



# The Iraq Fatality Investigations

## Transcript of Iraq Fatality Investigations Direction's Hearing 03 November 2022

**Inspector/Chair:** Dame Anne Rafferty

**Counsel to the Inquiry/Inquiry Team:** Natasha Jackson (NJ), Phil Judd, Richard Bottomley, Katharine Bailey, Sophie Warner.

**Legal representatives:** Caroline Clements (CC), Nick Davies (ND), Lewis Cherry, Zainab Al Qurnawi, Paul Taylor, Stephen Brown.

**UK Government Ministry of Defence:** Lisa Scarlett, Glyn Lowen, Thomas O'Flaherty, Elizabeth Inwang, Rhian Roberts.

**Witnesses:** SO81

**Start time:** 10:00AM

**End time:** 10:32AM

1 Good morning. This Iraq Fatality Investigations Directions Hearing is public and recorded. A  
2 transcript will be on the website in English and Arabic in due course. Please don't refer to  
3 confidential information during the hearing – if you feel it necessary please alert me – or name  
4 British military witnesses who are or might be participating in these Investigations.

5

6 *New faces*

7

8 We have some new faces on this call. Mine is one. I was appointed Inspector in July 2022. I  
9 had a career at the Bar in criminal law, ten years in Silk then onto the High Court Bench in  
10 2000. In 2011 I went to the Court of Appeal and I retired in July 2020. Commitments I've taken  
11 on since include the Judicial Appointments Commission outreach scheme, the King's Counsel  
12 Appointments panel, and over nine months in 2021 I ran the Highgate School Inquiry into  
13 alleged sexual abuse and harassment.

14

15 The second new face is far more important. Let me introduce Sophie Warner, replacing Celine  
16 Al-Asadi as Assistant to the Inspector. She is a solicitor at BDB Pitmans seconded to us full-  
17 time.

18



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19 *My role*

20

21 I conduct an investigation (Terms of Reference 04 November 2020) into the deaths of Radhi  
22 Nama and Mousa Ali, Iraqi civilians who died shortly after their May 2003 capture and  
23 detention at Camp Stephen the British military base in Basra. Given the factual similarity  
24 between the two incidents, some overlap in personnel involved and that they were within a  
25 week of each other, I'll investigate and report on them together.

26

27 I also investigate the death of Ahmed Jabbar Karim Ali, Part 1 of which was concluded by Sir  
28 George Newman in September 2016. Part II arises out of evidence of a practice of 'wetting'  
29 civilians to deter looters by forcing them into bodies of water. Baroness Hallett's Outline  
30 Statement of 03 November 2021 (on the IFI website) sets out the rationale for deferring Part II  
31 until completion of the investigation into the death of Saeed Radhi Shabram Wawi Al-Bazooni.  
32 Given that the Shabram Investigation concerned death by drowning in the presence of British  
33 military personnel, she thought it might have a bearing on Ali Part II. The Shabram Report was  
34 issued in September 2020 so we can now conclude Ali Part II, alongside Investigation into the  
35 deaths of Radhi Nama and Mousa Ali.

36

37 I am well aware that a number of witnesses serve or have served in the British military, and  
38 might find engaging with these inquiries distressing or difficult. These investigations concern  
39 the deaths of civilians, and their families are owed a full and fearless inquiry. I shall do all I  
40 can to run the Investigations sensitively and rigorously, and will always have an eye to how  
41 witnesses can fully engage. Requests for productive adjustments to the process on an individual  
42 basis will be received – and welcomed - against that backdrop.

43

44 Let me briefly update you on progress since the last Directions Hearing in April 2022

45

46 First, thank you to those witnesses who have agreed to help, and to their legal representatives  
47 here on their behalf.

