

# **The Iraq Fatality Investigations**

Inspector: Sir George Newman

Re: Mr Nadheem Abdullah (Deceased) and Mr Hassan Abbad Said (Deceased)

## **Application for Legal Expenses for Fahad Abdullah Manea and Ali Abbass Said** **("the Applicants")**

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### **DECISION**

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1. The Applicants, as the representatives of the families of each of the two deceased Iraqi civilians, have instructed two firms of lawyers to advise them and provide them with the legal support they require in connection with the two investigations I am currently appointed to carry out in my role as Inspector of the Iraq Fatality Investigations.
2. The two firms instructed by each Applicant are: Public Interest Lawyers Limited ("PIL"), a firm of solicitors having its offices at Eight Hylton Street, Birmingham and Qurnawi Legal Consultancy & Advocates (known as QC Law Firm) ("QC Law Firm") having its offices in Basrah, Iraq. The Applicants reside in Iraq in or near Basrah.
3. I have to decide whether funding for the legal expenses of the Applicants and witnesses in Iraq, who include family members, should be approved for both firms or one firm. If funding is to be limited to one firm I have to decide which of the two firms instructed can best serve the interests of the Applicants in these Investigations.
4. In a Public Statement dated 30<sup>th</sup> May 2014 and at a Public Hearing on the 5<sup>th</sup> June 2014 I stated that it was my intention to investigate whether there were any lawyers in Iraq who could provide assistance to the Applicants. It seemed likely that PIL would have connections with lawyers in Iraq and I invited the firm to

inform me of any law firms which might be able to provide legal services to the families and the witnesses.

5. PIL were unable to assist and informed me that its communications with its clients did not take place through lawyers but through a non-English speaking “agent”, who had no knowledge of English law, and that all its communications with Iraq take place through an interpreter. PIL responded to my request to make out its case for funding approval to be given to it rather than funding to be given to a firm of lawyers in Iraq. I received a detailed response from PIL by a letter dated 11<sup>th</sup> June 2014. I have taken it, the contents of the Statement of Facts in support of the Applicants’ application to apply for judicial review and PIL’s written application for funding dated 6<sup>th</sup> August 2014 into account in reaching my conclusion on these Applications.

6. PIL’s letter identified a number of factors to which it was said consideration should be given when deciding how effective participation in the Investigations could be achieved for the families and witnesses. These factors were later listed and relied upon in the Statement of Facts lodged in support of the Applicants’ application to apply for judicial review and in PIL’s application for funding dated 6<sup>th</sup> August 2014. In the main the factors appear to me to be relevant and to express the following propositions :

6.1 The Applicants should have access to the facts and have a clear understanding of the function and purpose of the Investigations and a clear understanding of the role the families and the witnesses should take up in the inquiry processes.

6.2 So far as possible steps should be taken to avoid logistical difficulties for the witnesses and families and so as to reduce the emotional strain and tension which is likely to be present.

6.3 There should be lawyers with a sufficient understanding of the English court system, sufficient knowledge and experience of English court procedure and a capability to understand the unique processes which the Divisional Court has mapped for these Investigations. Further the lawyers

should be available to the Applicants to explain fully the roles the families and witnesses are to play and should be available to approach me in respect of any application it was felt should be made.

- 6.4 Regard should be had to safety considerations affecting travel for the families from their homes in or near Basrah.
- 6.5 Consideration must be given to the difficulties which will arise from the use of the website for publishing reports and information because of a continuing need to translate written material.
7. PIL informed me of some of the details of the service they would provide to the Applicants by a letter dated 25<sup>th</sup> June 2014. These details, although stated to be subject to some flexibility, appeared to me to fall short of what I had hoped would be available. In particular there would be no direct communication in Arabic with the Applicants by a lawyer, no professional would be available locally charged with an obligation to serve the Applicants and PIL would be dependent on the quality of its advice being tendered by an interpreter with no knowledge of English law to an agent with no knowledge of English law. I have no doubt about the competency of PIL, which has great experience and has able partners and solicitors but the means of communication, language barriers and a lack of direct contact with the families and witnesses from a professional lawyer, who could be available when needed, fell short of what I wished to achieve and was not what I was prepared to confirm without more inquiry being made in Iraq.
8. As a result I informed PIL that active steps were being taken to secure the availability of an Iraqi lawyer to assist the families and witnesses. In a Progress Statement dated 16<sup>th</sup> July 2014 I referred to my concerns about the logistical difficulties which could arise and my concern to learn of the experience of the Abdullah family when attending at the Court Martial proceedings in 2005. This, as was emphasized by PIL, had been a distressing event. I reiterated my concern that the family should have a clear understanding of what the Investigations were about and what they were not about. For example by the time of my first correspondence with PIL, some months after they had been instructed, I was concerned to learn that the Said family had refused to have any contact with the

Investigations because they believed that it was connected with IHAT. The family declined to engage unless it was through PIL or Mr Abu Jamal.

