

The Iraq Fatality Investigations

Inspector: Sir George Newman

Opening Statement given at Inner London Crown Court

5th June 2014

Good Day to you.

This is an interim statement in a matter of the investigations into the deaths in Iraq of Nadheem Abdullah and Hassan Abbas Said. I am Sir George Newman. Brief biographical details appear on the website but for present purposes it is for note that I have been appointed as the Inspector to carry out these investigations in my capacity as a retired judge. I have for some weeks been looking into the immediate and surrounding circumstances of the death on the 11th May 2003 of Nadheem Abdullah and the death on the 2nd August 2003 of Hassan Abbas Said. I have been assisted by two barristers, Tom Poole and Sarah Ramsey.

In both instances it has been alleged that British soldiers were involved in the immediate circumstances of the deaths. Many of you listening to or reading this statement will be familiar with the events I'm looking into because of the various resulting court proceedings which have taken place.

Allegations against soldiers have been pursued in criminal prosecutions and as a result, thousands of pages of documents comprising reports, notes of investigations, notes of interviews, witness statements, reports, plans, photographs and transcripts have come into

existence. They have been supplied to me. There have been proceedings in the High Court in London with lengthy affidavits and exhibits. I have considered everything supplied to me and in addition, I have commenced making my own enquiries. I have seen some military witnesses and we have been drawing up lists of witnesses I need to approach.

I want to inform you today about the direction in which I intend to take these investigations and to inform you of the methods I propose to adopt in order to achieve expeditious and cost effective progress. I wish to emphasise nothing is set in stone, save for the obligation I have to carry out a fair balanced and thorough investigation which fulfils my terms of reference. We have a website; I invite attention to it, because it will give you some useful general information. In addition you will see a detailed set of procedures for these two investigations which will serve for the other investigations which are likely to follow in connection with civilian deaths in Iraq.

You will also see the terms of reference, a Written Ministerial Statement made by the Secretary of State to Parliament, a press statement, a statement from me placed last Friday and soon a video of this statement, which has already been recorded, and along with that there will also be a transcript of what I am saying to you today.

Let me now give you some details about the present position and the future course of these investigations. By an Order of the Divisional Court dated the 31st October 2013, the Secretary of State for Defence was ordered to hold enquiries into civilian deaths in Iraq in any cases where he accepted that Article 2 of the European Convention of Human Rights imposed an obligation on him to hold an inquiry and where he had concluded that there would be no prosecution of any British soldiers alleged to have been involved in the deaths.

The Order contains important specific obligations governing the reach and purpose of the proposed inquiries. The obligations, when read together with the two judgments of the Court in the action, *The Queen (Ali Zaki Mousa and Others) v. the Secretary of State for State (No. 2)* dated 24th May 2013 and 2nd October 2013 constitute detailed guidance from the Court devised to meet unprecedented circumstances which have arisen from the United Kingdom's invasion of Iraq in 2003.

I shall now refer to the paragraphs of the Order having particular relevance to my investigations. The Order in its entirety will be placed on the website in the very near future. The Order directed that inquiries be established as soon as practicable into the deaths of Hassan Abbas Said and Nadheem Abdullah. It directed that the inquiries were to be conducted by a suitable person such as a retired judge. It directed that it was for the Secretary of State to determine the terms of reference and the detail as to the form of each inquiry in conjunction with the Inspector. The terms of reference were to be drafted so as to ensure that the inquiry is compliant with Article 2 of the European Convention of Human Rights. It directed that the Inspector must have a power to compel witnesses to attend and to compel the production of documents, with appropriate sanctions for failure to comply. It directed that the inquiry should be public and be given the necessary support to enable the families of the deceased in Iraq to participate in such a way as to safeguard their legitimate interests. It directed that the Inspector should adopt an inquisitorial approach and should generally conduct the examination of witnesses himself or, if provided with assistants, questions can be asked by the assistants. There should be no separate counsel to the inquiry.

