

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

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**PUBLIC STATEMENT OF THE INSPECTOR, SIR GEORGE NEWMAN**

**26 MARCH 2019**

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1. This statement provides a summary guide to accompany the publication of my report into the death of TARIQ SABRI MAHMUD.
2. The report records the outcome of a lengthy investigation and concludes the seventh case referred to me by the Secretary of State for Defence. It concerns a civilian death in Iraq on 11 April 2003. As with previous reports, the report has been published under my name and under a general title, “The Iraq Fatality Investigations”. This title has been adopted as a convenient generic reference for the legal process which has governed these Investigations.
3. The Mahmud report is notable in that it comprises the first Investigation into the death of a prisoner of war (PW) occurring in the combat phase of the war in April 2003.
4. The status and legal obligations owed by States to PW under international law have a well-recognised and developed history. Errors here can give rise to particular sensitivity.
5. PW should be efficiently identified to enable formal reporting of their death to the International Committee of the Red Cross and onward transmission of the death to the family of the deceased. The process adopted for the identification of the deceased has not satisfied me, according to any satisfactory standard of proof, that he has been accurately identified. Nor have I been able to satisfy myself through my own investigations seeking to ascertain his identity.
6. His death occurred in the course of a specialist mission undertaken by coalition forces (British, Australian and US) to transfer a total of 63 PW captured in the

desert behind enemy lines by Australian Armed Forces operating with one embedded member of the US Armed Forces. They were to be transferred by British Forces, using British helicopters, to a US controlled holding facility situated in the desert behind enemy lines.

7. The death of the PW has never been in question. The reporting of its occurrence lacked precision, leaving it open to the interpretation that he died not on the Chinook helicopter but after he had been handed over to the US military. This lack of clarity should not have made any difference to the UK military high command because on any basis it was clear that he was “unconscious” when handed over to the US forces and it should then have been clear that Permanent Joint HQ were under a legal obligation to order an investigation into what had occurred in the course of the short transfer flight in the UK helicopter.
8. Had there not been an anonymous telephone call to the RAF Police and to a national newspaper, some nine weeks later, in which grave allegations of violence to the PW were made, there would have been no investigation at all. These circumstances gave rise to a suspicion there had been a cover up by the senior chain of command.
9. The failure to order a prompt investigation seriously prejudiced any investigation into the cause of death. Without a post mortem or medical examination recording any injury he had sustained, there was no clear contemporaneous evidence of what happened to the deceased. I took oral evidence about what had happened during the course of the flight. It was asserted that a need arose to use force to physically restrain more than one PW in order to preserve the safety of the aircraft. I was not however able to establish causation in respect of which act of restraint caused the death of this individual, or whether, alternatively, death was caused by contact with the floor of the aircraft or by a combination of both.
10. There was no reliable objective material available to shed light on the degree of force which had been used. Within hours he had been buried by US Armed Forces, who did not carry out a detailed medical examination of him. He could

have been exhumed had PJHQ ordered an investigation before it became impractical to contemplate.

11. I received full and frank accounts from all those in high command. There were gaps in the documentary records and multiple layers of command to be mined in the search for relevant decision makers. I am satisfied that the decision not to order an immediate prompt investigation stemmed from erroneous legal advice being given. It was erroneous because it was tendered on the flawed basis that, since he died after he had been transferred to the US military, it was for them to carry out the required investigations. After all these years, it was not readily clear where the advice had come from and I concluded that it was not part of my remit to attempt by a collateral inquiry to identify the source. That can no doubt be done if it is thought to be appropriate.
  
12. I concluded that the failure on the part of the high command in PJHQ to order the required investigation had not occurred because of a deliberate cover up. That said, the facts disclosed a disappointing failure to apply the detailed analysis to which the case should have been subjected.

SIR GEORGE NEWMAN  
INSPECTOR