48



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49 Second, the wheels of my appointment moved at a pace few would describe as brisk, which  
50 meant the directions of 27 April 2022 slipped. Let me thank all participating witnesses, and  
51 their legal representatives, who worked towards public hearings in July 2022. No one knows  
52 better than I do the frustration of being ready, under time pressure, then finding the timetable  
53 has changed. I might have been away from the Bar for years but the memory doesn't fade. So  
54 let me particularly recognise your understanding and phlegmatic approach, and your continued  
55 help. The team and I are doing all we can to conclude this Investigation expeditiously. Thank  
56 you, once again.

57

58 This hearing is to address:

59 1. Anonymity

60 (a) Anonymity Order

61 (b) Preservation of confidentiality of information disclosed to other legal  
62 representatives

63 (c) Ciphers and redaction

64 2. The purpose of these Investigations

65 3. Progress of these Investigations and witness participation

66 4. A timetable for finalising evidence from witnesses and public hearings

67

### 68 **Anonymity**

69

70 *Anonymity Order*

71

72 Let me clarify anonymity as it applies to these Investigations. The Directions Hearing of April  
73 2022 led to an Order that general public anonymity applies to all military witnesses in the  
74 Investigations, subject to representations. There were none, so the Order has been effective  
75 since 4 November 2022 and I intend to leave it in place.

76

77 Its practical effect ensures that an individual may not be named in the public domain; witnesses'  
78 names will not appear in documents on the IFI website (which will include my final report, and  
79 any substantive evidence appended); during public hearings, witnesses' names will not be used.



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80

81 *Preservation of confidentiality of information disclosed to other legal representatives*

82

83 The Order does not extend to material not published or publicly referred to as part of the  
84 Investigations. However, where material is *disclosed* to other witnesses' legal representatives,  
85 disclosure is contingent upon confidentiality undertakings which all legal representatives have  
86 given. Those include not to disclose, publish or pass on any document, witness statement or  
87 other material, absent my written permission. The combination of these measures – the general  
88 public anonymity Order and the confidentiality undertakings – reasonably protects the rights  
89 and, importantly, the safety, of participating witnesses. I have taken particular account of the  
90 fundamental rights and protections they enjoy under the European Convention on Human  
91 Rights as well as the interests of open justice.

92

93 Should a witness seek to disclose their own identity publicly, to the press or otherwise, I can't  
94 stop them. I will however require prior notification and an explanation if they enjoy anonymity  
95 pursuant to an application.

96

97 *Ciphers and redactions*

98

99 The team has allocated ciphers to all participating witnesses to preserve anonymity. All  
100 witnesses' legal representatives should have those for their clients; if not, would you email  
101 Sophie Warner.

102

103 If alongside our final reports any documents are published which could name witnesses, names  
104 will be removed and ciphers substituted. This will apply to witness statements as well as  
105 historic evidence and any documentation classified 'key'. Redactions will be processed by the  
106 Ministry of Defence then checked by the IFI team before the documents are made public.

107

108 If there are any questions about anonymity, ciphers, or redactions, there will be an opportunity  
109 to be raise them after these introductory remarks, or by email to Sophie Warner.

110



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111 If a witness who engages with the Investigations for whatever reason does not want to be  
112 protected by anonymity, would they and/or their legal representative confirm their position to  
113 me either at the end of these remarks, or, again, via email to Sophie Warner.

114

## 115 **The purpose of the IFI / Article 2 investigation**

116

117 The April 2022 Directions Hearing set out the purpose and background of these investigations.  
118 Most of you here today were also there, and the transcript is on the IFI website.

119

120 Let me repeat: I am very conscious of the passage of time. These Investigations fulfil an  
121 important role for the families of the deceased, entitled to a full and fearless inquest into what  
122 happened to someone they loved. They also ask something of those whose evidence is founded  
123 in what they lived through in tough times. I know that. The team and I will have that well in  
124 mind from now on.