In terms of fact finding, it directed that the Inspector should adopt the approach applicable to inquests, that is to seek to establish by what means and in what circumstances the deceased

came about his death. Also that there was a need to consider making recommendations about lessons learned where appropriate, but that care should be taken to consider the extent to which it is necessary and proportionate to examine such issues, if those issues have already been covered by the Ministry of Defence or other inquiries. It directed that where a case had been investigated by IHAT, all material relating to the investigations should be provided to the Inspector within 7 days of his or her appointment.

The Court provided that it was a matter for the Inspector to decide what needs to be disclosed to interested parties to enable them to participate in the inquiry to the extent necessary to protect their legitimate interests.

So far as the next of kin of those whose deaths are the subject of an inquiry, they are to have a right to suggest questions and raise lines of enquiry to the extent considered necessary by the Inspector to enable them to be involved to an appropriate extent. But those persons or those representing them have no right to ask questions and it will be a question of discretion for the Inspector whether he or she permits questions to be asked directly by such persons or those persons representing them.

Funding. The Court directed that funding would be required for legal assistance to victims and families, to the extent necessary to safeguard their legitimate interests. It however stated that there was no need for an advocate to be instructed on behalf of the family or families.

Summarising therefore the position so far as the Court Order is concerned, an inquiry – as it happens inquiries – have been established into the deaths of Hassan Abbas Said and Nadheem Abdullah. I, as a retired judge, have been appointed to conduct them. The

Secretary of State has determined the terms of reference and the detail as to the form of the inquiry in conjunction with me, the Inspector. The terms of reference have been drafted so as to ensure that the inquiry is compliant with Article 2 of the European Convention of Human Rights.

I have a power to compel witnesses to attend and to compel the production of documents. That power carries with it appropriate sanction for failures to comply. But I would add I do not anticipate that I shall need to compel anyone to attend, since I intend so far as possible to encourage assistance to be given by all those who can give assistance, and I intend to adopt that approach, rather than to anticipate now how I will deal with resistance.

The inquiries are to be public and this interim statement is one means whereby the inquiries are public. The families will be given the necessary support to enable them to participate in such a way as to safeguard their legitimate interests. I shall adopt an inquisitorial approach. I have assistance as I have mentioned from two barristers and I have recently acquired another member of the team, a paralegal. There is no separate counsel to the inquiry or investigations. I shall follow the guidance as to the fact finding obligation imposed upon me. I have already applied my mind to the possible areas where recommendations may be required. I was supplied with great promptitude with all the material relating to these investigations which were in the possession of IHAT. I have been supplied with great promptitude with other information which I have sought from other quarters. I have yet to decide what will need to be disclosed to the interested parties to enable them to participate in the inquiry to the extent necessary to protect their legitimate interests. But I have no doubt that I need to put, onto the website and by direct communication with them, as soon as I possibly can, the effect of the evidence or material which I have presently before me which is

most relevant for them to know about. As and when they have received that information or seen it on the website, they will then be, as the next of kin, in a position to suggest questions and raise lines of enquiry. For this purpose it is likely that they will need legal assistance in order to suggest questions and to raise lines of enquiry, and there will be legal assistance available to them. Some of the witnesses in Iraq in the case of Mr Abdullah are relatives of the deceased. As I shall say later in this statement and as I have said in the statement I put out last week, at present it seems to me that it is expedient and sensible that those people in Iraq who need legal assistance should receive advice from lawyers in Iraq.

On 27th March 2014, the Secretary of State made a Written Ministerial Statement in connection with my appointment. Each of those documents are on the website and I invite attention to them. I wish only to refer to one or two paragraphs in the terms of reference so that some of the central parts of my duty are on the record now. The fifth paragraph of the terms of reference states, “Where facts are found in connection with the instructions, training and supervision given to the soldiers, consideration should be given as to whether it is proportionate or necessary to make recommendations on the issues raised taking into account the extent to which those issues have already been considered”. Paragraph 6 provides that the investigations are to be conducted so as to bring to light all the facts including failures on the part of the State and the facts from which such failures could be properly inferred. As a general principle, specific individuals should not be identified as responsible for such failures, but the investigations are not to be inhibited by the likelihood of liability being inferred from the facts found or recommendations made. I wish to emphasise most importantly before the soldiers, these investigations and the report that I will produce will not be concerned to determine or to consider any person’s criminal or civil liability.