9. By the time of the Progress Statement I was able to report that “*appropriate and qualified lawyers*” had been instructed to approach the Applicants and I expressed a hope that they would be able to work together. Until the Applicants had been able to consider their position and the lawyers in question had met them and the meeting had resulted in instructions being given and accepted by the lawyers there could be no decision on the best way forward. Mr Justice Leggatt (“the Judge”) so found and dismissed the Applicants’ application for permission for judicial review.
10. After that decision, and in my absence abroad, QC Law Firm, informed Sarah Ramsey, my assistant, that the Applicants had been seen and that both families had given written signed instructions for the firm to act for them in connection with the Investigations.
11. QC Law Firm was founded in January 2014 by Zainab Al-Quarnawi (“ZAL”). She is assisted by Mrs. Souad Nasser.
12. ZAL was educated in Iraq and graduated from Al Mamoun College in Baghdad with a B.A. in English literature in 1994. Between 1995 and 1999 she studied Law at the Lebanese University in Beirut. Between January 2000 and July 2002 she took a Foundation Course for an LLM, receiving a commendation, at the London School of Economics and thereafter obtained a Post Graduate Diploma in English law at BPP Law School, London. From September 2002 to July 2004 she did a post graduate Legal Practice Course at BPP Law achieving distinctions in civil litigation, criminal litigation, conveyancing, business law and business and solicitors’ accounts. Her aggregate marking was 70% and she received a commendation.
13. Her studies at BPP Law School were part time because in January 2000 she commenced employment, as a legal assistant, at Bower Cotton (Solicitors) of 36, Whitefriars Street, London. She was legal assistant to a senior partner in the commercial litigation and company departments and was involved in very large

civil actions, commodity litigation, shipping, insurance, media litigation, arbitration and issues relating to Middle Eastern laws.

14. In October 2002 she was admitted as a member of the Iraqi Bar Association. In November 2002 she joined Clyde & Co, in London, as a trainee solicitor where she gained wide experience in contentious and non contentious matters. Her work included drafting pleadings, witness statements, instructions to counsel and correspondence. The litigation was high profile and complex and required a thorough knowledge of procedure and English law. The non contentious matters involved advising on oil agreements, banking and joint venture agreements.
15. In April she was admitted to practise as a solicitor in England and Wales and she remained with Clyde & Co. as a solicitor acting in contentious and non contentious matters. She handled commercial litigation in the High Court in commercial cases as well as defamation and libel cases. In 2007 she was seconded to JP Morgan Chase in London where she worked on complex agreements in connection with oil and finance transactions.
16. In July 2008 she commenced as a director in a private enterprise firm, advising on a wide range of legal matters. She left in March 2011 to become Legal Counsel, Middle East and North Africa, for Shell EP International Limited Dubai. Between 2012 and 2014 she was Senior Associate for Clyde & Co., Dubai, leaving in January 2014 to found QC Law Firm.
17. Her associate, Mrs Nasser, graduated from Baghdad University with a degree in law. Between 1974 and 1984 she worked within the judiciary in Iraq both as an assistant and in training the judiciary. From 1984 she served as Attorney General for prosecutions in Basrah Courts, as a judge assigned to the Basrah Misdemeanor Court and in 2003 she became a judge of the First Degree, being the highest judicial level. She was the first female judge in Basrah. She sat as a judge in the Criminal Court of Basrah and retired from public service, joining QC Law as a Legal consultant in 2014.

