

**In the matter of an investigation into the death of
Mr Saeed Radhi Shabram Wawi Al-Bazooni**

Inspector: Baroness Heather Hallett

RULING ON PUBLIC HEARINGS

When first appointed as the Inspector in August 2019, my original intention was to take into account all the relevant written material including statements from witnesses and to hold public hearings to hear evidence from Munem Auda (MA) and three of the soldiers. These four were the only significant witnesses to the incident who were still alive, then apparently available to give evidence and whom I considered there may be evidential value in questioning further regarding the incident. However, in February 2020 I received medical reports from two expert forensic psychiatrists that two of the soldiers, SO70 and SO71, would be unable to assist the investigation by giving evidence. The experts also suggested that the mental health of the soldiers would suffer if I continued the Investigation. I concluded that, under the circumstances, it would not be reasonable or proportionate to call evidence from either and that I could conduct an effective investigation consistent with the Article 2 duties of the State without doing so ([see Public ruling dated 13 March 2020](#)). Furthermore, I decided that it would be in the best interests of all the soldiers, MA and the family of the deceased if I pressed ahead with the Investigation and concluded it as soon as possible.

I invited MA and the other soldier, SO72, to give evidence at a public hearing with the aim of producing my report by Summer 2020. All the arrangements were in place for the hearings at the Rolls Building on 17 and 18 March 2020. Unfortunately, the coronavirus pandemic meant it proved impossible to call MA and, despite my decision to grant him anonymity and to deploy special measures for his evidence, SO72 decided at late notice he would not attend. He stated that he had nothing to add to his previous statements. Therefore, I had no option but to postpone the hearings.

I was advised that I may apply to the High Court for a witness summons to compel SO72 to give evidence at a future hearing. However, it is now 17 years after the incident. SO72 was not asked to make a statement to investigators until June 2004, and thereafter he was investigated several times for the possible offence of manslaughter. He made a statement to the IFI dated 30 January 2020, which states that he destroyed any material relating to the incident in his possession on legal advice following the decision not to prosecute him taken at the Formal Preliminary Enquiry in 2006. He could provide the IHAT

investigation in 2015 with no further information and relied upon his better memory of events when first asked about the incident in 2004. He explained to my Investigation that he finds the whole process of investigation and reinvestigation traumatic. I do not find that surprising and it is no doubt in his best interests also that this investigation is concluded.

In those circumstances, I have reached the firm conclusion that calling him would not add to his written accounts given in 2004 and to my Investigation, and that I can conduct an effective investigation without taking his oral evidence publicly. It would be unnecessary and disproportionate therefore to make an application to the High Court.

Since it is uncertain when it will be possible to rearrange a hearing via a video link from Iraq, I then had to decide whether I could conduct an effective investigation consistent with the Article 2 duties of the State without hearing oral evidence from MA. I concluded that it was.

MA was first interviewed on 29 May 2003 within days of the incident. He has been interviewed on several occasions since and I have seen a video recording of the scene accompanied by his explanation of what he says happened. He was also examined and cross examined at the Formal Preliminary Enquiry in 2006. He has also provided a witness statement to my Investigation. He has had ample opportunity to provide a full account of the day and I considered it highly unlikely that I would be assisted further by giving him yet another opportunity 17 years later.

In addition, I have the advantage of a considerable quantity of material gathered by various investigators. I am satisfied that on the basis of all that material and the material gathered by the IFI that I have conducted as effective an investigation that is possible 17 years after the event into the death of Saeed Radhi Shabram Wawi Al-Bazooni, in accordance with the State's Article 2 duties. Accordingly, although it may not seem an ideal solution, given the circumstances and the need to conclude the Investigation as soon as reasonably possible, I intend to reach my conclusions solely on the papers.

I should add that I circulated the above ruling in draft to the parties inviting any submissions on my proposed conclusions. The legal representative acting for MA and the family of Saeed Radhi Shabram Wawi Al-Bazooni expressed the disappointment of their clients at my proposed course of action but did not seek to dissuade me from it.

The response from the legal representatives on behalf of SO70 and SO71 suggested that an "escalated timetable" (namely one without public hearings) is "relevant to the risk posed" to their client's mental health.

They argued that the “concerns arising from the medical evidence served do not support simply concluding these proceedings as quickly as possible but rather question whether the proceedings should continue at all in light of risk of suicidal intent, which takes into account the continual reinvestigation over many years”.

I have already ruled on this issue. The only new factor is the escalated timetable. In my view there is no basis in the reports for the assertion that continuing with the investigation on an “escalated timescale” would have an adverse effect on the mental health of the soldiers, over and above that I have already considered. On the contrary, I remain of the firm opinion that the sooner this investigation is completed the better for all.

The parties were so informed and also told that they would receive my final report in draft before publication and that I would consider all the material before me except the statements of those witnesses deemed unreliable by Sir George Newman, as agreed with the parties in October 2019. I still hope to complete my report by the summer of 2020.

Baroness Heather Hallett

11 May 2020