

The Iraq Fatality Investigations

Inspector: Sir George Newman

Public Statement dated 20 March 2015

Good day to you all.

The consolidated report having been published, I believe it would be useful to make some observations about the process I adopted in these investigations, some comment about my findings, and some comments about the future.

I believe that there is no further source of relevant and reliable evidence which could be available in connection with the deaths of Mr Abdullah and Mr Said. As you will see when you read the report, there are obvious difficulties associated with an investigation which takes place 11 years after the event under investigation, and the obvious difficulties which can be associated with the recollection of detail and the overlay that may have occurred in the witnesses' minds over the 11 years which have passed.

First, then, to the findings. It is not desirable that I should attempt to take you through a summary which can be possibly seen as some way departing from my report. The findings are in the report and I believe they are clear and they are in dedicated sections. I have to say there can be no substitute for reading the whole report. It is not that long and there are photos and maps to bring it alive. If time is scarce, though, go straight to Sections 5 and 6 (page 67) of Chapter 2 for the findings in Mr Abdullah's case, and Section 5 Chapter 3 for the findings and conclusions in the case of Mr Said (page 81).

This statement will be translated into Arabic and transmitted to Iraq. For obvious reasons, the whole report will not be translated here in London for transmission to Iraq. It will of course be available to Ms Al Qurnawi, who acted as the lawyer for the relatives and witnesses, but I have in mind that there may be a desire for a ready and accessible record translated into Arabic to be available for such public awareness as may be considered desirable in Iraq.

To that end, and it is only for that purpose, I shall draw attention now to those parts of my findings which might be regarded as of most interest to people in Iraq.

First of all, page 67, Section 6, in a section headed 'A Summary of Findings and Conclusions Regarding the Death of Mr Abdullah'. I find that Mr Abdullah died from a blow or blows to the left side of his head, inflicted by one or more soldiers of a section of 3 PARA on the 11th of May 2003. It is not possible to conclude with any degree of precision what degree of force was used, but the evidence points to it being sufficient to cause a ruptured or fractured skull, causing a brain haemorrhage from which he died.

I find that the force was applied to the deceased by a soldier or soldiers at first to remove him from the stationary vehicle in which he was a passenger. I find that at the next stage, when he had been removed from the vehicle, force was again applied to him by a soldier or soldiers, so as to force him to lie down on the ground. There is some evidence, which I have accepted, that he may have resisted being put to the ground. I find that at a stage when he was on the ground, he attempted to get up, and that he was forced down again by a soldier or soldiers.

I have not been able to determine with any precision at what stage or stages of the physical encounter with the soldiers he sustained the fatal injury. Its infliction in the process of him being forcibly removed from the vehicle appears to me to be the least likely, owing to the limits of the space and the required angle for the infliction of the blow. As was pointed out to me by Dr Hunt, a blow to a mobile head can readily cause injury, fracture and haemorrhage to the brain, and when the deceased was still on his feet, he would have presented the more likely angle for the infliction of the blow. I have no evidence that he sustained the fatal injury from striking the ground. An injury to the left back of the head is consistent with it being inflicted when he was lying on the ground, but the lack of extensive visible injury to his face is inconsistent with that being the time when it was inflicted.

I found no evidence, and it was not suggested to me at any stage, that the degree of force which was used to cause the fatal injury was necessary to secure Mr Abdullah's compliance with the demands of the soldiers. It was more violent than was required in the circumstances to achieve that end. There is some evidence that Mr Abdullah may have acted to resist the soldiers' demands, but no evidence that he either levelled or attempted to level any blow at the soldiers. Neither the actions of Mr Abdullah nor the driver, Athar Finjan, constituted a direct threat to the soldiers, and nor were they seen to be a direct threat. But their actions were likely to have been considered by the soldiers to be increasing the risk to them from exposure in circumstances they perceived could be dangerous.

I have a section to which I would draw attention headed 'Wider Circumstances Affecting the Conduct of the Soldiers'. The soldiers on this patrol were instructed to follow the vehicle which it was believed had avoided or failed to stop at the vehicle check point which those soldiers were managing. I find that all the soldiers in the patrol were broadly aware of, and

were likely to have been affected by, the following state and conditions existing in Maysan Province: the widespread availability to civilians of weaponry and the customary behaviour of Iraqi men to carry a weapon; the prevalence of terrorism and serious organised crime by various groups as well as widespread tribal feuding and general lawlessness occurring where there was no effective law enforcement; an uncertain attitude and growing hostility to the presence of Coalition Forces; [and] the risk that hostile combatants sometimes dressed as civilians. And I also find that it was a commonly held belief by most of the soldiers, on reasonable grounds, that they were still deployed in combat conditions.

As to Mr Said, then, Section 5 at page 81 can be looked at. I find that Mr Said was shot in the right lumbar region by a bullet which struck and fractured vertebrae numbers 1, 2 and 3 causing internal bleeding. A fragment of the bullet also damaged the left lung, causing internal bleeding in the left thoracic cavity. The bullet that killed Mr Said fired by SO09 was a standard form of ammunition used by the British armed forces and it was not an explosive or fragmenting bullet.