125

## 126 **The progress of these Investigations / witness participation**

127

### 128 *Practical challenges*

129

130 Since the Directions Hearing in April 2022, the team has secured the cooperation of one further  
131 witness. Unfortunately, the team continues to meet not inconsiderable difficulties in making  
132 contact with military and civilian witnesses, not unexpected, 20 years since the incidents.  
133 However, we are exhausting all reasonable and proportionate avenues to find and engage  
134 witnesses. This requires considerable co-ordination between the Inquiry team and the Ministry  
135 of Defence, as well as in some cases legal representatives, and I – like you - would like to see  
136 it concluded by the end of the year.

137

138 A number of witnesses we have approached, or might be able to approach, suffer Post-  
139 Traumatic Stress Disorder as a result of their experiences serving in the British military and  
140 fear that engaging with these Investigations would cause significant distress. The team and I



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141 are astute to welfare and I will consider individualised adjustments designed to let witnesses  
142 participate.

143

144 The April 2022 Directions Hearing on locating and securing the engagement of potential  
145 civilian witnesses, all of whom in my Investigations are Iraqi, continue to apply. Let me speak  
146 for the team and add my own voice in thanking QC Law for their considerable help in making  
147 contact with witnesses as well as offering representation. Mr Mousa Ali's son, also a witness  
148 to events, remains unwilling to participate in my Investigation having previously expressed  
149 willingness. Let me repeat the invitation publicly offered during the previous Directions  
150 Hearing: I would warmly welcome his evidence should he choose to provide it.

151

152 *Finalising evidence*

153

154 Following the April Directions Hearing, my team worked hard to provide confidential  
155 disclosure bundles to witnesses (limited to their previous accounts and containing certain select  
156 documents), with a list of questions. We are very, very grateful to all participating witnesses  
157 for giving us written statements by agreed deadlines. We are also very, very grateful for legal  
158 representatives' unstinting co-operation which meant the statements provide a stand-alone  
159 narrative account.

160

161 I might ask witnesses written clarificatory or additional questions prior to public hearings.

162

163 The team continues to work with the Ministry of Defence and Services Legacy Police  
164 Investigations to ensure we have considered all relevant documents, witness evidence and  
165 reports, including those produced as part of previous investigations. We might find that new  
166 evidence warrants being addressed by some participating witnesses. If I do pose any written  
167 questions to witnesses, it will be after careful thought about proportionality and it will certainly  
168 be sensitive to the burden on witnesses to respond.

169

170 **Timetabling**

171



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172 You'll have understood by now how anxious I am to conclude this Investigation, for the sake  
173 of the families of the deceased and for all the witnesses. The delay visited upon us, coupled  
174 with my coming to these Investigations with new eyes means bringing myself up to speed with  
175 diligence and care will take some time. The IFI are working to publish the final report on these  
176 Investigations by summer 2023.

177

178 Witnesses' representatives can expect to be contacted before 02 December 2022 with either (a)  
179 confirmation that the witness statement has been accepted in its final form; or (b) a request for  
180 a supplementary witness statement to address matters arising. I intend to set the deadline for  
181 any supplementary witness statements at 13 January 2023, ample time – accounting for the  
182 holiday and New Year period.

183

184 I would also like provisionally to schedule public hearings for the week commencing 20  
185 February 2023. They will take place remotely, but if legal representatives want to argue for a  
186 different forum, alert me in good time prior to the hearings and I'll think about it.

187

188 In any event, given some representatives are in Iraq, and the general anonymity order, provision  
189 will be made for witnesses and interested parties to attend the public hearing remotely. For  
190 those of you to whom the general anonymity order applies, the team will liaise with your legal  
191 representatives so you can participate preserving that anonymity and cannot be identified.

192

193 The public hearings will be transcribed.

194

195 At the moment, I can't give a precise time-estimate for the duration of the hearings, but our  
196 working assumption is two days, with a timetable circulated closer to the time to a limited  
197 distribution list of witnesses' legal representatives.