The allegations concerning the death of Mr Abdullah are that he died from injuries inflicted by soldiers from the Parachute Regiment who were patrolling in two military vehicles near Al-Uzayr in Maysan Province, South East Iraq on 11th May 2003. The allegations concerning the death of Mr Said are that he died whilst an attempt to effect his arrest was being made by two soldiers, death resulted from a gunshot wound sustained in the course of the attempted arrest.

Previous investigations. My investigations are not the first to take place in connection with Mr Abdullah's death nor the first occasion upon which Mr Said's death has been the subject of an investigation. But the Divisional Court held that the investigations, having terminated at an early stage had not discharged the obligations arising under Article 2 of the European Convention of Human Rights. As a result, the Court ordered these further investigations should be carried out. The records from the previous investigations, so far as they are still available, have been produced to me. I have considered them in detail. In each of the cases they include the results of investigations commenced in Iraq by the Royal Military Police (the RMP), the Special Investigations Branch (SIB) of the RMP. The records include a number of witness statements and exhibits prepared for the prosecution of the soldiers.

In connection with the death of Mr Abdullah, 7 soldiers were placed on trial for murder and violent disorder. A Court Martial hearing took place in September and October 2005 at Colchester. In the case of the death of Mr Said, investigations led to a soldier being charged with murder and committed for trial at the Central Criminal Court. At the trial the Crown Prosecution Service offered no evidence. Not guilty verdicts were entered in respect of all soldiers on all charges in each case. I repeat, I am not to consider culpability either individually or collectively, whether criminal or civil. My concern is to find out what

happened. It is for the eye witnesses to tell me what happened. My task is therefore unlike a judge at trial; I need to determine what happened, and that does not require me to determine precisely, by way of identification, who did what. I seek now the assistance I need from eye witnesses who can tell me what, according to their observations, they saw, without identity being given, without any role that they may have played, without any detail other than what it was that they saw, because I need to know what happened.

Unfortunately the electronic record of the Court Martial has been destroyed. Merrill Legal Solutions, formerly World Wave International, had a contract with the Army which provided for destruction of all materials, including audio recordings and transcripts 6 years from the date of recording. A transcript of the judge's ruling in the Court Martial dismissing all charges is available, as are the Skeleton Arguments of all counsel who appeared and selected passages of evidence used in the course of argument by counsel. The trial papers in the case of Mr Said's death are available.

The records to which I have referred are voluminous. However, they have advanced the investigations and they have assisted me in the planning of the future course of the investigation and assisted me in the task of identifying the lines of enquiry I should follow. I have called for and received other reports and records. I have commenced interviewing witnesses, in particular in connection with the legal framework which prevailed in the circumstances in Iraq and witnesses speaking as to the actual circumstances prevailing on the ground in Iraq in May and August of 2003. I have seen some witnesses and propose to see others in connection with the training and instruction of the soldiers who were required to carry out policing and law and order duties. I have not seen any eye witnesses but look forward to receiving, as I have said, due cooperation and assistance from them in the near

future. I shall use the website to publish witness statements as they become ready, not only to inform the public generally but to inform those who wish to participate by putting forward lines of enquiry.

I propose now to indicate the direction in which I intend to go, based on the material I have considered. I invite anyone who believes they have relevant information which will assist me to make contact with me. At this stage, the decision as to what part of any evidence I have received by way of witness statement is to be dealt with orally is open for my future consideration.

The invasion of Iraq by land offensive operations commenced on 23rd March 2003. The combat phase of the invasion to a large extent, ended on 1st May 2003 but there was no specific declaration to that effect and no declaration that coalition forces had ceased to be in combat phase, but on 13th May it was declared that a permissive stage of the presence of coalition forces in Iraq had commenced. It was termed the Coalition Provisional Authority. The death of Mr Abdullah occurred after 1st May and two days before the beginning of the Coalition Provisional Authority; that of Mr Said on 2nd August 2003.

