuting Authority and the authority is entitled to exercise it as it chooses. Mr Webster KC suggested that Mr Glancy was criticising the Service Prosecuting Authority for actions which the Lord Advocate, whom Mr Glancy appears on behalf of, had also taken. I will deal with these two objections separately.

[579] The full text of section 26(2)(g) of the 2016 Act reads as follows –

“As soon as possible after the conclusion of evidence and submissions in an inquiry, the sheriff must make a determination setting out in relation to the death to which the inquiry relates, the sheriff’s findings as to the circumstances mentioned in subsection (2), and ... (g) any other facts which are relevant to the circumstances of the death.”

[580] Subsection (g) is often referred to colloquially by lawyers as a “catch all” or “sweeping up” provision and allows a sheriff to comment on any matters relating to the death which appear to be important but which do not fit or fit well into any of the other subsections of section 26(2). It is a very useful subsection and is used fairly widely in Determinations. That being said, I agree with Mr Webster KC’s interpretation. To include reference to prosecutorial decision making under the subsection is placing a strain on its interpretation which it cannot bear. Accordingly, I am not prepared to make the finding suggested to me by Mr Glancy under section 26(2)(g).

[581] The matter having been raised in submissions I consider that I do require to deal with it in some greater depth and to seek to explain the position for those who may have watched the inquiry or who are reading this Determination in isolation. As explained in paragraph [42] above, the situation in this case is very, very unusual in Scotland in that there are two separate, independent public prosecutors who have potential jurisdiction, namely the Lord Advocate and the Service Prosecuting Authority. To date, neither public prosecutor has initiated any criminal proceedings against any individual or organisation in relation to the circumstances giving rise to LCpl Spencer’s death.

[582] It may be of assistance if I give some general background in relation to public prosecution. Having worked as a public prosecutor in Scotland for more than two decades I hope that I can present the positions of the public prosecutors in this case

fairly, although it should be readily apparent that I am not privy to any of the reasons for the decisions of the respective prosecutors in relation to this case.

[583] Criminal proceedings can only be taken where there is sufficient evidence that a crime has been committed by a particular individual or individuals, or by an organisation. In Scotland, there must be corroborated evidence of the commission of the crime and the identity of the perpetrator. That is to say, there must be evidence from two separate sources. In general, if there are to be criminal proceedings these take priority over other judicial proceedings, given the potential gravity of the consequences of a criminal conviction. If witnesses are to give evidence at a criminal trial, they should ideally do so before giving evidence in any other proceedings. If witnesses give evidence at other proceedings first, any evidence they give will potentially be admissible at a later criminal trial. No one is obliged to incriminate himself, hence the reason for the warnings to C/Sgt 2 and DS 1 in this inquiry, as discussed in paragraphs [45] – [52] above. Therefore a witness who may potentially be at risk of criminal proceedings may refuse to answer questions, which properly protects them from self-incrimination, but prevents the court hearing their evidence from hearing their full evidence or questions being asked to expand or explain their evidence. This situation can be avoided by the prosecutor giving the witness immunity. In effect this is an irrevocable commitment by the prosecutor that any evidence given by the witness will not be used to support any future criminal case. Once given, immunity cannot be taken back.

[584] There is sometimes a misapprehension that providing a witness with a warning against self-incrimination, or the witness exercising their rights under such a warning,

are indicative of the witness having something to hide. That is an inference which should not be drawn. Exercising the right not to potentially incriminate oneself is not a matter from which any adverse inference can or should be drawn.

[585] Public prosecutors are therefore in something of an invidious Catch 22 situation. Where, hypothetically, there is insufficient evidence that an individual has committed a criminal offence and that individual is called to give evidence about matters at, for instance, a fatal accident inquiry, and the prosecutor does not give immunity the witnesses requires to be warned and chooses not to answer questions. The prosecutor still does not have evidence to base a criminal prosecution and the prosecutor may be criticised by parties to the inquiry, persons interested in the inquiry or the inquiry itself for having 'prevented' the witness from giving their evidence and being compelled to answer questions. Alternatively, the prosecutor grants immunity, the witness gives evidence which is self-incriminatory and the prosecutor is barred from taking criminal proceedings, which also leads to criticism and a sense of injustice.

[586] On the very rare occasions where this situation has arisen in the past and immunity had been given my experience is that the witness gives evidence much in line with their earlier statements or with the evidence that is expected and that sudden confessions to criminality do not generally occur. No one really finds out anything that they did not already know.

[587] In relation to LCpl Spencer's death neither the Lord Advocate nor the Service Prosecuting Authority had provided immunity from prosecution to C/Sgt 2, DS 1 or any other witness. Mr Glancy gave a fairly clear informal indication of the Lord Advocate's

position, but formal immunity was not provided. I have addressed the consequences of that, as I see them at paragraph [51] above.

[588] If I understood Mr Glancy's submission correctly it was not so much a criticism of the Service Prosecuting Authority's decision in relation to immunity but rather an exercise in expectation management that if the situation remains the same the evidence at any Coroner's Inquest is unlikely to be materially different from the evidence before this inquiry, at least so far as C/St 2 and DS 1 are concerned.

