

**In the matter of an investigation into the death of  
Mr Tariq Sabri Mahmud**

Inspector: Sir George Newman

**Progress Statement – 7 September 2018**

Since the last progress statement, three days of public hearings have been carried out.

There are some evidential inquiries regarding some details which have to be answered, but the bulk of the investigations have been carried out and the process of drafting the report has commenced. The investigation has covered evidence from in excess of 30 witnesses and will be concerned with two principal issues: (i) the circumstances surrounding the death, and (ii) the reporting of the incident up the chain of command.

Separately, I have received a number of queries from an academic which have given rise to a response from me. I am publishing this response for the benefit of the broader public in understanding the nature and remit of my investigations.

SIR GEORGE NEWMAN

**In the matter of an investigation into the death of  
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Sir George Newman's comments on the queries contained in the email from Dr Carla  
Ferstman dated 22 August 2018.

The queries contained in the email of 22 August 2018 are reproduced below in italics. My comments follow.

*In general, we have some questions about the mandate of the IFI as well as the relationship between the IFI and DSP, MOD and SPLI.*

On 27 January 2014, the Secretary of State for Defence appointed me to conduct such fatality investigations as the Ministry of Defence (**MOD**) assigned to me from time to time, with my consent.<sup>1</sup> I have accepted eight such appointments over the course of the years. My 'mandate' for each investigation is set out in the Terms of Reference which accompany my letter of appointment.

My investigations are different in origin and purpose from those conducted by the Service Prosecution Authority (**SPA**) (headed by the DSP) and the Service Police Legacy Investigations (**SPLI**), and comprise independent judicial processes. There is no 'relationship' between the IFI and the SPA and SPLI. They are sources of evidence for the IFI.

As is set out in my Terms of Reference, I am not concerned to determine or to consider any person's criminal or civil liability. Rather, my investigations are to be conducted so as to bring to light all the facts relating to the immediate and surrounding circumstances in which the deaths occurred. This includes failures on the part of the state, and the facts from which such failures could be properly inferred.

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<sup>1</sup>[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/689751/secretaryofstatesletterofappointmentandtermsofreference.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/689751/secretaryofstatesletterofappointmentandtermsofreference.pdf)

The evidence gathered during the course of any previous investigations is to be disclosed to me within the time limit laid down by the Divisional Court. The order of the Court requires full disclosure of all relevant material in the possession of the Secretary of State. My function is not to review earlier investigations, but to investigate and take evidence for myself from all persons and sources who can assist (including those who have provided evidence to others) and to reach my own conclusions of fact.

The IFI is independent of the MOD but the Secretary of State is obliged to provide, through the MOD, the administrative support reasonably necessary to fulfil investigations. This includes all of the funding for the administration of the IFI, staffing arrangements and office accommodation. The MOD is also a link to locating military witnesses. Further details on this point are set out in my response to your query numbered 2(a) below.

*1. In February 2018, a new paragraph 13 was added to the Terms of Reference (ToR in the Shabram Al-Bazooni case): "Where it appears to the Inspector a risk exists that the public reputation of the armed forces could be adversely affected by the outcome of his investigations he should consider whether he should receive representations in connection with that risk."*

- a. Why was the paragraph added?*
- b. What exactly does this mean and what are the practical consequences?*
- c. Is it, in Sir George's view, in line with the direction given in Ali Zaki Mousa (No.2)) v Secretary of State for Defence, where it was held that "It is 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 must be drafted so as to ensure that the inquiry is compliant with Article 2 (1)."*
- d. Has Sir George refused to "receive representations" or is this something that is likely to arise in future?*

1(a) - The need to divide the case of Ali into two parts, to enable an investigation into the extent to which 'wetting' occurred, may have received some acceptance by British Forces and introduced a specific potentiality for the general reputation of the Armed Forces to be adversely affected. In such circumstances, an informed and balanced understanding of the operation of the Armed Forces might be assisted by receiving representations.

1(b) – Fairness requires informed criticism to be advanced. It is for the Inspector to exercise his discretion as to whether assistance is required. If his discretion was so exercised, the consequence is that he could receive representations and take them into account when writing his report. The case of Shabram may or may not be an instance of ‘wetting’.

1(c) – The paragraph was considered in conjunction with me and was added by agreement. It expressly reflects a general principle of fairness which is entirely consistent with and compliant with the proper conduct of an Article 2(1) investigation.

1(d) – To date, no circumstances have arisen in any case which have called for the discretion to be exercised.

