



Ministry
of Defence

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4.7.7

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Dear Sir George

I am writing to appoint you to conduct such fatality investigations as shall be assigned to you from time to time, with your agreement, by the Ministry of Defence and to report to me on your findings. The first two of these will relate to the deaths of Naheem Abdullah on 11 May 2003 and Hassan Abbad Said on 2 August 2003. The terms of reference are set out in the annex to this letter.

As the Divisional Court emphasised, the proceedings should be conducted expeditiously, proportionately and economically.

The Ministry of Defence undertakes to provide you with all relevant documentation in its possession or control. Notice will be given to you where it is considered disclosure or publication would be damaging to national security, the international relations of the State or the safety of any individual. Where it is necessary to make use of such material, you will consider how best to avoid giving rise to this damage, for instance by gisting rather than reproducing verbatim that information.

Your reports should be sent to me in confidence. I will arrange for their publication as quickly as possible on a date to be agreed with you.

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.

*Your sincerely
Philip Hammond*

THE RT HON PHILIP HAMMOND MP

Sir George Newman
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ANNEX B: DRAFT TERMS OF REFERENCE

The Scope of the Investigations.

1. The investigations in to the death of Naheem Abdullah on 11 May 2003 and the death of Hassan Abbad Said on 2 August 2003 ('the deaths') are to be conducted so as to ensure that, so far as possible, the relevant facts are fairly, fully and fearlessly investigated thereby ensuring the effective implementation of the right to life and accountability for the deaths and discharging the positive obligations of the State under Article 2 Of the ECHR.
2. The investigations must be accessible to the victims' families and to the public, thereby bringing the facts to public scrutiny.
3. The investigations should look into and consider the immediate and surrounding circumstances in which the deaths occurred.
4. Where circumstances demand it the investigations should extend to the instructions, training, and supervision given to the soldiers involved in the circumstances in which the deaths occurred.
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 those issues have already been considered by the Ministry of Defence or other inquiries.
6. The investigations are 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. 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.
7. The investigations and the report will not be concerned to determine or to consider any person's criminal or civil liability.
8. The Inspector shall have the power to compel 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.

The Conduct of the Inquiry.

9. The procedure and the conduct of the investigations 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. He 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 investigations. In particular the Inspector will decide whether both investigations, or any stage of them, can be conducted at the same time.
10. The Inspector is to embark on his investigations 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). 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 disclosure is required in order to achieve the aims and purpose of the investigations.

11. 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.
12. Having implemented the steps set out in paragraph 10 the Inspector will draw up and publish the procedures which are to be followed to progress the investigations. In this regard he will follow the guidance given by the court in connection with the extent of legal representation likely to be necessary, the questioning of witnesses and the opportunity to be given to the next of kin to raise lines of inquiry.
13. 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.

ANNEX C: THE CASES TO BE INVESTIGATED

Hassan Abbad SAID

Mr SAID died on 2 August 2003. He was part of a group accompanying a cart carrying what appeared to be mines, and who were stopped by soldiers from 1st Battalion, the King's Regiment battle group. Mr SAID fled and was pursued and cornered by two soldiers – S009 and S008. He resisted attempts to handcuff him, during which S009 fired a single shot, killing him.

The Royal Military Police (RMP) investigated the incident, following which S009 Commanding Officer dismissed a murder charge against him. This prevented his being prosecuted by court-martial. However, given the nature of the allegations, the case was referred to the Crown Prosecution Service. The Metropolitan Police reviewed the case, and on 7 September 2004 the CPS decided to prosecute him for murder.

The case hinged on whether or not S009 had acted in self-defence. Despite conflicting evidence from S009 and S008 the CPS decided that further evidence regarding the dangers faced by British forces in Iraq in 2003 meant that there was no realistic prospect of conviction. Consequently, the Crown offered no evidence in the trial at the Old Bailey, and a formal verdict of not guilty was returned on 7 April 2005.

There is no prospect of further prosecution in relation to this incident.

Naheem ABDULLAH

Mr ABDULLAH died as a result of an altercation with soldiers from the Parachute Regiment, who were on patrol near Al-Uzayr in Maysan Province, south-east Iraq, on 11 May 2003.

Between 1500 and 1600 hours the soldiers stopped a white pick-up truck, which had avoided a vehicle checkpoint, and ordered the driver and passengers out of the vehicle. They resisted, and the soldiers forcibly removed them. The situation degenerated and some of the soldiers struck the occupants of the vehicle with their rifle-butts, helmets, fists and feet, inflicting serious head injuries on Mr Abdullah, and minor injuries on four others (Atheer Fenjan SADDAM, Dalal Fenjan SADDAM, Kazeem Khaif Tema IL-MAHAMADAWI and Sougheir Khalaf Toama IL-MAHAMADAWI). Mr ABDULLAH died of his injuries in hospital in Al-Amarah. At no point was he in the formal custody of British forces.

The incident was investigated by the RMP, who submitted their final report on 6 July 2004. Seven soldiers were charged with murder and violent disorder, and were tried jointly before a court-martial, which commenced in Colchester on 12 September 2005.

As there was insufficient evidence to determine which individual(s) had struck the fatal blow, the prosecution case hinged on whether the soldiers had used lawful and proportionate force to effect compliance with their instructions, and whether all of the soldiers were part of a criminal joint enterprise.

On 3 November 2005 the Judge Advocate General (JAG) dismissed the charges on the grounds that there was no case to answer, and directed the court-martial board to return a not guilty verdict. The JAG made a number of comments about the evidence in the case, and criticisms of the investigation.

Following the acquittal the Adjutant General undertook an immediate review of the case. This sought to address the shortcomings in the original investigation, and to make recommendations. As part of this review the Adjutant General received reports from the Provost Marshal (Army), which concluded that a number of the JAG's criticisms had been unfair, and from the Service Prosecuting Authority (SPA).

There is no prospect of further prosecution in relation to this incident.