[589] Only the public prosecutors can properly assess how likely or otherwise it is that criminal proceedings in relation to LCpl Spencer's death may be initiated in the future. Only the public prosecutors can properly assess whether the prospect of such criminal proceedings is so unlikely that the prejudice to any such proceedings by providing immunity to witnesses at an inquiry is more in keeping with the public interest than restricting the possible evidence given but preserving the possibility of future potential criminal proceedings.

[590] Questions of prosecution under military law for incidents during training exercises are not purely hypothetical or speculative. Nor is a passage of a number of years indicative that such proceedings will not occur. In May 2012 a twenty one year old soldier was fatally shot during a training exercise at Castlemartin Training Area in Pembrokeshire. Six years later two army officers and a warrant officer were successfully prosecuted at a Court Martial in connection with that death and one of the officers received a custodial sentence. A gunshot fatality had also occurred at the Otterburn Ranges in August 2016 and it was clear from the evidence, particularly of the SPO, that

there was an awareness of that incident among those involved in the delivery of the sniper operators' course LCpl Spencer attended. Criminal liability for actions during military training exercises will have been a very live issue for the Service Prosecuting Authority and for the witnesses before this inquiry who were involved in the delivery of the sniper operators' course.

[591] I make no comment as to what decision the public prosecutors should make. That is entirely within their discretion. I have sought simply to try to explain the issues and the potential consequences of the different decisions that the public prosecutors could choose to make, for the assistance of any readers unfamiliar with the issues involved. Likewise, I have sought to explain why certain witnesses were given a warning prior to giving evidence and the consequences of their choice to act on that warning. Whether to act on that warning is a decision entirely for them.

[592] Mr Glancy also submitted that I should reflect in my Determination under section 26(2)(g) of the 2016 Act that the Ministry of Defence should record participation in Skills at Arms lessons in the training records of soldiers as well as recording completion of Weapon Handling Tests. Weapon Handling Tests were recorded at the time of LCpl Spencer's death and continue to be so recorded. The Ministry of Defence have considered recording participation in Skills at Arms lessons and have decided not to do so. The reasons for that decision were clearly explained by Air Commodore 1. Skills at Arms lessons should be a necessary precursor to attempting a first Weapon Handling Test on a weapon system. Subsequent Weapon Handling Tests are periodically required to confirm a soldier's ongoing capability to use the weapon

system. Skill at Arms lessons should only need to be delivered once, prior to the first Weapon Handling Test. Therefore the recording of the first Weapon Handling Test confirms that the Skill at Arms lessons have been delivered and it is not necessary to separately record them.

[593] In reply to Mr Glancy's submissions Mr Webster KC, on behalf of the Ministry of Defence, forcefully rejected the suggestion of recording participation in Skill at Arms lessons. He reminded me of Air Commodore 1's evidence to the effect that the possibility had been considered and rejected by the Ministry of Defence. In addition to the point made by the Air Commodore, that recording participation in Skill at Arms lessons was unnecessary, because an initial Weapons Handling Test can only be undertaken following completion of the appropriate Skill at Arms lessons, Mr Webster KC also submitted that not only would recording participation in Skill at Arms lessons serve no utility it would be counterproductive. A training record showing partial completion of Skill at Arms lessons but successful passing of the Weapons Handling Test would sow confusion as to the competence of the soldier on that particular weapons system.

[593] Mr Webster KC also advised that with around one hundred and thirty thousand service personnel and around fourteen thousand competences to be assessed it was simply unrealistic to record participation in Skill at Arms lessons. He submitted that there was no evidence before the inquiry that would allow me to conclude that recording participation in Skill at Arms lessons was reasonable or practicable.

[595] The explanation put forward in evidence by Air Commodore 1 is entirely correct. Recording the successful completion of a Weapon handling Test should be a guarantee that the individual has participated in the necessary precursor Skill at Arms lessons. However, that relies on the Army's internal systems being properly carried out and not short circuited, for whatever reason. As discussed above at paragraphs [537] to [542], on the evidence available to me I am not satisfied that LCpl Spencer, in particular, did complete the full Skill at Arms lessons for the rifle before taking, and passing, a Weapons Handling Test. He may have, but the position is not clear. If there had been a requirement for the Skill at Arms lessons to be recorded, and that had properly been done, the situation might be clearer.

[596] While discussing his submissions with him I understood Mr Webster KC to accept my point that successful completion of a Weapon Handling Test is only an assurance that Skill at Arms lessons have been received if the system is properly followed, but his position in reply was that there must be some degree of trust, in any organisation but perhaps particularly in the military, that people will do what they are supposed to do. Sadly, the evidence in this inquiry demonstrates that people do not always do so. Where the checks and balances on the human factor in any system should lie is not a binary issue of right or wrong. It is a matter of judgement.

