

In the matter of an investigation into the death of Mr Muhammad Salim

PUBLIC STATEMENT OF THE INSPECTOR, SIR GEORGE NEWMAN

7 AUGUST 2015

This is the first preliminary statement, made on 7 August 2015, into my investigation into the death of Muhammad Abdul Ridha Salim. On the 28 May 2015 my appointment by the Secretary of State for Defence to conduct an investigation into the death of Mr Salim was confirmed. By a letter of the same date, Public Interest Lawyers Limited ('PIL') were notified by the Ministry of Defence ('MoD') of my appointment.

These investigations must take place as expeditiously as possible. I am concerned that more needs to be done to achieve that end. Paragraph 1.11 of the Order of the Divisional Court in R (Ali Zaki Mousa and others) v Secretary of State for Defence No 2 [2013] EWHC 291 (Admin) states "*where a case has been investigated by IHAT, all material relating to the investigation must be provided to the Inspector within seven days of his or her appointment.*"

I can confirm that all the information investigated by the IHAT was provided to me within that time limit. There appears to me to be no good reason why all of the information held by any firm of solicitors on the record in connection with a victim or family, where that information has not already been supplied to the IHAT, should not also be supplied to the Inspector within seven days. There is no reason why that should not take place without any request having to be made by the Inspector for that material to be disclosed to him or her. This approach constitutes a working out of the express terms and the spirit of paragraph 1.11 of the Order, which is that these investigations are to be as expeditious as possible.

Further, paragraph 1.4 of the same Order states "*as soon as it is clear that there will be no prosecution in a case in which the Secretary of State accepts that an article 2 obligation to hold an inquiry arises, an inquiry should be commenced as soon as possible.*" To enable it to become clear that a prosecution is not likely, it is essential that there should be full disclosure

by solicitors of all information in their possession, including witness statements, to the IHAT. I wish to make it clear that an Inspector appointed under these provisions expects of those who have information in their possession or control relevant to the circumstances of a death which has become subject of an investigation to co-operate with the terms and spirit of the Order and to endeavour to comply with what I am now attempting to lay down as a form of procedure. The stage at which disclosure should take place should be prompt, for example by way of response to the standard form of letter, which I understand the IHAT send to the solicitors on the record in connection with a case they are embarking upon investigating, asking for disclosure. That disclosure should be made without delay. I emphasise that the phrase “*subject to investigation*” should be understood as including each of the following stages:

- 1) The stage at which the IHAT commences its investigations;
- 2) It having reached its conclusion, the stage at which a decision is made as to whether a prosecution is likely, and then;
- 3) The stage at which it becomes subject to an investigation by an Inspector.

Persons familiar with the High Court proceedings in which relief has been claimed in these cases, which include of course the fatality cases, will be well aware of the limited factual detail provided in those proceedings for each case. Commonly the amount of detail amounts to a recital of facts and allegations that run to a paragraph comprising a few lines. The IHAT has an obligation to conduct a criminal investigation under the statutory framework of the Armed Forces Act 2006 and in order for it to act expeditiously and effectively, those who have documents in their possession or control relevant to the death to be investigated should make full disclosure to the IHAT to enable it to fulfil its obligations. I understand, as mentioned already, that as a matter of routine a letter is sent by the IHAT to any firm of solicitors on the record acting for a family of a victim. Full disclosure is asked for. If that request is not complied with and documents and information are held, only to be disclosed later, the IHAT and the Service Prosecuting Authority may well go on to reach conclusions in the absence of highly material documents which should have been available to them and which it is envisaged by the Court are likely to be made available to the IHAT. Any failure to disclose what is then in existence can only lead to delay.

My present view is that the need for full disclosure should be a continuing expectation on the part of solicitors involved in these cases. Further I intend to inquire with the MoD and the Government Legal Department ('GLD') as to the best process that can be devised to ensure that documents held by the GLD in any relevant proceedings in connection with any of the IHAT cases are earmarked and disclosed to the IHAT so that there is in fact a comprehensive and sophisticated system for disclosure between the GLD and IHAT and of course, where necessary, later in connection with any further disclosure to the Inspector.

I have to say unless this topic is addressed and effectively dealt with there will be a risk of delay being caused to an Inspector's investigation. I am conscious that there may be misunderstandings about the nature of the obligation to disclose material both to the IHAT and to the Inspector. For example, whether a witness statement held by a solicitor must be disclosed. In the normal course, there is unlikely to be a valid ground to advance to resist disclosure. I should emphasise that the lack of client consent is not a valid objection. If arguable grounds do exist they can be asserted in the usual and proper way and the validity of an objection can be determined.

Whether there are existing witness statements or not, I need to emphasise the principle that it is a matter for the Inspector to decide according to his or her discretion the manner in which any statements, whether further statements or not, will be obtained. An Inspector's access to witnesses for the purpose of taking a witness statement where a solicitor is on the record for the witness (in court proceedings or otherwise) is not subject to the consent of the witness and / or solicitors. That having been said, it is hoped that the Inspector's investigation can take place with the full co-operation and understanding of all those involved in accordance with the Inspector's decision as to how the procedures should be implemented.

I should conclude this statement by a message to the families and witnesses in Iraq in connection with the circumstances of the death of Mr Salim, and I will invite them as I do now to appreciate that an Inspector, on this occasion *my* role as the Inspector, looks for and hopes for the co-operation of them all in ensuring that the investigation I must carry out is as full, reliable and accurate as it can be.

Now to a short report on the state of my investigation into the death of Mr Salim. I can report that I have taken steps to obtain evidence from a number of witnesses. My investigations are

relatively well advanced and I have recently turned to consider the best method of obtaining statements from the family of the deceased and eyewitnesses in Iraq. There are inquiries to be made in Iraq from persons other than the family and eyewitnesses. However, I have to report that within the last week I received from PIL copies of witness statements, with exhibits, from the family and some eye witnesses. These statements are dated February 2013 and are headed as having been filed in claims for compensation in the High Court here in London. I have requested full disclosure of all documents, including pleadings, witness statements and orders, existing in those proceedings.

I have yet to complete full inquiries into all the circumstances in which these statements have been disclosed to me, how they were obtained and the extent to which they have been available to the IHAT. When those inquiries have been completed, I shall make a further statement. As I said earlier, I shall take up with the MoD and the GLD the question whether there can be a co-ordinated process set up to ensure disclosure of all documents held by the GLD in any related proceedings.

Finally, a message to the family and witnesses in Iraq:

I am obliged by the terms of reference to make the investigation accessible to the family of Mr Salim. The reciprocal obligation is that the family and the witnesses should make themselves accessible to me. I shall have to decide how best to achieve these aims but I have no doubt that I will receive the full co-operation of the family and the witnesses in the common endeavour which we have to search for the facts and circumstances surrounding the tragic death of Mr Salim. I look forward to setting in train the best steps I can devise for the accessibility which is to be given to the family and the witnesses and I shall report to you as soon as the matters I have already mentioned have been resolved.

Thank you very much.

SIR GEORGE NEWMAN