



The Iraq Fatality Investigations

Transcript of Iraq Fatality Investigations Directions Hearing 27 April 2022

Inspector/Chair: Baroness Hallett

Counsel to the Inquiry / Inquiry Team: Natasha Jackson (NJ), Richard Bottomley, Phil Judd, Katharine Bailey, Celine Al-Asadi.

Legal representatives: Matthew Barlow (MB), Lewis Cherry (LC), Hilary Meredith (HM), Zainab Al Qurnawi, Caroline Clements, Jade White.

UK Government Ministry of Defence: Harry Darnell

Start time: 10:34AM

End time: 11:12AM

Baroness Hallett:

1 Good morning to everyone. If anybody has any problems with the connection, in the chat box they
2 will find Celine's email address. If they contact her, she will do her best with Katharine's help to get
3 people online appropriately. I am going to start with an introduction. I will then invite any questions
4 or comments from those attending this morning. Could I ask that everybody please stays on mute until
5 they are invited to speak.

6 May I begin with the introduction. I was appointed to conduct an independent investigation into the
7 deaths of Radhi Nama and Mousa Ali on the 4 of November 2020 and that is when the terms of
8 reference were settled. The deceased were both Iraqi civilians who died shortly after their detention
9 at the British military base in Basra known as Camp Stephen in May 2003. Given the factual similarity
10 between the two incidents, some overlap in personnel involved and also the fact that they happened
11 within a week of each other I decided to investigate and report upon the two deaths together. I was
12 also appointed to complete the investigation into the death of Ahmed Jabbar Karim Ali part one of
13 which was concluded by my predecessor the late Sir George Newman in September 2016. Part II of
14 that Investigation arises out of suggestions there was an alleged practice of wetting to deter looters
15 by forcing them into water. As I indicated in my Outline Statement of the 3 of November 2021 I decided
16 to complete my Investigation into the death of Saeed Radhi Shabram Wawi Al-Bazooni before
17 returning to this investigation given that the Shabram Investigation concerned the death by drowning
18 in the presence of British military personnel and may have had a bearing on the Ali Part II Investigation.
19 Now that I have concluded the Shabram Investigation it is in my view possible to conclude the Ali Part



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20 II Investigation and I decided to investigate and report on Ali Part II at the same time as investigating
21 and reporting on the deaths of Radhi Nama and Mousa Ali for the reasons set out in my first Outline
22 Statement.

23 However, in December 2021 I was appointed by the Prime Minister to Chair the Covid 19 UK Public
24 Inquiry and the burdens of that role mean that I shall have to relinquish my role as Chair of the Iraq
25 Fatalities Investigations. I hope that my successor will be appointed shortly. In the meantime, the IFI
26 team has been continuing to prepare cases for hearing. I should like to thank those witnesses who
27 have agreed to assist the Investigation and their legal representatives attending today on their behalf.
28 If any of you wish to speak when I have concluded this opening statement, please use the raise your
29 hand function and state who you are and whom you represent. The team are always available to you
30 if you have any questions after this hearing. This is a public hearing technically albeit it is being
31 conducted remotely; it is being recorded. We aim to publish a transcript on the website of the relevant
32 parts both in English and Arabic so that those interested in this country and those interested in Iraq
33 can follow what has happened. I ask that no reference is made to confidential information. If you feel
34 that is necessary, please notify us first.

35 The purpose of this hearing is first and foremost to set out a proposed timetable for the taking of
36 evidence and to address matters relating to anonymity. But, given recent press reports I wanted also
37 to take this opportunity to say something about the general purpose of the Iraq Fatality Investigations
38 and also its powers to set the record straight. As far as the purpose is concerned this was set out by
39 my predecessor Sir George in his remarks of the 14 of May 2019 when he gave directions for the
40 Shabram Investigation. In summary he observed: 'it is well-known that from time to time and for a
41 variety of reasons, a need for historic investigation arises. They are an established part of a quest in
42 accordance with the rule of law for open accountability and justice'. It is acknowledged that revisiting
43 events after such a long passage of time can be very stressful for all those involved. But, both he and
44 I were given the task of conducting these Investigations to fulfil the State's duty under Article 2 of the
45 European Convention of Human Rights. Article 2 concerns the Right to Life, as all those here present
46 will know, and it places a procedural obligation upon the State to investigate where a death may have
47 resulted from the State breaching its duty to protect the deceased. If a person dies in the care of the
48 State within the territory of the UK, for example, during arrest or search or at a police station, there
49 will be an Article 2 inquest under the Coroners and Justice Act 2009 , if the death may have been
50 caused by non-natural or violent causes. The inquest would investigate the facts and circumstances
51 by which the person died and identify any lessons learned that may prevent future deaths. The State's