[597] I do not accept the proposition that recording participation in Skill at Arms lessons would lead to confusion where the records showed successful completion of a Weapons Handling Test but partial completion of the associate Skills at Arms lessons. I do not agree that this would generate confusion as to the competence of the soldier with

the weapon system. Rather, I consider that it would give clarity that something that gone amiss during the soldier's training and give an opportunity for that to be corrected.

[598] Given that systems are already in place to record the training history of soldiers I would have hoped that it would not be unduly burdensome to record participation in Skill at Arms lessons separately from completion of Weapon Handling Tests, even if an initial Weapons Handling Test should not be undertaken without first completing Skill at Arms lessons. However, that is a matter for the Ministry of Defence.

[599] Prior to hearing the submission of parties I had contemplated whether or not to recommend that the Ministry of Defence should reconsider whether or not Skill at Arms lessons should be recorded.

[600] In all the circumstances I have concluded that there would be no utility in making a recommendation in relation to recording participation in Skill at Arms lessons. That has already been considered and rejected by the Ministry of Defence. The Ministry of Defence is no more bound to accept my view as to the utility of recording Skill at Arms lessons than I am to accept their view of why it is not appropriate. Nevertheless, I take the view that the issue is relevant to LCpl Spencer's death and could and should be commented upon in my Determination under section 26(2)(g) of the 2016 Act.

[601] The other three parties to the inquiry had no submissions to make in relation to section 26(2)(g) of the 2016 Act.

[602] None of the parties submitted that I should make any Recommendation in terms of section 26(1)(b) of the 2016 Act. That does not preclude me from doing so, if I were minded to do so. However, I do not consider it necessary or appropriate to make any

recommendations arising from LCpl Spencer's death. This may appear surprising, where main point in holding a fatal accident inquiry is to learn for the future. However, it should rarely be necessary for an inquiry to make recommendations. It is inevitable that a fatal accident inquiry will occur some time after the death involved. Complex investigations into deaths take time to be properly carried out. Sometimes that time period is longer than would be considered ideal and it would no doubt have been preferable if this inquiry had been able to conclude rather earlier than eight years after LCpl Spencer's death. Following any death the immediate lessons should have been identified and acted upon by employers, or those in the position of employers, well in advance of an inquiry concluding. It is not necessary to recommend that something be done, if it is already being done. It is appropriate that such lessons be learned by other employers and brought to the wider attention of the public but this can properly be achieved by commentary in the course of the Determination rather than by formal recommendation. There is little to be gained by recommending something that is already happening. The Service Inquiry, which concluded in April 2018, has already made detailed recommendations arising from LCpl Spencer's death. Air Commodore 1 gave evidence confirming the acceptance of those recommendations by the Ministry of Defence and the steps already taken to implement them. I am pleased, but not surprised, that the Army has already sought to learn lessons from the circumstances of LCpl Spencer's tragic death.

[603] In drawing this Determination to a close I observe that LCpl Spencer's death occurred as a result of the actions and decisions of a number of individuals, including

LCpl Spencer himself, as discussed in detail above. From the evidence available to me I do not consider that any of these individuals acted with malice or recklessness or had any idea of the catastrophic event their actions would lead to. In isolation each of the decisions is relatively innocuous, with the exception of LCpl Spencer's utterly inexplicable failure to complete the unloading drill for the rifle. It is with the benefit of hindsight that the consequences of these decisions can be seen clearly. These decisions are not inevitably linked, in the manner of links in a chain or dominoes in a row, leading to an inevitable, predictable consequence. Rather they are individual decisions, like flakes of snow landing on a stable mountainside. All it takes is a few random flakes falling in the wrong place at the wrong time to precipitate an avalanche. LCpl Spencer's death serves as a powerful reminder to those involved in the handling of weapons and those involved in potentially risky activity of any sort that actions can have far reaching consequences. Care needs to be taken in relation to the small things and the routine tasks, not just the bigger picture.

[604] I wish to record my appreciation to the parties to the inquiry and their legal representatives for the manner in which the inquiry was prepared for and presented. Considerable assistance was thereby provided to the inquiry, particularly by the production of comprehensive and carefully considered closing submissions.

[605] Society owes a deep, abiding and ongoing debt to the personnel of His Majesty's Armed Forces for allowing us to live the lifestyles we wish to live and enjoy the freedoms which we all too often take for granted. I wish to extend my thanks to all the

members of the Armed Forces, past and present, who participated in the inquiry, both for their assistance to the inquiry and for their service to the nation.

[606] The soldier most often in my thoughts over the course of the inquiry was, of course, LCpl Spencer. Finally, I wish to join with Mr Glancy, Mr Webster KC, Ms Bone, Ms Watt and Ms McDonnell in expressing my condolences to his family, friends and comrades. Their loss is no doubt still keenly felt. He was clearly a much loved son, brother and partner and a very highly regarded soldier, both by his peers and his senior officers. It is clear from the evidence that I have heard that he was a young man of extraordinary determination and strength of character, committed to the service of others. He appears to have epitomised the regimental motto of the RIFLES – “*Swift and Bold*”.