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Wednesday, 15 October 2008

THE BAHA MOUSA PUBLIC INQUIRY

CHAIRMAN'S OPENING STATEMENT

THE RIGHT HONOURABLE SIR WILLIAM GAGE

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Wednesday, 15 October 2008

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Housekeeping

5 MR HUGHES: Good morning ladies and gentlemen. Before the  
6 Chairman comes in to start the proceedings, perhaps  
7 I could deal with some domestic and other matters first  
8 of all. For your safety can I say that there is no fire  
9 drill expected this morning, therefore if the fire alarm  
10 goes off it is for real. Could you please exit by  
11 either door, the door there or the door here, then if  
12 you go out of that door turn left, if you go out of this  
13 door turn right, to the stairs, and walk down the stairs  
14 out of the building. Then if you turn right out of the  
15 exit there is a little alleyway on your right. If you  
16 can go down that to the rear courtyard, that is the  
17 assembly point. There should be, I hope, staff  
18 directing you if that event happens, which I certainly  
19 hope it doesn't. Thank you.

20 Comfort facilities are available on either side of  
21 the lifts. If you are going out of that door you come  
22 to the gents first, then the ladies are past the lift.  
23 If there is a queue, they are in the same place on each  
24 floor so feel free to explore the building if there are  
25 queues.

1           Can I then say that the Chairman is simply making  
2           his opening statement today. He is not inviting  
3           questions. The text of the statement, together with the  
4           press release, a contacts list for the Inquiry and  
5           a question and answer sheet will be available as soon as  
6           the Chairman has completed his statement. So there is  
7           no need to take copious notes, you will get a full text  
8           of the statement at the end of the proceedings. There  
9           will be an opportunity for media representatives to have  
10          further background briefing with the media team in  
11          Room B26 at the end of the proceedings. B26 is out of  
12          that door and on the right.

13           Can I say that when the Chairman comes in he has  
14          asked that we observe formal court formalities, and  
15          therefore I would ask to you rise when the Chair enters  
16          the room and again when he leaves.

17           Finally, before we start, could I ask you to check  
18          that any mobile phones you may have or any other piece  
19          of equipment that might cause embarrassment if it went  
20          off during the Chairman's address are switched off now,  
21          please, before we start. Thank you very much.

22           The Chairman has said that he will come in at 10.30  
23          exactly so you have a minute or two.

24   Chairman's Opening Statement

25   SIR WILLIAM GAGE: Good morning, ladies and gentlemen.

1 I see from that clock that I have come in about one  
2 minute early. I hope that is a good omen for this  
3 Inquiry.

4 What I am about to say, as I am sure you have  
5 already been told, will be available for you in written  
6 form at the end of this short opening.

7 On 21 July 2008 I was asked by the Right Hon Desmond  
8 Browne MP, then Secretary of State for Defence, to chair  
9 this public Inquiry which was formally set up under the  
10 Inquiries Act 2005 with effect from 1 August 2008.  
11 Details of my judicial experience can be found on the  
12 Inquiry website. By mid-November I shall have retired  
13 as a Lord Justice of Appeal. It is my intention to sit  
14 alone to hear the evidence given in this Inquiry.  
15 I should add that I am aware that I have power under the  
16 2005 Act during the course of the Inquiry to appoint  
17 assessors. At present I see no reason to do so.

18 The Inquiry is primarily concerned with the  
19 circumstances surrounding the death in 2003 of one man,  
20 Baha Mousa, and the treatment of others detained with  
21 him in Basra, Iraq, by soldiers of the 1st Battalion of  
22 The Queen's Lancashire Regiment. Whatever my ultimate  
23 findings in this matter, it is right that at the outset  
24 we express our sincere regret of the loss of life of  
25 a man in army custody. It is also right that we do not

1 forget the loss of life of British servicemen in Iraq in  
2 2003 and thereafter.