## Conclusion

18. I regret that it was not made clear to the Judge that an Iraqi lawyer was not being sought in order to provide advice on Iraqi law. Nor when the search commenced was it settled that, if an Iraqi lawyer was located and had obtained instructions, exclusive funding would be ordered in favour of the Iraqi lawyer. There remained the possibility that despite improved, professional, direct support being available in Iraq there would still be a need for a lawyer having knowledge of English law and procedure to be available as well. The Judge noted the position, stating: “*I note that the Progress Statement addresses only the ability of the Iraqi lawyers to communicate with the claimants and does not suggest that they will have the knowledge of the relevant UK law and procedure needed in order to provide effective representation and advice to the claimants regarding the nature of and the procedures for the Investigations or to suggest issues on behalf of the claimants that the Inspector should examine as part of his investigation*”.
19. I am satisfied that the education, training, experience, qualifications and professional standing of ZAL demonstrate that she has sufficient knowledge of English law, procedure and practice to be able to provide the necessary support for the Applicants. She has worked on English law matters of complexity and has had first hand experience of litigation in the High Court and in the less formal procedure of arbitration. Her grasp of English is impeccable. Her ability to understand the “*uniqueness*” of these Investigations is, in my judgment, well within her proven intellectual and legal achievements.
20. Mrs. Nasser can, in addition, bring her distinguished career and skills as a judge in criminal investigations to bear upon the factual inquiries which it may be relevant to pursue.
21. I am clear that the direct communications which can take place in Iraq, in Arabic, with lawyers who are nearby in Basrah is a matter to be given weight, not simply because of its obvious advantages for the Applicants but for the advantages and assistance it provides to me in the effective running of the Investigations allowing confidence to exist that all the statements and communications, witness notes and disclosed material on the website will be instantly considered, understood and accurately conveyed to the Applicants.

22. A critical time for the families and witnesses will be when listening to or answering questions via a video link or Skype. ZAL will be available, with her colleague to assist. ZAL will be able to address me and inform me on any issues as they arise.
23. In summary and for convenience by reference to the points made by PIL at pages 2 and 3 of their written application for funding dated 6<sup>th</sup> August 2014:

*23.1 Dangers of not fully experiencing proceedings and an inability of being in direct contact in the course of a hearing.*

I have no doubt that the arrangements that will be put in place by QC Law Firm will be the best possible arrangements to avoid this risk.

*23.2 Legal complexity.*

At present I do not envisage any points of legal complexity arising but in the light of the qualifications of ZAL I have no doubt that she has the competence and ability to identify and deal with points of legal complexity.

*23.3 Access to a process that will provide clarification of the facts.*

The arrangements proposed for direct contact with ZAL and her colleague, in my judgment, provide the best opportunity for these aims to be met.

*23.4 Access to a process where family members will understand clearly the function, purpose and methods of the Investigations and have confidence that they are able to play a role within them.*

As stated above, the arrangements proposed for direct contact with ZAL and her colleague, in my judgment, provide the best opportunity for these aims to be met.

*23.5 Access to a process that is safe and unhindered by logistical complexity.*

I regard the geographical proximity of ZAL in Basrah to the Applicants who live in or near to Basrah to be of great importance and the best arrangement that could exist in the difficult circumstances prevailing in Iraq.

*23.6 Access to representatives who can explain fully the context of the Investigations and the families' roles within them.*

Under the arrangements which I have decided should be funded there will simply not be contact with a representative but contact with a highly trained, Arab speaking, admitted solicitor with great experience, who will be available throughout the process and in particular on any occasion when there is a video link or Skype link to the families.

*23.7 Access to representatives who can adequately and efficiently communicate the families' desire for engagement in the Investigations.*

For reasons which sufficiently appear ZAL can provide and assist in this objective.

*23.8 Access to representatives who have sufficient understanding of the Investigations, legal issues that arise and the UK Court system.*

I consider it to be of great importance and to be a great advantage to the Applicants that they will receive their advice and assistance directly from an Arab speaking lawyer fully qualified in English law rather than from solicitors in London who have had to communicate through an interpreter to their agent who speaks no English and has no knowledge of English law.

*23.9 Access to relevant background documentation so as to pursue lines of enquiry.*

The fluency in English and competency in English law of ZAL to read and understand all materials put on the Investigations' website is of great

importance not just to the Applicants but it will also be conducive to the effective and speedy process of these Investigations.

24. For the above reasons I have decided that no purpose would be served by the approval of funding to lawyers in London as well as to QC Law Firm. In my judgment the balance falls clearly in favour of funding approval being given to QC Law Firm. Should a need arise for legal assistance in London to be available it is well within ZAL's ability to instruct an appropriate firm or counsel.

**Sir George Newman**

**9<sup>th</sup> September 2014**