



Ministry
of Defence

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

MINISTRY OF DEFENCE

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Sir George Newman
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Our Ref: DJEP/GLOBAL ISSUES/QUASI-INQUESTS

Date: 25 May 2017

Dear Sir George,

CONFIRMATION OF APPOINTMENT

On 27 January 2014, the Secretary of State for Defence wrote to appoint you to conduct such fatality investigations as the Ministry of Defence (MOD) assigns to you from time to time, with your agreement.

In accordance with the Secretary of State's decision that the establishment of such fatality investigations should be delegated to the Directorate of Judicial Engagement Policy, I am writing to confirm your appointment as Inspector in a seventh fatality investigation. This relates to the death of Tanik Sabri Mahmud.¹ The terms of reference are annexed to this letter.

On 11 April 2003, Coalition Forces detained Mr Mahmud and a number of other Iraqi nationals as prisoners of war at a checkpoint in Western Iraq. They were taken to a temporary holding facility, from where they were transported on UK helicopters to a US-controlled detention facility. Upon arrival at that facility Mr Mahmud was pronounced dead. The time and cause of death remain unclear. Although a US investigation at the time found no evidence of any unlawful act, it was subsequently alleged that he had been unlawfully killed.

Mr Mahmud's death has been thoroughly investigated by the UK Service Police. The Iraq Historic Allegations Team (IHAT) conducted a case review of the initial RAF Police investigation (designated Operation Raker), and identified a number of potential further lines of inquiry. This resulted in further investigative steps (designated Operation Spelt), which culminated in the RAF Police referring one individual to the Director of Service Prosecutions (DSP). Having reviewed the evidence, the DSP directed that no charges should be brought in relation to Mr Mahmud's death.

As the Court has emphasised, your investigation should be conducted expeditiously, proportionately, economically and with regard to the human cost of investigations. 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 high Court Judge.

I am most grateful to you for accepting this responsibility.

Yours sincerely,

Ben Sanders

¹ The deceased is named variously as Tanik or Tariq Sabri Mahmud, and as Tarik or Tariq Sabri Mahmud. His death was considered by the High Court in *R (Ali Zaki Mousa & Others) v Secretary of State for Defence*, [2013] EWHC 1412 (Admin), at §134(i) and §166.

ANNEX A: TERMS OF REFERENCE

The Scope of the Investigation

1. The investigation into the death of Tanik Sabri Mahmud on 11 April 2003 ('the death') is to be conducted to establish the relevant facts and accountability for the death, 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 family 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 death occurred.
4. The investigation should encompass the wider circumstances of the death, 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 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 which 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 he 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 his investigation by considering all the relevant documentation in the possession of the Ministry of Defence and any relevant information emanating from the Service Police and Service Prosecuting Authority.
12. Having considered all the documents which are to be supplied to him and any further documents or information which he may have requested the Inspector will 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 the Ministry of Defence 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 Ministry 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.
14. At the conclusion of an investigation the Inspector will produce a written report which sets out:
 - a) a narrative account of the circumstances in which the death occurred; and
 - b) any recommendations he has decided to make.
15. The report will not be concerned to determine or address any person's criminal or civil liability. Nevertheless, the investigations are not to be inhibited by the likelihood of liability being inferred from the facts found or recommendations made.