3 The Inquiry's terms of reference have been  
4 published, but it may be useful if I were to repeat them  
5 here. They are:

6 "To investigate and report on the circumstances  
7 surrounding the death of Baha Mousa and the treatment of  
8 those detained with him, taking account of the  
9 investigations which have already taken place, in  
10 particular where responsibility lay for approving the  
11 practice of conditioning detainees by any members of the  
12 1st Battalion, The Queen's Lancashire Regiment in Iraq  
13 in 2003, and to make recommendations."

14 The gravity and importance of the events that this  
15 Inquiry is to investigate require little explanation.  
16 The courts and the public in general have long  
17 recognised that the death of any person in the custody  
18 of the State other than by natural causes is always  
19 a ground for serious concern. Where the death has  
20 occurred in the custody of British forces serving  
21 abroad, and there has at the same time been the  
22 infliction of injury to other detainees in circumstances  
23 in which the issue of the use of conditioning techniques  
24 is raised, these matters are of clear and obvious public  
25 concern and importance.

1           I shall take note of previous investigations and  
2           proceedings which relate to these matters, but I stress  
3           that I am inquiring afresh with all the powers provided  
4           to me by Parliament under the 2005 Act. I am under no  
5           illusions as to the magnitude of the task ahead. It  
6           will require much work in terms of the assembly and  
7           analysis of documents, as well as the preparation and  
8           taking of witness statements. The bulk of this must be  
9           done before I can embark upon hearing evidence. I shall  
10          endeavour to ensure that this work proceeds with an  
11          appropriate degree of urgency.

12          The Inquiry team. To assist me in this task and in  
13          the broader running of the Inquiry I have appointed an  
14          Inquiry team. They are as follows; the solicitor to the  
15          Inquiry is Duncan Henderson, a senior civil servant who  
16          has been seconded to the Inquiry from the Treasury  
17          Solicitor's Department. He will be responsible for the  
18          gathering of the evidence relating to matters I am  
19          investigating. As such, he will normally be the first  
20          point of contact for matters relating to the documents  
21          or witnesses. He sits in front of me on the right of  
22          that table as you look at it.

23          The secretary to the Inquiry is Lee Hughes, a senior  
24          civil servant, seconded to the Inquiry from the Ministry  
25          of Justice, who is primarily responsible for the

1 administration of the business of the Inquiry.  
2 Enquiries in this regard shall normally be addressed to  
3 him. He sits on the left of the table, the right as you  
4 look at it.

5 On my behalf Mr Henderson has instructed three  
6 independent members of the Bar, Gerard Elias QC,  
7 Nicholas Moss and Patrick Halliday. They sit at the  
8 desk on my right. Their role is not to promote any  
9 particular conclusion or result, still less to favour  
10 any particular witness or class of witness, rather it is  
11 to assist me in ascertaining the facts that are relevant  
12 to my investigation so that I can make appropriate  
13 recommendations for the future. They will do that by  
14 presenting to me the evidence and questioning those  
15 witnesses whom I decide should be called to give oral  
16 evidence. When required they will also provide me with  
17 impartial advice on matters of law and procedure.

18 The oral hearings. I am sitting today at the  
19 International Dispute Resolution Centre where the  
20 Inquiry's offices are located for the time being. From  
21 next week, however, the Inquiry is to be based at  
22 Finlaison House in Furnival Street, London, which is  
23 where it is intended that all future hearings will take  
24 place. Further details about them will be published in  
25 due course on the Inquiry's website, which can be found

1 at [www.bahamousainquiry.org](http://www.bahamousainquiry.org). Details for making contact  
2 with the Inquiry team in the meantime are set out in the  
3 handouts available here this morning and on the website.

4 In due course the transcript of today's proceedings  
5 and any rulings and directions which I may make from  
6 time to time will be posted on the website. The oral  
7 hearings themselves will be simultaneously recorded and  
8 available in real time for the legal representatives  
9 present. Verbatim transcripts will be made available to  
10 the core participants shortly after the close of a day's  
11 proceedings and also posted to the website so that the  
12 general public can follow the proceedings. Similarly,  
13 it is intended to scan all relevant and publishable  
14 documents into a system which will permit them to be  
15 called up onto screens in the Inquiry room and then  
16 published on the website after they have been adduced in  
17 evidence.

