

The Iraq Fatality Investigations

Inspector: Sir George Newman

PROCEDURES FOR IRAQ FATALITY INVESTIGATIONS

Introduction

1. These procedures govern the conduct of the Iraq Fatality Investigations (see below).
2. The following definitions are used in these procedures:
 - a. *'The Iraq Fatality Investigations'* – the investigations into the circumstances of deaths during the Iraq conflict.
 - b. *'The judgments and directions'* - the judgments of the High Court in the case of *R (Ali Zaki Mousa No 2) v Secretary of State for Defence* [2013] EWHC 1412 (Admin) and [2013] EWHC 2941 (Admin) along with any directions made by the judge designated by the High Court to deal with matters arising from the Iraq Fatality Investigations.
 - c. *'The Inspector'* – the person appointed by the Ministry of Defence to conduct an inquisitorial investigation into the circumstances in which the death in question occurred and to make recommendations as to steps to be taken to prevent similar incidents occurring in the future.
 - d. *'Interested persons'* - those persons who the Inspector decides have a particular interest in the investigation, taking into account the role played by such persons in the matters giving rise to the death and/or the interest of those persons in the outcome of the investigation.
 - e. *'Next-of-kin of the deceased'* – any parent, child, sibling or spouse of the deceased or such other person(s) as the Inspector decides should be treated as the next-of-kin of the deceased.
 - f. *'A Public hearing'* - a proceeding conducted by the Inspector, whether live or recorded, which is intended to be accessible or broadcast to the public.

General

3. The procedure and conduct of the Iraq Fatality Investigations are to be such as the Inspector may direct, consistently with the judgments and directions and with these procedures.
4. When conducting the Iraq Fatality Investigations the Inspector shall adopt an inquisitorial approach.

5. In terms of fact-finding the Inspector should seek to establish by what means and in what circumstances the deceased came about his death.
6. The Inspector should also consider making recommendations about lessons learned, where appropriate, but should carefully consider the extent to which it is necessary and proportionate to examine such issues if those issues have already been covered by the Ministry of Defence or other inquiries.
7. In making any decision as to the procedure or conduct of an investigation, the Inspector must act with fairness, but should also take into account the need for the proceedings to be conducted as expeditiously, proportionately and economically as possible as detailed in the judgement and directions.
8. In conducting the investigation the Inspector is not to opine on, and has no power to determine, any person's civil or criminal liability. In addition it will generally be inappropriate for the Inspector to identify specific individuals responsible for the death. But the Inspector is not to be inhibited in the discharge of his functions by any likelihood of liability being inferred from facts that he determines or recommendations that he makes.

Evidence

9. Within 7 days of the Inspector's appointment the Ministry of Defence will provide to the Inspector all relevant documentation in its possession relating to the death and the circumstances surrounding it, including any relevant documentation emanating from the IHAT (Iraq Historic Allegations Team) investigations.
10. The Inspector shall not disclose or publish any material which the Ministry of Defence indicates would be damaging to the public interest (eg. for reasons of national security).
11. Subject to paragraph 10 above, the Inspector has discretion to decide what needs to be disclosed to interested persons, the next-of-kin of the deceased or other persons to enable them to participate in the inquiry to the extent necessary to protect their legitimate interests.
12. The Inspector may, upon giving reasonable notice, require any person or organisation—
 - a. to provide a written statement in the investigation (having been given a description of the matters or issues to be covered in the statement by the Inspector);
 - b. to answer written questions posed by the Inspector;
 - c. to attend at a time and place to give oral evidence to the Inspector;
 - d. to attend a public hearing to give oral evidence;
 - e. to produce any documents in his custody or under his control that relate to a matter in question in the investigation.

13. When the Inspector makes any request pursuant to paragraph 12 he should explain the possible consequences of not complying with the request.
14. If a person or organisation fails to comply with or objects to any request made by the Inspector pursuant to paragraph 12, the Inspector shall decide whether it is reasonable in all the circumstances to require compliance with the request.
15. All questions of reliability and evidential weight are for the Inspector to determine.
16. It will not normally be appropriate for any interested persons, next of kin or other persons to be legally represented in giving evidence, save to the extent necessary to ensure that they are able to safeguard their legitimate interests. Where the next-of-kin require legal assistance it will normally be appropriate for such legal assistance to be provided in Iraq by Iraqi lawyers.

Public hearings

17. Public hearings in relation to an investigation may be held if the Inspector considers that it is appropriate to do so in all the circumstances.
18. Where public hearings take place:
 - a. The Inspector shall give reasonable notice to
 - i. the next of kin of the deceased (where their whereabouts are known); and
 - ii. all interested personsof the arrangements for any public hearings.
 - b. Where witnesses are based outside the United Kingdom evidence should if possible be given by video link.
 - c. The questioning of witnesses should normally only be conducted by the Inspector, save where the Inspector is satisfied that there is good reason to allow any other person to do so.
 - d. The next of kin shall be given an opportunity in advance to suggest questions and raise lines of inquiry to the extent considered necessary by the Inspector to enable them to be involved to an appropriate extent.
 - e. The Inspector should make arrangements for the next of kin of the deceased to be informed of the progress of the public hearings by providing summaries in Arabic
 - f. It will not normally be appropriate for any interested persons to make an opening or closing statement to the Inspector at the public hearings, but it will be a matter for determination by the Inspector.
 - g. It will not normally be appropriate for any interested persons, next of kin or other persons to be legally represented at or before a public hearing. No advocate will be instructed. Where the next-of-kin do require legal assistance it will normally be appropriate for such legal assistance to be provided in Iraq by Iraqi lawyers.

- h. The Inspector should have regard to the need to conduct any public hearings expeditiously, proportionately and economically as detailed in the judgement and directions.

Public access to hearings and information

19. The Inspector should take such steps as he considers reasonable to secure that members of the public (including reporters) are able–
 - a. to attend or view any public hearings;
 - b. to obtain or to view a record of evidence and documents given, produced or provided to the Inspector as part of the investigation.
20. No recording or broadcast of public hearings may be made except at the request of the Inspector.

Written report

21. At the conclusion of the investigation the Inspector should produce a written report, signed by him, which sets out:
 - a. A narrative account of the circumstances in which the death in question occurred; and
 - b. Any recommendations which are considered appropriate as to steps to be taken to prevent similar incidents occurring in the future.
22. Prior to finalisation of the report, the Inspector may circulate a draft to the interested persons, to enable those persons to comment on the report before its finalisation. Any draft report should be treated as subject to an obligation of confidence.
23. The Inspector should send a letter to any person who may be subject to criticism in the final or draft report which:
 - a. sets out what the criticism or proposed criticism is; and
 - b. refers to any evidence which supports the criticism or proposed criticism.
24. The Inspector should not include any explicit or significant criticism of a person in the draft or final report unless the person has been sent a letter in accordance with paragraph 23 above and the person has been given a reasonable opportunity to respond to that letter.
25. The Inspector shall send the final report in confidence to the Secretary of State, who will arrange for its publication within a reasonable time on a date to be agreed with the Inspector