*2. What is the level of cooperation /oversight by MOD?*

- a. How much MOD involvement in the work of IFI beyond the ToRs?*
- b. Access to recordings and video evidence? Access to court martial materials (e.g., Nadheem Abdullah and Shabram Al-Bazooni IFI investigations);*
- c. Is there any comment that can be made on the issue of “missing” court martial transcripts and the case in general?*
- d. Cooperation with the MOD systematic issues working group?*

2(a) - As briefly mentioned in my response to your general query about the relationship between the MOD and the IFI, close cooperation between the IFI and the MOD is necessary in the day-to-day functioning of an investigation. The IFI obtains assistance from the MOD in locating witnesses and sourcing documents. There is also frequent correspondence between the MOD and the IFI on general administrative matters (e.g. the payment of invoices). I also provide the MOD with the opportunity to review documents and propose redactions to them before they are released into the public domain, in line with my Terms of Reference. This is a non-exhaustive list of examples of the assistance I receive from the MOD. The MOD has no involvement in the substantive work which I carry out, such as identifying lines of inquiry and making findings of fact.

2(b) - I request all material from previous investigations, but as stated above, as a matter of course they are supplied to me. Where court martial proceedings have taken place, I request and receive the transcript, recordings, witness statements and video evidence.

2(c) – Court martial transcripts are sometimes not available as they may have been destroyed after a number of years in line with an institution's record keeping policies.

2(d) – My cooperation has not been requested.

*3. Is there any possibility to provide an update on the Shabram Al-Bazooni investigation and the outstanding Part 2 of the Jabbar report ? Is IFI expecting to receive the Baha Mousa case?*

A progress statement on the cases that you have mentioned will be published on the IFI website in due course.

Regarding a potential referral of the Baha Mousa case, it is for the Secretary of State for Defence (through his delegates) to make the decision as to whether a case ought to be referred to me.

*4. Is Sir George looking also into cases of ill-treatment, which did not lead to death (but might evidence systemic issues)? Is this understood to fall within the IFI mandate?*

*a. (e.g., allegations of "wetting" - IFI Progress Statement, 12 March 2018, para. 2; are there possibly other types of allegations which would be similarly treated?)*

Cases of ill-treatment do not fall within the remit of the IFI because they are not Article 2 cases. The existence of other allegations of 'wetting' falls within the scope of my investigation under Article 2 into the death of Mr Ali and is only within the remit of the IFI by reason of that Article 2 investigation. As set out in the paragraph of my Progress Statement of 12 March 2018 which you have referred to above, during the course of that Investigation, I became concerned that there were grounds for believing that the drowning of Mr Ali could have occurred and originated within a wider context of events, namely a number of instances of looters being soaked in water by soldiers in an attempt to punish and deter them from looting (see section 7: Part 2 at paragraph 7.2 Cm 9324). I therefore concluded that the relevance of other instances

of looters being soaked in water would need to be considered as part of Part 2 of my Investigation (paragraph 7.11).

*5. Assurances – we note that certain information was sent to the ICC on the basis of assurances regarding the non-use of self-incriminating evidence. Presumably some of the information held by IFI came from sources outside of the IFI – (including IHAT and SPLA); Was such information also covered by the assurances?*

Your question suggests that you have misunderstood the purpose and effect of the assurances which have been received from the ICC. The assurances are not stated to extend to evidential material other than the evidence of individual soldiers given to the IFI. The ICC receives a letter from me summarising the circumstances which, at the date of the letter, are believed to be the circumstances in which the death occurred, along with a copy of the letter of my appointment and the Terms of Reference.

*6. Have there been any anonymity rulings made since 9 January 2017 (last one that is on the website)?*

I have made a number of anonymity rulings in the Investigation into the death of Mr Mahmud since 9 January 2017. I will consider at an appropriate time whether these rulings will be posted onto the IFI website.

*7. Could IFI recommend that a criminal investigation be opened (or re-opened), or would that go beyond the mandate?*

The answer to the first part of the question is no. It follows that the answer to the second part of the question is yes. The criminal and civil culpability of individuals is expressly stated to be outside my Terms of Reference.<sup>2</sup> Accordingly, it would not be appropriate for me to recommend that a criminal investigation be opened or reopened in any given case.

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<sup>2</sup> E.g. paragraph 7 of the Terms of Reference for the Investigation into the death of Mr Mahmud, 'The investigations and the report will not be concerned to determine or to consider any person's criminal or civil liability'.