18 In accordance with the presumption of openness, the  
19 hearings will be in public to the greatest degree  
20 practicable. Any possible exceptions to this position  
21 will be addressed in written procedures which  
22 I anticipate will be available for consideration at the  
23 first directions hearing.

24 Facilities will be made available at the hearings  
25 for members of the public and representatives of the

1 press and media organisations.

2 I take the opportunity to mention now that at the  
3 court martial of seven servicemen arising out of these  
4 events, the presiding Judge Advocate made an order which  
5 I am advised remains in force requiring the media not to  
6 publish certain features and information in relation to  
7 the defendants. If anybody has submissions to make in  
8 relation to this order, or any related matter affecting  
9 other service personnel they must be made to me in  
10 writing by 14 November 2008. I shall consider them and  
11 any further argument at the first directions hearings.

12 The format of the Inquiry. I propose to conduct the  
13 Inquiry in four modules:

14 Module 1, the history. I propose to examine the  
15 history of the use of what has been labelled  
16 "conditioning techniques". This will entail  
17 consideration of the Government, Ministry of Defence and  
18 army approaches to such techniques from the time of  
19 internment in Northern Ireland in the early 1970s up to  
20 and including March 2003, the date of the invasion of  
21 Iraq.

22 Module 2, Baha Mousa and the other detainees.  
23 I propose to examine the circumstances of their arrest  
24 and subsequent detention and seek to ascertain what  
25 happened to them and who was involved.

1           Module 3, training and the chain of command. In  
2           this module I propose to examine what training and  
3           guidance was given and what orders were issued to those  
4           involved in the detention, and to follow the chain of  
5           command upwards in relation to these matters.

6           Module 4, the future. I propose to consider what  
7           has happened since 2003 in relation to conditioning  
8           techniques and to examine any appropriate  
9           recommendations for the future. I shall give  
10          consideration to holding a seminar-type hearing as part  
11          of this module.

12          The Inquiry team has already identified  
13          a preliminary list of issues falling under each module  
14          heading. As is inevitable with an inquisitorial  
15          process, no one should take the issues list as being  
16          final. It is always possible that further issues will  
17          emerge as the Inquiry progresses, but I intend shortly  
18          to circulate the draft list of issues to the prospective  
19          core participants in case they have particular comments  
20          on it. In all cases, the decision on the relevant  
21          issues to be examined will be for me to take based on  
22          the terms of reference.

23          I appreciate that there may be elements of overlap  
24          between the modules, but so far as possible I shall  
25          require core participants to confine themselves to the

1 issues falling within the relevant module.

2 To promote the orderly running of the Inquiry I may  
3 take a short break between modules.

4 Procedures. In outline the full Inquiry hearings  
5 will be conducted as follows. Firstly, there will be an  
6 opening statement by counsel to the Inquiry outlining  
7 the nature of the evidence to be called in relation to  
8 the first three modules and, to the extent that it may  
9 be necessary, a short further opening before each  
10 succeeding module. I shall consider the appropriate  
11 time tabling of opening statements by and on behalf of  
12 core participants as provided for in rule 11 of the  
13 Inquiry Rules 2006 at the first directions hearing.

14 Secondly, all witnesses will be the Inquiry  
15 witnesses. They will be called and examined by counsel  
16 to the Inquiry. Further, the Inquiry intends to be  
17 directly and closely involved in the taking of witness  
18 statements.

19 Thirdly, I may allow examination by other parties  
20 but only on notice in accordance with Rule 10 of the  
21 2006 Rules. I shall not permit the same topic to be  
22 canvassed by more than one party, and where this  
23 requires prior consultation and cooperation between the  
24 parties I shall expect it to have been carried out.

25 Fourthly, in due course and before the first

1 directions hearing I propose to publish the procedures  
2 to be adopted for notification of possible criticism of  
3 core participants and/or witnesses.