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52 investigatory obligations under Article 2 have been found by the Courts to extend to civilian deaths in
53 Iraq involving British military personnel during the period of occupation following the war. These
54 Investigations were set up by order of the Divisional Court in *Ali Zaki Mousa (No 2)* [[2013] EWHC 1412
55 (Admin)] and they are designed fulfil that obligation. Our task is not to establish criminal or civil liability
56 but to establish the facts and wider circumstances of the civilian deaths we are appointed to
57 investigate. My Outline Statement of the 3rd of November 2021 sets out my current view on the scope
58 of the Investigations. The Investigations may also fulfil an important role for the families of the
59 deceased who are entitled to a full and fearless inquest into what happened to their loved one.

60 An article was published last weekend in the Telegraph newspaper that names a particular individual
61 and links them to this Investigation. In the article comments are made that could give rise to a
62 misunderstanding of what the Investigations are about, how they are handled and if not corrected,
63 may also risk damaging their progress. The article referred to an individual being “dragged into the
64 inquiry”. Further it referred to a letter sent to this individual by the IFI in which it was stated that “a
65 refusal to help the inquiry without good reason could lead to a High Court order requiring a witness
66 to attend a public hearing or provide a statement. If you fail to comply with that order you may be
67 liable to a fine or prison sentence”. I wish to emphasise that the powers to which reference was made
68 are the powers of the High Court. They are not the powers of the IFI. The IFI is not a statutory inquiry
69 and the Chair of the IFI does not have the power under the Inquiries Act to compel witnesses to
70 participate in the investigations. The way the IFI operates is to invite cooperation, evidence and the
71 attendance of witnesses. The only power the Chair of the IFI has, by reference to the requirements of
72 Article 2, is to seek an order of the High Court to compel the cooperation of a witness. Obviously, I
73 cannot bind my successor, but it is important to note that to date no Chair of the IFI has sought to use
74 that power. The Investigations have operated with the cooperation and assistance of witnesses and
75 High Court orders have never been sought.

76 The article also makes repeated reference to IHAT which was shut down in 2017. The IFI Investigations
77 are both in principle and practice distinctly different from the IHAT Investigations in that the IHAT
78 Investigations considered criminal liability. I repeat these Investigations do not determine civil or
79 criminal liability. They are legally required to take place to discharge the State’s procedural obligations
80 under Article 2 and for the benefit of the family members of the deceased.

81 May I now turn to the progress that the team have made so far. Since my Outline Statement we have
82 been able to contact and secure the cooperation of a number of potential witnesses. My team have
83 encountered not inconsiderable difficulties, however, in making contact with some military and



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84 civilian witnesses. Those difficulties are totally understandable given that nearly 20 years have passed
85 since the incidents under investigation took place. Many military witnesses are no longer serving or in
86 contact with the MOD. Some of those represented today have only recently been contacted by the
87 team and I am particularly grateful to their representatives for making themselves available at short
88 notice. For those witnesses whom we have not yet managed to contact we are continuing to exhaust
89 all reasonable and proportionate steps to identify them, locate them and invite them to engage with
90 us. Similar issues have also arisen in locating and securing the engagement of potential civilian
91 witnesses (all of whom in these Investigations are Iraqi). I am grateful to QC Law for their considerable
92 assistance in contacting witnesses as well as offering representation. One of the potential witnesses
93 and a very important witness for these Investigations is Mr Mousa Ali's son. He was also a potential
94 witness to events but having previously expressed a willingness to cooperate with these Investigations
95 he has now declined to do so. I would like to state publicly that should he change his mind the
96 invitation to assist the Investigation remains open to him.