The framework of law for actions being taken by British Forces on 11th May and 2nd August 2003 can be derived from various legal directions issued from time to time by High Command and passed down the chain of command to Commanding Officers in the theatres of operation. It is against this legal framework that I have commenced considering operational issues as well as the nature and extent of the instruction and training given to soldiers in connection with their duties when on patrol in Iraq in order to maintain law and order. I wish to emphasise that this focus differs from that which has been under investigation in

other Iraq inquiries where allegations were related to maltreatment in the interrogation of detained persons. I am considering what measures were taken by soldiers in the course of carrying out public law and order and policing duties in occupied territory.

It follows that I have been giving consideration to the circumstances and the state of affairs existing in areas policed by soldiers, including the state of relations between British forces and Iraqi citizens. I regard the circumstances and the environment in which the soldiers operated at the material time to be of relevance and to require further attention by me. I can say that what I have seen so far points to these actions taking place in a country torn apart by armed invasion and where there was significant growing hostility towards the occupying force.

Criticism was levelled by the judge presiding at the Court Martial into the limited nature of the RMP's investigations in the weeks following the death of Mr Abdullah. I have considered these criticisms and examined the circumstances and explanations for the perceived failings. The investigations have also been reviewed internally and have been considered in reports. I do not consider at present that it comes within my remit to embark upon a review of the differences of opinion, but I must point out that the obligations imposed by Article 2 of the European Convention on Human Rights do give rise to the need for an investigation by prosecuting authorities to be effective. Prompt and diligent gathering of evidence, as well as timely forensic testing and analysis can be critical to the achievement of an effective Article 2 investigation. How this can be achieved in the future in operations by British Forces will no doubt have to receive State attention, if it has not already done so, so that it will be demonstrable that there has been proper compliance with Article 2, but I should

say at this stage that whether it is an issue for me to consider in detail and to treat as a matter requiring a recommendation from me is something which I shall keep under review.

In the case of Mr Abdullah, investigations were commenced by the RMP on the 21 May 2003, but this was not soon enough to obtain reliable forensic evidence. Statements were taken from the Iraqi witnesses, many of them being relatives of the deceased. Short statements were taken from the soldiers believed to be members of the patrol which had detained and searched the vehicle which had carried the Iraqi civilians, including Mr Abdullah. On the 24 May 2003 the soldiers' possessions including their weapons, were seized for forensic examination. At a later date, video interviews of Iraqi witnesses took place. However the soldiers returned to the United Kingdom in June 2003 and were not interviewed under caution until August 2003, the first interviews, and again in November 2003, the second interviews.

From my considerations to date it seems fairly clear that two factors impacted upon the evidential content and the course of the Court Martial. On the one hand most of the soldiers being charged with murder and violent disorder exercised their right to silence. Secondly, the evidence of some of the Iraqi witnesses appeared to the judge tailored to the pursuit of claims for compensation rather than accuracy and truth. It would have been helpful to have had a full record of the evidence given by the Iraqi witnesses who attended the trial and were cross-examined. In the event, I must consider the most cost effective means by which I can take evidence from those who can speak as to the circumstances in which they have alleged Mr Abdullah was assaulted. Save for statements and interviews by the soldiers put in evidence by the Prosecution, there was no evidence from the soldiers at the trial. As a result, I must

consider the most effective means whereby they can provide evidence to me and I repeat my request for assistance.

The judge dismissed all charges because he accepted submissions at the end of the Prosecution's case that there was no case to answer. As I have said in the case of Said, the Crown Prosecution Service offered no evidence at the trial of the soldier at the Central Criminal Court because it had concluded the evidence was insufficient to justify the continuation of the prosecution.

After these matters had drawn to a close in 2005, Brigadier Atkin commenced an internal inquiry and he reported on 25th January 2008. His report looked into cases of deliberate abuse and unlawful killing in Iraq in 2003 and 2004 and he reported on measures which have been taken to counter systemic failings he had detected. Whilst the case of Abdullah was one of the cases referred to in his report, it is fair to say that it was not investigated so far as the facts were concerned. This report has been of assistance to my investigations, it being an exhibit in the High Court proceedings, and I have been able to interview him, but it has to be said that the focus of his attention has been in cases of misconduct by soldiers to civilians held in custody for interrogation rather than cases where death ensued from the actions of soldiers acting in the course of arrest and stop and search duties.

