



Ministry  
of Defence

From: Dr. Benjamin Sanders, DJEP Deputy Head (Public Law & Historic Investigations)

**MINISTRY OF DEFENCE**

3<sup>rd</sup> Floor, Zone H, Main Building, Whitehall, London, SW1A 2HB

Email: [ben.sanders340@mod.gov.uk](mailto:ben.sanders340@mod.gov.uk)

Telephone 020 721 81101

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Baroness Hallett  
Iraq Fatality Investigations  
(By email)

Our Ref: DJEP/GLOBAL ISSUES/QUASI-INQUESTS

Date: 4 November 2020

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Dear Lady Hallett,

**CONFIRMATION OF APPOINTMENT**

On 7 August 2019, the Secretary of State for Defence asked you to conduct such fatality investigations as the Ministry of Defence assigns to you from time to time with your agreement.

Further to my email of 21 August 2020, to which your team responded on 4 September, I now write to confirm your appointment as Inspector in a ninth fatality investigation. This relates to the deaths in custody of Radhi Nama and Mousa Ali. The terms of reference are attached to this letter.

On 8 May 2003, Mr Nama was arrested at his home by soldiers from the 1<sup>st</sup> Battalion, Black Watch (1BW) and taken to Camp Stephen for questioning. He was not the target of the arrest operation, which had been conducted with the intention of arresting his son, who was suspected of involvement in criminal activity. Mr Nama died within two hours of arriving at Camp Stephen, was pronounced dead by the Company medic, and transported to the morgue of a nearby hospital. Despite this, his family were informed on 10 May that he was in hospital following a heart attack.

On 13 May 2003, Mr Ali and his son were arrested at the family home by soldiers from 1BW and taken to Camp Stephen for questioning. They were not the targets of the arrest operation, which had been conducted at a nearby property with the intention of arresting a high-value target. The search was extended to their home after a suspect was seen fleeing over the roofs. Mr Ali died within seven hours of arriving at Camp Stephen, and was transported to a hospital morgue.

Both incidents were investigated by the Royal Military Police in theatre, and, following a case review, a further investigation was commenced by the Iraq Historic Allegations Team (IHAT) and completed by Service Police Legacy Investigations (SPLI). This reinvestigation concluded that both Mr Nama and Mr Ali had been subjected to systemic ill-treatment, including physical assaults, being forced to maintain stress positions, and being forced to carry out strenuous physical exercise.

There was insufficient evidence to charge any individual with their deaths, but the SPLI referred three people to the Director of Service Prosecutions for offences connected with

the ill-treatment of Mr Nama, Mr Ali, and other persons at Camp Stephen, namely: commission of an outrage upon personal dignity; failure to exercise command responsibility; and, threats to kill. No-one has been prosecuted for any offence arising from these incidents, as the evidence was assessed not to establish a realistic prospect of conviction.

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 Lord or Lady Justice of Appeal.

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 deaths of Radhi Nama on 8 May 2003 and Mousa Ali on 13 May 2003 ("the deaths") is to be conducted to establish the relevant facts and accountability for the deaths, 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 families 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 deaths occurred.
4. The investigation should encompass the wider circumstances of the deaths, 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 (MOD) 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 that 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 they 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 their investigation by considering all the relevant documentation in the possession of the MOD and any relevant information emanating from

the Royal Military Police Special Investigations Branch, Iraq Historic Allegations Team, Service Police Legacy Investigations, and Service Prosecution Authority.

12. The Inspector will consider all the documents that are to be supplied to them and any further documents or information which they may have requested, and then 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 their investigation, they will consider whether they should receive representations in connection with that risk.

14. Where the MOD 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 MOD 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 that sets out:

- a) a narrative account of the circumstances in which the deaths occurred; and
- b) any recommendations they have 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.