198

199 Does anyone attending have any questions?

200

201 **ND:**



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202 Good morning Dame Anne, Nick Davies here, Partner at Maddox Legal. We act for witnesses  
203 SO89 and SO90. At the April 2022 Direction's Hearing my colleague had requested  
204 substantive disclosure of additional documentation from previous investigations. We are aware  
205 of a packet of documents from a previous investigation which we have not had sight of. My  
206 clients have previously been the subject of criminal prosecutions and there still remains a risk  
207 to them that they may face criminal prosecution. Baroness Hallett said she would make a  
208 decision on our submission, but we did not receive a substantive response. The obvious risk to  
209 my clients is that they face risk of a criminal prosecution and certainly if they are going to be  
210 asked to give supplemental witness statements, we would, once again, request disclosure of  
211 this material.

212

213 **Dame Anne Rafferty:**

214 Let me just see if I have got it. You represent SO89 and SO90, what you have done is asked  
215 for more substantive disclosure. Your clients were previously seen as "suspects" and they are  
216 feeling anxious. I believe I know the answer to your question, but I am going to ask Natasha to  
217 give you the current state of play.

218

219 **NJ:**

220 Thanks Mr Davies for your question. Have you seen a copy of Baroness Hallett's ruling dated  
221 29 April 2022?

222

223 **ND:**

224 I believe I have. Did you say April 2022?

225

226 **NJ:**

227 Yes, that is correct. We can arrange for a copy to be sent to you. I believe Baroness Hallett  
228 ruled on your query in this document. May I invite you to consider this ruling and write to us  
229 if you feel it does not fully cover your position?

230

231 **ND:**

232 Okay, I shall consider the ruling.





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233

234 **Dame Anne Rafferty:**

235 That was what I was going to refer you to, Mr Davies. You will realise from the tenor of my  
236 Opening Statement that at all stages just ask the question – ask, contact, and I will do all I can  
237 with the team to consider and answer your queries. Don't hold back.

238

239 **ND:**

240 Many thanks.

241

242 **CC:**

243 Good morning Dame Anne, I'm Caroline from the Government Legal Department.

244

245 **Dame Anne Rafferty:**

246 Good morning. Caroline Clements, I believe?

247

248 **CC:**

249 Yes, that is correct Dame Anne. The GLD are acting for witnesses SO81 – SO86. My question  
250 is a follow up point on disclosure. If witnesses are going to be giving oral evidence at public  
251 hearings and documents may be put before them during these hearings, will we receive advance  
252 disclosure of those documents?

253

254 **Dame Anne Rafferty:**

255 Ms Clements this is going to be another instance of 'I think I know the answer but I am going  
256 to defer to the expert'. Natasha?

257

258 **NJ:**

259 Thanks for your question Caroline. Yes, that is the plan. There will be disclosure of hearing  
260 bundles ahead of the public hearings. We will be able to provide further details on this closer  
261 to the time.

262

263 **CC:**



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264 Thanks Natasha. The hearings are listed for two days. I am assuming you do not intend to call  
265 all the witnesses to give evidence. Will you be providing a list of witnesses that you will not  
266 be questioning at the public hearings?

267

268 **Dame Anne Rafferty:**

269 We have provisionally scheduled public hearings for the week of 20 February 2023, but what  
270 you will see as we get closer to this date is an idea of the shape these hearings will take. We  
271 are taking a working model of two days, and we will work round that. We are trying to give  
272 legal representatives advance notice of our plans.

273

274 **NJ:**

275 We will give notice at the earliest possible date regarding whether there are witnesses who do  
276 not need to give evidence at the public hearings. We have the 02 December 2022 deadline for  
277 requesting supplementary witness statements, so we should be able to give an indication then.

278

279 **CC:**

280 Thank you.

281

282 **Dame Anne Rafferty:**

283 I don't believe there are any more questions, but I will give it a beat in case there is something.  
284 It doesn't seem as if there is anything else. May I turn to the team in case there is anything I  
285 have omitted?

286

287 **NJ:**

288 Nothing from our perspective Dame Anne.

289

290 **Dame Anne Rafferty:**

291 Good. Can I repeat both my thanks and the team's to you all for joining us remotely today.  
292 Thank you and good morning.

**END: 10:32AM**