The legal framework. On the 18 March 2003 Parliament voted for the use of force to enforce UN Security Resolution 1441. The military operation was named Op Telic. It was to be implemented in four phases: preparation, shaping, decisive action and aftermath. I am concerned with phase 4 aftermath. Combat soldiers and members of the RMP were deployed to Kuwait in February 2003 and they entered Iraq on and after the commencement of land

operations on the 21 March 2003. The immediate objective of Operation Telic was the establishment of a sustainable joint force in theatre to conduct war fighting operations. I have had access to and seen all the relevant directions and the rules of engagement and I have in mind of course the State's obligations under the Geneva and Hague Conventions. I have also had the opportunity of considering the provisions of the law of armed conflict known as LOAC.

There are differences as to the effect of the applicable law stemming from the changing rules of engagement and whether actions were being taken within or without of a combat phase. But for present purposes these differences are not a matter of concern. I proceed in my investigations upon the basis that Iraqi civilians were entitled to the protection of the law and no soldier had the right to use any force against the civilian, save that which was reasonable and in self-defence and save that which was reasonable in the exercise of a duty to stop search and if occasion arose, arrest a civilian. The interference with vehicles by way of stopping and searching had to be for reasonable cause, according to the circumstances prevailing at the time.

I have summarised all this, but I must now make clear why I have bothered to so. I want to make it clear why I have referred to this legal framework and in the terms I have just set out. I do not draw attention to these matters because I am considering whether any individual soldier or groups of soldiers breached the law which governed their actions. I do so because I consider it relevant to consider whether in the circumstances of a speedy movement to the aftermath of the decisive action phase, the process whereby soldiers were informed of the limitations and restraints in connection with their conduct of maintaining law and order was sufficient. Again, I must emphasise I need to look into that, and by having determined that I

am looking into it, nobody should now believe that I anticipate they were not sufficient. But perhaps more importantly, I consider it relevant to examine the extent to which soldiers were instructed and trained in connection with law and order duties they had to perform and were familiarised with the circumstances which could be met by them by way of response from Iraqi civilians. These are not areas which have been considered before in connection with these cases. This is an area which is nevertheless wholly open for my investigation and I mention it now to place on record that in my view it is relevant to what I have to do. Further, I consider it relevant to consider what means and procedures were adopted to maintain control and discipline over soldiers who were being sent out to perform law and order duties in the difficult circumstances prevailing at the time.

I intend to examine how the instructions and directions were transmitted down the chain of command. How they were implemented on the ground and what measures were adopted for their implementation. I wish to make it clear to the soldiers that it is for this reason that their assistance is particularly sought by me, namely their assistance in connection with this area of my inquiry. I wish to take evidence from Commanding Officers at various levels as I have said, but I will also have to pursue these enquiries with the soldiers. I have seen evidence pointing to the end of the combat phase but on the other hand I have seen evidence that despite the end of the combat phase, tensions were still very high, particularly near al-Uzayr because of its proximity to the Iran border, and I regard that as a relevant area for me to consider. I shall be investigating the operational considerations prevailing on the 11 May 2003 and the 2 August 2003.

I want now to make a brief reference to the role of the RMP in Iraq because there is evidence of difficulties faced by the officers and men at the dates I am considering. It is an area of

operation by the Armed Forces where the law has changed but it has to be said that the events which occurred appear to me to point to a need in the future for resources and planning to take place in connection with the RMP's obligations. This is an area upon which I must reflect as to whether a recommendation by me will be appropriate. As a matter of history, in 2003 the powers of the RMP were laid down by the Army Act 1955. That has now been repealed. Permanent joint headquarters were in Northwood and they ran RMP operations overseas. The RMP operated with two branches, the General Policing Duties Branch, the GPD and a Special Investigations Branch, the SIB. The principal obligations imposed on the RMP were to enforce discipline and the law within the British Forces but more particularly to fulfil important coronial responsibilities that the RMP held in connection with any deaths of British forces and British soldiers, thereby assisting the Coroner in the United Kingdom who would be able to hold the necessary inquests into such deaths. I shall keep under review what need there may be for me to consider the details of the RMP operations in May and August 2003 and the level of resources and number of officers and soldiers available to fulfil those duties.