97 I turn to anonymity. I have received and granted several applications for anonymity from the majority
98 of those witnesses represented at this hearing. Those who have not yet applied have indicated they
99 may do so and I am very happy to receive their applications. My reasons for granting anonymity can
100 be stated in very general terms. This is a public Investigation and I am acutely conscious that the
101 starting point is usually the principle of open justice. The public press and media should have full
102 access so far as reasonable and practical. However, that must be balanced against other interests.
103 Many military and ex-military witnesses have real concerns about their being named as part of
104 investigations for a variety of reasons. These are investigations into historic events; many of the
105 witnesses have been involved in previous investigations and since that time have moved on with their
106 lives. Some suffer from Post-Traumatic Stress Disorder as a result of their service and their experiences
107 and they would experience significant additional distress and difficulty if named publicly. In other
108 cases, I have been satisfied there may be risk to personal safety given the current circumstances of
109 the witness. Furthermore, because the Investigations are not concerned with establishing individual
110 liability of anyone involved but with establishing the facts and wider circumstances it is my current
111 view that the Investigation can reach its conclusions without specifically naming the individuals to
112 whom I have granted anonymity. Open justice was the starting point but in these circumstances, I feel
113 that justice can be properly served without specific naming of those individuals. Although some
114 witnesses have yet to make an application for anonymity the IFI has preserved the anonymity
115 temporarily of all military and ex-military witnesses as a provisional measure and that will remain in



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116 place until such time as we have received (and the Chair has considered and ruled) on all requests for
117 anonymity. If a witness does not wish to be protected by anonymity, I would therefore be grateful if
118 they could confirm their position. The effect of an anonymity order, obviously, is that the individual
119 may not be named in the public domain. Witnesses who have been granted anonymity specifically will
120 be assigned a cipher and that will be used to refer to them in any public hearings or publications. The
121 press should not report the names of those to whom anonymity applies and I request that the identity
122 and privacy of individuals is respected. Should a witness seek to disclose their own identity publicly to
123 the media or otherwise, I cannot stop them from doing so. But if they have applied for and been
124 granted anonymity I would be grateful for prior notification coupled with an explanation as to why,
125 having applied for and been granted anonymity, they have sought to remove it. If the identity of a
126 witness has already entered the domain in connection with these Investigations, possibly at the
127 instigation of the witness themselves, the media may wish to make representations to the Chair of
128 the Investigations on their freedom to report.

129 I am now going to turn to disclosure and evidence.

130 The IFI team is in the process of providing confidential disclosure to witnesses. They are in direct
131 contact with the witnesses so far traced and they hope that almost all of those whose representatives
132 are attending this morning will receive disclosure in the next week or so. At the moment, disclosure
133 will be limited to their own previous accounts and certain other selected documents. It should not
134 involve a very considerable amount of work to consider those documents. Once they have received
135 disclosure, we will ask witnesses to provide a written statement signed by a statement of truth in
136 which they set out a narrative account of matters relevant to the Investigations. Obviously, events
137 occurred a very long time ago and everyone is aware of the difficulties that witnesses will have,
138 particularly if they are currently suffering PTSD. That is why they will be able to refresh their memory
139 from any previous account before providing a narrative statement. They will also be given a
140 comprehensive list of questions to address in their evidence. If the witness feels that there is
141 additional information that might be helpful and they wish to add, they are very much invited to add
142 it. Although witnesses may refer to their previous accounts to refresh their memories, we ask them
143 to produce a witness statement that operates as a free-standing document to the IFI. This approach
144 is intended to help the witnesses to give the best evidence they can to the Investigation and it is
145 designed to enable those who do suffer from conditions like PTSD or from distress to engage fully with
146 us. The team is available to anybody who has questions about the process and if there are any possible
147 adjustments we could make to the process, on an individual basis, please let the team know.



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148 Now timetabling. I am mindful of the need to conclude this Investigation effectively and expeditiously
149 for the benefit of the families of the deceased but also for all the witnesses involved. The deaths
150 occurred I repeat in 2003 and it is a very long time ago. The team therefore hope to that it will be in a
151 position to publish the Chair's final report on the Investigations by no later than November 2022. If
152 that is going to be achieved a relatively tight timetable is required. I know that the parties'
153 representatives have not yet had the opportunity to review disclosure and to take instructions. But
154 because the pre-statement disclosure is so limited, we hope it can be done expeditiously. If there are
155 any problems, requests for extended time will be entertained. The present intention subject to hearing
156 submissions is to request statements to be provided by 1 June 2022 thereby allowing over four weeks
157 from disclosure to take instructions but I will receive submissions on that timetable in a moment.
158 I would also like to take this opportunity provisionally to schedule public hearings for the week
159 commencing 4 July 2022. It will obviously depend on the commitments of my successor and my
160 successor will confirm the arrangements and timetabling once they have been appointed. I hope that
161 makes the position clear especially for those of you who have only recently become involved with the
162 IFI Investigations. I am very happy to receive any questions or comments at this stage. Does anybody
163 attending have anything they wish to ask or to raise? Do not worry if you do not raise them now you
164 can always email the team and raise them in that way.