There was a high degree of physical resistance by Mr Said against a number of attempts to place handcuffs on him and arrest him. These efforts were being made after he had fled from the scene where the munitions had been discovered and after a warning shot had been fired in order to bring him to a stop. There is confirmation of the conflict and physical resistance of Mr Said from the evidence of one of the Iraqi witnesses. One of the witnesses recollected that Mr Said was resisting the soldiers when he was shot.

Importantly, about the circumstances immediately prevailing at the time that he was shot, I find that he was shot by SO09 at or about the moment when an attempt by SO08 to hit Mr Said with a baton resulted in only the tip of the baton connecting with Mr Said. I have concluded three things occurred thereafter which caused SO09 to shoot Mr Said. They were SO08 being on the ground; the attempt by Mr Said to lay hands on SO09's rifle; and an apparent attempt by Mr Said to lay hands on SO08's pistol.

Those, then, are the specific findings which may be of particular importance to public awareness in Iraq. But I need to make a reference to another aspect of my findings. I have highlighted as a matter of general importance for the future a particular aspect of the operational demands under which soldiers can be required to operate. Such demands may be of increasing importance where soldiers are deployed for combat, but nevertheless have to interact with civilians where there is no ground equivalent to a battleground where there is combat, and where terrain varies and sometimes takes in civilian habitation. Such demands as I see can be made on soldiers are illustrated by the circumstances of the death of Mr Abdullah. Do not misunderstand me; nothing that I now say is meant to be anything other than an observation upon the circumstances and in no way affect the findings I have made.

The soldiers of 3 PARA were deployed to Iraq as a fighting combat force and they were trained for deployment as a combat force. At the time of the stop and search in which the fatal blow or blows were delivered, the soldiers were operating under a clear duty and obligation to use only minimum force to civilians with whom they had to interact and engage. That said, they had a right to protect themselves and their colleagues from any threats to their safety. Conventionally, matters such as this – and I am not now considering the issues in relation to the facts of Mr Abdullah's case – but conventionally, the source of threat to which attention and focus is often turned is the *direct threat* that may be presented by any individual who is there in the event being dealt with the soldier or soldiers. But as I have indicated in my report, what seems to me to be a matter for consideration and attention – I would suggest both legally and operationally – is a situation which arises where, in relation to any individual there being dealt with, there is no direct threat from that individual, but consideration needs to be given to the perceived threat that might arise from the immediate surroundings in which the operation with the civilian is taking place, combined with any prevailing hostile general circumstances which might be established in the region.

As I say, this area seems to me to be alive for further consideration. It emerges in my report from the very helpful evidence that I had from Major Friend (as he was), who adumbrated before me the concept of 'courageous restraint' being required in these circumstances. I would invite some consideration to be given to this, to endeavour to get more legal clarity as well as operational development on this aspect.

Next, therefore, the Iraq Fatalities Investigations, my adopted procedures and practice in these two cases, and some points which I regard as relevant to the future Article 2 ECHR investigations which are expected.

The investigations have their provenance in the judgment of the Divisional Court. I have set out the details, and I have set out my working out of the Court's Order in my report. In particular, I have stated my reasons for adopting particular processes and procedures for dealing with these two cases. But I recognise that, since the report is the first of its kind, it might be taken, and indeed it may well be appropriate for it to be taken, as a template for the approach to be adopted in future cases. That said, I would caution against it being elevated to the status of a precedent.

As I stated in the report, my course was set according to what I judged to be the demands of justice and fairness in these two cases. Other cases may require quite different treatment. The treatment given by me to these investigations may well be out of place or disproportionate in the other cases. I am not aware of the details of the other cases which may fall to be considered by the Iraq Fatalities Investigations. They would each, as I respectfully suggest, need to be considered on their own and in accordance with the issues

that they raise. The legal objectives of an Article 2 investigation are set and established and they are binding. Those objectives amount to a solid framework of principle upon which an Inspector will be bound to steer his course. But as the Court recognised, and I would maintain as a matter of general principle and general judicial discretion, the procedures for achieving them must be for the discretion of the Inspector, and they are likely to vary as the circumstances of the cases will vary.

Finally, I should like to emphasise that I was struck by the impact of the demands which are made on all participants when investigations have to be made into a civilian death in a foreign theatre of military action [caused] by British forces. The topic can excite legitimate stimulating debate and comment. But I would like to emphasise that the legal process of these investigations deserve respect, and thus care should be taken to avoid discouraging the due participation of those who may be required by those legal processes to assist in the investigations.

I would like finally – the second ‘finally’ – to thank everybody who assisted me, and to express my gratitude for all the support I have had from the Ministry of Defence in all areas where it was necessary for me to be supported, and from my legal team.

Thank you.

SIR GEORGE NEWMAN

20 March 2015