The way forward. I return to the immediate circumstances of the death of Mr Abdullah. I return to the Iraqi eye witnesses of these events. There have been a number of occasions and opportunities for evidence to be given by them and they have taken those opportunities. Full records are available apart, as I have said, from a full record of the examination in chief and cross-examination of the Iraqi witnesses which took place at the Court Martial. Having regard to the amount of information and the records, the statements, and the content of the interviews, I propose the way forward to be that we will prepare summaries of the Iraqi witnesses' evidence as it appears from what we have and they will be submitted to the witnesses in Iraq, duly translated, to enable them to state whether they can confirm that the

summaries accurately reflect their evidence and whether they can stand as their evidence in written form to me. If not, they will be asked whether they wish to amend, delete or add to the summaries. When I am in possession of their responses which I trust will be prompt, I can then decide what further steps need to be taken for the manner in which that evidence can be considered by me and if it will involve an oral hearing. There are at present seen to be some difficulties which I trust will be resolved in connection with a video link by them to me here in London, but the importance of their evidence to me is that I should know what it is that they say accurately and truthfully reflects what they remember as having seen on the day in question, in particular in relation to what they saw which led, it is alleged, to the death of Mr Abdullah. I am concerned to know what they saw which touches or touched or brought about the death, as they say, of Mr Abdullah.

Legal advice should be available to the family and the relatives, some of whom are witnesses. Not only in connection with their evidence but also to enable them to understand the nature of my investigations and to enable them to participate by suggesting any line of enquiry they wish me to pursue. It seems likely to me that the witnesses can give immediate consideration to the question or issue as to whether there are any lines of enquiry they wish me to pursue. At present I see only a limited need for legal advice for witnesses, as opposed to the family and relatives, because that legal advice, as I see it, need only to be available in respect of the summaries which I shall be sending to them for their consideration and for the formulation of their proper response and due consideration in the manner in which I will seek from them.

At present it appears to me that all necessary legal advice and assistance should be given by Iraqi lawyers in Iraq. Commonsense suggests that with the witnesses and relatives being in Iraq, it should be Iraqi lawyers or lawyers who are in Iraq, even if not Iraqi lawyers, who

should provide legal assistance. It is by no means clear to me at present that the Iraqi lawyers will need guidance from international lawyers or from English lawyers familiar with our procedures here, but if a need is said to exist, let me be told and I shall consider the request. I have asked for a list of firms of lawyers in Iraq having the necessary expertise to be supplied to me. I know from the background provided by the litigation which has given rise to these inquiries and investigations that the English firm, Public Interest Lawyers Limited, are likely to have extensive knowledge of firms of lawyers practising in Iraq who would have the necessary expertise to provide to the witnesses if necessary and to the families. Public Interest Lawyers Limited have been in touch with me and I would ask them to assist me, if they can do so, by giving me a list of firms or lawyers they would recommend as being a suitable firm or suitable firms which can be approached for the purposes which I have indicated.

The soldiers. I intend to seek the assistance of all the soldiers, as I have probably made abundantly clear already. I have located some but not all of them. If, as it may be the case, those soldiers who are aware of my investigations are in contact or know of the whereabouts of their former colleagues, then I would ask them to assist by providing me with information as to how I can make contact with them, or by informing them that they should make contact with me. I anticipate that the soldiers may wish to take legal advice. If they wish to do so, would they please let me know. If they wish to take advice in a form other than that which has been offered to them by correspondence, I would ask them to make that clear to me.

The timetable. It is not the time now to attempt to estimate with any accuracy when the matters I have listed today will have been completed and thus enable me to move to the stage of writing a report or reports. It has to be said that the most time consuming aspect of the

remaining investigations is the gathering together of the evidence from the eye witnesses. If those witnesses act promptly, if those witnesses can assist me in any of the requests which I send to them for advancing the evidential investigation, then the sooner we will be able to get to the report stage. I am anticipating a prompt response to all my enquiries and all my communications. By 'prompt', I mean not weeks after, but days after. I shall, as I have indicated, regularly put onto the website a progress report when something of significance to report has happened in the advancement of the investigations.

Thank you all very much.