



Ministry
of Defence

From: Ben Sanders, DJEP Assistant Head (Public Inquiries & Judicial Reviews Strategy)

MINISTRY OF DEFENCE

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Sir George Newman
Room C3/4
Headquarters London District
Horse Guards, London
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Our Ref: DJEP/GLOBAL ISSUES/QUASI-INQUESTS

Date: 23 December 2015

Dear Sir George,

CONFIRMATION OF APPOINTMENT

On 27 January 2014 the Secretary of State for Defence wrote to appoint you to conduct such fatality investigations as the Ministry of Defence assigns to you from time to time with your agreement.

In accordance with the Secretary of State's decision that the establishment of such fatality investigations should be delegated to the Directorate of Judicial Engagement Policy, I am writing to confirm your appointment as Inspector in a fourth fatality investigation. This relates to the death of Ahmed Jabbar Kareem Ali. The terms of reference are annexed to this letter.

It was alleged that on 8 May 2003, Ahmed Ali was arrested together with other Iraqis by UK Forces, that he was beaten and forced to swim a river, that he was unable to swim due to his injuries, and was dead when he was pulled from the river. Four soldiers were charged with his manslaughter, and were acquitted at a Court Martial. The case was referred to the European Court of Human Rights, which concluded that the initial Service Police investigation and Court Martial proceedings did not discharge the procedural requirements of an investigation under Article 2 of the European Convention on Human Rights.

The Iraq Historic Allegations Team (IHAT) has conducted an investigation into this incident but was unable to find new and compelling evidence. In the absence of such evidence, the first limb of the test for ordering a retrial under Article 10 of the Armed Forces (Retrial for Serious Offences) Order 2013 is not met. Consequently, there is no realistic prospect of a fresh prosecution in this case.

As the Divisional Court emphasised, your investigation should be conducted expeditiously, proportionately, and economically. You are to produce and publish a report of your findings.

You will be paid a daily rate (or part thereof) equivalent to the scale of remuneration currently payable to a High Court Judge.

I am most grateful to you for accepting this responsibility.

Yours sincerely,

Ben Sanders

ANNEX A: TERMS OF REFERENCE

The Scope of the Investigation.

1. The investigation into the death of Ahmed Jabbar Kareem Ali on 8 May 2003 ('the death') is to be conducted to establish the relevant facts and accountability for the death, thereby discharging the positive obligations of the State pursuant to Article 2 of the European Convention on Human Rights.
2. The investigation must be accessible to the family of the deceased and to the public, thereby bringing the facts to public scrutiny.
3. The investigation should look into and consider the immediate and surrounding circumstances in which the death occurred.
4. The investigation should encompass the wider circumstances of the death, including the instructions, training, and supervision given to the soldiers involved.
5. Where facts are found in connection with the instructions, training and supervision given to the soldiers, consideration should be given to whether it is proportionate or necessary to make recommendations on the issues raised taking into account the extent to which the issues raised have already been considered by the Ministry of Defence or other inquiries.
6. The investigation is to be conducted so as to bring to light all the facts, including failures on the part of the State and facts from which such failures could be properly inferred.

The Conduct of the Investigation.

7. The procedure and the conduct of the investigation are to be such as the Inspector may direct so as to achieve the aims and purposes set out above and to comply with the terms of the Court's judgements, Orders and directions.
8. The Inspector will draw up and publish the procedures which are to be followed to progress the investigation, and so far as appropriate conduct the investigation in accordance with the published procedures established in previous investigations. In this regard he will follow the guidance given by the Court about the extent to which legal representation will be necessary, the questioning of witnesses and the opportunity to be given to the next of kin to raise lines of inquiry.
9. The Inspector will from time to time consider and keep under review the need for procedures to be made public in connection with any of the aims and purposes of the investigation.
10. The Inspector has the power to require any person or organization to provide evidence in writing, to produce relevant material in their possession or control and to attend a public hearing to give oral evidence.
11. The Inspector is to commence his investigation by considering all the relevant documentation in the possession of the Ministry of Defence and any relevant

information emanating from the Iraq Historic Allegations Team (IHAT) and Service Prosecution Authority.

12. Having considered all the documents which are to be supplied to him and any further documents or information which he may have requested the Inspector will decide what needs to be disclosed to interested persons, the next of kin of the deceased or the public to enable the investigations to be accessible and subject to public scrutiny.
13. Where the Ministry of Defence considers publication or disclosure would be damaging to national security, international relations of the State, or the safety of any individual it shall bring its considerations to the notice of the Inspector who, having heard such representations from the Ministry as may be necessary, will determine the extent to which publication or disclosure is required in order achieve the aims and purpose of the investigations.
14. At the conclusion of an investigation the Inspector will produce a written report which sets out:
 - a) a narrative account of the circumstances in which the death occurred; and
 - b) any recommendations he has decided to make.
15. The report will not be concerned to determine or address any person's criminal or civil liability. But the investigations are not to be inhibited by the likelihood of liability being inferred from the facts found or recommendations made.