MB:

165 I have a question, my Lady.

Baroness Hallett:

166 Yes. If you could please state your name and whom you are representing.

MB:

167 My name is Matthew Berlow I am a Scottish criminal lawyer and I represent X and Y. My understanding
168 is that the International Criminal Court have an interest in the proceedings. I am aware that these are
169 not adversarial proceedings. However it is my opinion and I have sought advice from counsel that
170 because my clients are not regular witnesses but witnesses/suspects or witnesses/ former suspects.
171 Although the International Criminal Court has specifically stated that they will not seek to use any
172 information from the Inquiry, bearing in mind that these men are still potential suspects and there is
173 the threat of prosecution potentially still hanging over them I don't feel that I could properly exercise
174 a duty of care to them or properly advise them unless I have had sight of some substantive disclosure
175 in relation to previous investigations. There is mention of the IHAT investigation. There were
176 substantial investigations into these gentlemen and a report was transmitted to the Service



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177 Prosecution Authority. Now although they decided not to take any action and there are no
178 proceedings domestically there is still the threat of proceedings against them in an international
179 context. The effect is that I do not feel I can properly advise these gentlemen without sight of some
180 substantive disclosure from the investigation. I was wondering whether that would at some point in
181 the future become available.

Baroness Hallett:

182 Mr Berlow, as a former criminal lawyer myself, I totally understand your concerns and you are
183 absolutely right that there has been interest internationally in these investigations. My report into the
184 death of Saeed Radhi Shabram Wawi Al-Bazooni was considered by the then Chief Prosecutor at the
185 International Criminal Court and was satisfied that the UK had conducted as thorough an investigation
186 as it could so long after the death. On that basis, the ICC Prosecutor decided to do nothing further in
187 relation that that death. So I do very much understand your concerns and obviously the concerns of
188 your lay clients. Essentially, disclosure is limited at this stage because we were hoping the witnesses
189 would be able to give a narrative of what they can remember refreshed by the accounts they have
190 given before. But I will certainly consider with the team your question about when fuller disclosure
191 would be possible.

MB:

192 Thank you my Lady. Can I also add that I think we can distinguish my clients from perhaps other
193 witnesses in the Inquiry. There are witnesses to this Inquiry who had a role in events but some
194 witnesses had more of a direct role. For example witnesses may have been involved simply with the
195 transport of prisoners or the care of prisoners. But my clients in particular seem to have been treated
196 as suspects in the deaths of the Iraqi gentleman concerned in the Inquiry. So it is just to add to my
197 concern that they are more than just regular witnesses. Thank you.

Baroness Hallett:

198 I very much take your point Mr Berlow. Thank you for that and as I said I will talk to the team about
199 your point. We need to try to get things moving and keep to the timetable because as I am sure
200 everybody understands having this matter hanging over people is no good for anyone.

MB:

201 Can I assure my Lady that if fuller disclosure is made for example the package that IHAT passed to the
202 Service Prosecution Authority then I will endeavour to have that looked at within the timetable.

Baroness Hallett:

203 That is extremely helpful Mr Berlow. Mr Cherry, I think you have got your hand up.



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LC:

204 I am my Lady good morning. I am Lewis Cherry and I am currently representing one of the people who
205 was also reported for prosecution along with Mr Berlow. At the IHAT stage I represented another
206 person but he has not yet contacted me but that may follow. My concern my Lady is very similar to
207 Mr Berlow's as you will understand and I wonder if consideration had been given to what took place
208 in the Baha Mousa Inquiry where my client gave anonymised evidence at that point in relation to
209 matters that touch and concern your Lady's Investigation. We received at that point a letter of comfort
210 effectively one from the Attorney General and one from the Director of Service Prosecutions indicating
211 that any evidence my client might give would not be used against him. My client is still serving and he
212 has received a letter from Director of Service Prosecution telling him that no prosecution would be
213 brought but if any further information came to light the matter would be reconsidered. Clearly you
214 will be well aware of why a comfort letter of that type might be of assistance and if it has been given
215 consideration if not then if it could it be given consideration my Lady.

