



Ministry
of Defence

From: Ben Sanders, DJEP Deputy Head (Public Law & Historic
Investigations)

MINISTRY OF DEFENCE

3rd Floor, Zone H, Main Building, Whitehall, London, SW1A 2HB

Email: ben.sanders340@mod.gov.uk

Telephone 020 721 81101

Sir George Newman
Room C3/4
Headquarters London District
Horse Guards, London
SW1A 2AX

Our Ref: DJEP/GLOBAL ISSUES/QUASI-INQUESTS

Date: 15 February 2018

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 an eighth fatality investigation. This relates to the death of Saeed Radhi Shabram Wawi Al-Bazooni. The terms of reference are annexed to this letter.

On 23 May 2003, three soldiers from 32 Royal Engineer Regiment on the dockside by the Shatt al Arab river observed and detained two Iraqi men on suspicion of stealing electrical cables. Mr Al-Bazooni ended up in the water and drowned. The incident has been investigated by the Royal Military Police and, following a case review, by the Iraq Historic Allegations Team. Although the police on both occasions considered that the evidential sufficiency test had been met, no-one has been charged and no prosecution has been brought as the available evidence leaves unresolved the significant conflict between the accounts of the Iraqi and military witnesses as to whether Mr Al-Bazooni entered the water voluntarily.

I am also writing to advise you that the decision not to prosecute in this case removes the earlier obstacle to your investigation of systemic issues that contributed to the death of Ahmed Jabbar Kareem Ali, and to request that you now resume that wider investigation.

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 Saeed Radhi Shabram Wawi Al-Bazooni on 23 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 Royal Military Police Special Investigations Branch (RMP SIIB), 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 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.
14. 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 to achieve the aims and purpose of the investigations.
15. 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.
16. 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.

