

The Iraq Fatality Investigations

Inspector: Sir George Newman

Guidance note for witnesses (#1)

What are these investigations?

The Government of the United Kingdom has set up the Iraq Fatality Investigations in order to examine the circumstances of the deaths of some Iraqi civilians who were allegedly killed by British soldiers in Iraq.

The investigations are led by ‘the Inspector’. His task is to ask witnesses to tell him of facts or events in their knowledge which will inform him of the circumstances in which death was caused. The Inspector must search for the facts. If the Inspector has asked you to tell him what you know, it is because he believes you can provide him with some of the facts for which he is searching.

If you have been asked to tell the Inspector what you know, you can be sure that he needs your assistance. You should be truthful and as accurate as you can be and tell him everything you know. He will not be so interested in being told by you what you have been told by others, but if you know of anyone who may be able to help the Inspector, you should tell him and if possible give him the name of that person.

The Inspector for the first two investigations is Sir George Newman, who is a retired judge. The Inspector will investigate the actions of the British soldiers in order to establish the circumstances in which the deaths of the Iraqi civilians occurred. He will then make any recommendations to the Government that he believes are necessary.

Why are these investigations taking place?

The following paragraphs are for the benefit of those who may be helping to explain matters to witnesses.

These investigations have been ordered by the Court in the United Kingdom in a court case called *Ali Zaki Mousa (No 2)*. The Court found that, in a number of cases where there had been no prosecution of the soldiers who were allegedly involved in deaths of Iraqi civilians,

there was a legal obligation on the Government of the United Kingdom to create an independent and public inquiry to investigate the deaths.

The Court stated that the Government would satisfy this legal obligation if it created a public inquiry which was modelled on a British ‘Coroner’s Inquest’. An inquest is a legal investigation held in public which establishes the circumstances surrounding a person’s death, including how, when and why the death took place. The ‘Coroner’ is in charge of the inquest and will reach a verdict on the circumstances of the death. An inquest is not like a criminal trial because the Coroner will not try to establish whether anyone was responsible for a person’s death. He will choose witnesses to give evidence and he will ask them questions but there is no prosecution or defence.

What will the procedure be in these investigations?

After the Inspector has gathered together all the evidence he can find, he will consider it and make his findings of fact. He will set these out in his written report.

The following is a summary of the procedure which will follow.

- The Inspector will examine all the relevant documents relating to the circumstances in which the deaths occurred. He will decide which documents should be made public on the investigations’ website – www.iraq-judicial-investigations.org.
- In order to make the investigations accessible to the family of the deceased and to the public, there will be public hearings. These will be held when the Inspector thinks it appropriate to bring a matter to public attention.
- The Inspector will decide which witnesses he wishes to hear evidence from and whether they should produce a written witness statement.
- If the Inspector thinks it is appropriate, he will then ask the witness to answer his questions in writing or he will ask the witness questions at a public hearing.
- The Inspector has a particular interest in receiving assistance on the facts from eyewitnesses, both Iraqi witnesses and soldiers who were present. Because it is not his job to decide questions of blame for a death, and because he is the person who must find the facts, only the Inspector or his assistant will ask questions of witnesses.
- The Inspector regards the relatives of the deceased to be ‘interested persons’. Being an interested person means that you have certain rights because you have a special

interest in the investigations. Witnesses, like interested persons, also require particular consideration from the Inspector. For example, they may need legal assistance to understand what they are being asked. Soldiers may need legal advice in order to understand what they are being asked to do and how what they do might affect them.

- There are many different ways in which the need for legal assistance may arise, but the Inspector wishes to ensure that the relatives of the deceased, and the soldiers and all witnesses should be able to participate in this inquiry and to assist the Inspector. The Inspector believes that, if a relative or witness in Iraq wishes to have assistance, the assistance of Iraqi lawyers will be ensuring that their interests and participation are protected. He anticipates that the soldiers may wish to instruct English lawyers.
- All interested persons have the right to suggest questions to the Inspector. They can also suggest issues that the Inspector should examine as part of his investigations.
- If a public hearing is going to take place, the Inspector shall inform the relatives of the deceased and all other interested persons about the hearing. Enquiries are currently being made about the possibility of using a videolink to Iraq.
- The Inspector will arrange for the relatives of the deceased to be informed of the progress of the public hearings by providing summaries in Arabic.
- It will not normally be appropriate for any interested persons, including relatives of the deceased, to be legally represented at a public hearing.

What would be the role of a lawyer in these investigations?

Where necessary, the role of a lawyer, whether acting for a relative of the deceased, an Iraqi witness or a soldier, can extend to the following:

- Explaining the nature of the investigations to the client;
- Explaining the rights of the client and the permitted degree of participation, as set out in the procedures above;
- Making any representations on behalf of the client to the Inspector in connection with the procedures for the investigations;
- Suggesting issues on behalf of the client that the Inspector should examine as part of his investigations;

- Advising the client and assisting them in relation to making a witness statement and/or answering written questions posed by the Inspector and/or advising generally in connection with the giving of evidence or the provision of documents to the Inspector.

For the soldiers, a lawyer's role will also extend to advice in connection with self-incrimination and generally other legal consequences which may be a cause of concern to the soldier.

What will happen at the end of the investigations?

The Inspector will produce a written report which sets out:

- 1) A narrative account of the circumstances in which the death in question occurred; and
- 2) Any recommendations that the Inspector decides are appropriate in order to prevent similar incidents occurring in the future.