Baroness Hallett:

216 Yes of course. I think the point is slightly different from that Mr Berlow was making. Mr Berlow's
217 concern is with what might happen elsewhere.

LC:

218 Indeed my Lady.

Baroness Hallett:

219 They are linked obviously.

LC:

220 My client is not quite as intimately involved as Mr Berlow's clients were at the moment of death. My
221 client is more into the higher command at that point, but it is still a concern that I would have for both
222 of them.

Baroness Hallett:

223 Mr Cherry it is a very good point. It is a matter to which we are alive and if that kind of comfort letter
224 has not gone out then we will definitely look into it.

LC:

225 Thank you, my Lady.

Baroness Hallett:

226 Thank you very much. Mr Cherry did you say that you were involved in the IHAT Investigations for
227 another client?



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LC:

228 Yes my Lady. There is another former sergeant who was one of the I think five or six people referred
229 in this matter and although I did not do his police interviews, I was appointed under the service scheme
230 to guide and advise him through the process that went through to the Director of Services Prosecution.

Baroness Hallett:

231 Thank you very much well that is obviously very useful background information that you have to help
232 us. Ms Jackson you have your hand up I suspect it is on the comfort letter front.

NJ:

233 I just wanted to confirm that there is a comfort letter from the Prosecutor of the ICC and from the
234 Attorney General. They are from 11 January 2021 and they are on the website. We can circulate the
235 links after the hearing if that would be helpful.

Baroness Hallett

236 I thought we had them. Mr Cherry we can circulate them as well as putting them on the website so
237 that everyone knows exactly where they stand.

LC:

238 Thank you my Lady. There was also the Director of Service Prosecutions in the last one. I am sure it
239 has been considered.

Baroness Hallett:

240 Yes I will ask Ms Jackson to check.

NJ:

241 I think I can confirm. The Director of Services Prosecution has already taken a decision on this case so
242 the case has been referred to us following his decision not to prosecute.

Baroness Hallett:

243 Yes. We will check that you have the assurances that you require. By the sounds of it they are all in
244 place, but we can make sure that there is no doubt whatsoever.

LC:

245 I am grateful thank you my Lady.

Baroness Hallett:

246 Thank you. Has anybody else got any comments? Ms Meredith I know that you had some questions
247 about your lay client. Have I answered them in my opening statement?

HM:



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248 Yes I think you have my Lady. The only comment I think I would make is that clearly some of the clients
249 I represented had a very rough ride under the IHAT Investigation and the Red Snapper team and they
250 were not involved in the incident they were merely bystander witnesses. They are very traumatised
251 by having to give any sort of evidence all over again. I wonder if one of my clients, in particular, can
252 make an application to be excused.

Baroness Hallett:

253 Ms Meredith this problem is one we encountered in the Shabram Investigation and I do understand.
254 It must be very difficult to be asked time and time again about events that occurred so long ago. We
255 will do everything we can to make sure that people are treated sympathetically whether they be Iraqi
256 civilians, whether they be military witnesses or former military witnesses. We will obviously look again
257 at what your lay client has said in the past and her role but, as I remember, she does have potentially
258 relevant evidence to give. Could you reassure her please that if she does co-operate we will be as
259 sympathetic as we can and make sure she has assistance and guidance at every step of the way. If she
260 does assist, it may help her to know the whole matter will be over sooner? If we did not think she had
261 relevant evidence to give, we would not have asked her to cooperate. So, I doubt that we can withdraw
262 our request. Obviously, it is up to her whether she cooperates or not but it would be helpful if she
263 would.

HM:

264 That is helpful I will relay the message thank you.

Baroness Hallett:

265 Thank you very much. Does anybody else have any questions? Do any of my team have anything they
266 wish to raise? Thank you all so much. Please reassure your lay clients that we want to get on with this
267 Investigation but it will be thorough and fair (to comply with the State's duties) and conducted with
268 understanding of the difficulties. Goodbye.

END: 11:12AM