4 Fifthly, I propose to invite final submissions in  
5 writing after the conclusion of all the evidence, but  
6 I shall give an opportunity for oral amplification.

7 Witnesses and documentary evidence. I have powers  
8 under section 21 of the 2005 Act to require the  
9 attendance of witnesses and the production of documents.  
10 Where necessary I shall not hesitate to use them. I am  
11 aware that the Inquiry team has already made formal  
12 approaches to certain parties for the production of  
13 relevant evidence and documentation and that such are  
14 being provided. This will be an ongoing process. To  
15 those not already approached in this way, I take this  
16 opportunity to request that anyone who is in possession  
17 of any information, evidence or any document relevant to  
18 the matters I am looking into should communicate that  
19 fact to the Inquiry forthwith.

20 To seek to ascertain the truth of what occurred  
21 in 2003 and of related matters, the Inquiry must rely on  
22 the cooperation of witnesses in giving the fullest and  
23 frankest accounts of events which occurred. To assist  
24 this aim I have sought, and the Attorney General, The  
25 Right Honourable The Baroness Scotland QC has provided

1 an undertaking in the following terms:

2 "An undertaking in respect of any person who  
3 provides evidence to the Inquiry that no evidence he or  
4 she may give before the Inquiry, whether orally or by  
5 written statement, nor any written statement made  
6 preparatory to giving evidence, nor any document or  
7 information produced by that person to the Inquiry, will  
8 be used in evidence against him or her in any criminal  
9 proceedings (including any proceedings for an offence  
10 against military law, whether by court martial or  
11 summary hearing before a commanding officer or  
12 appropriate superior authority), except:

13 "(a) A prosecution (whether for a civil offence or  
14 military offence) where he or she is charged with having  
15 given false evidence in the course of this Inquiry or  
16 having conspired with or procured others to do so, or

17 "(b) In proceedings where he or she is charged with  
18 any offence under section 35 of the Inquiries Act 2005  
19 or having conspired with or procured others to commit  
20 such an offence."

21 Thus, no person giving evidence before me need fear  
22 that his or her evidence can itself be used as evidence  
23 against him or herself in any criminal proceedings.  
24 Neither shall any statement or document made for the  
25 purposes of this Inquiry be used against the maker, save

1 for the purposes stated in the undertaking, that is in  
2 relation to a prosecution for the giving or conspiring  
3 or agreeing to give or provide false evidence to this  
4 Inquiry or procuring another so to do.

5 At this time I have left open the question of  
6 whether it is necessary or desirable that I should seek  
7 a similar undertaking from the Permanent Secretary of  
8 the Ministry of Defence in relation to the taking of  
9 administrative action against Crown servants who may  
10 give evidence before me. Should any prospective core  
11 participant wish to raise that matter I invite written  
12 submissions on the subject to be made to me no later  
13 than 14 November 2008, and I shall hear any argument  
14 addressed to me at the first directions hearing.

15 Core participants and their legal representation.  
16 The Inquiry Rules 2006 place certain duties upon me in  
17 relation to the designation of core participants and of  
18 lawyers as recognised legal representatives. I am  
19 actively considering the position in this regard and,  
20 through the Inquiry solicitor, have given indications in  
21 a number of cases of those who are likely to be so  
22 designated.

23 I am aware that discussions are proceeding between  
24 some of the prospective core participants to seek to  
25 reach agreement on sensible arrangements for

1 representation which reduces the number of separate  
2 legal representatives appearing before the Inquiry  
3 without sacrificing the essential elements of fairness  
4 and justice, and which can properly be approved by the  
5 Inquiry. I am grateful to those who are participating  
6 in these ongoing efforts and encourage agreement where  
7 possible.

8 I underline my mandatory duty under Rule 7 in  
9 relation to those prospective core participants who have  
10 a mutuality of interest in the Inquiry. In the event  
11 that satisfactory arrangements for representation cannot  
12 be agreed between the prospective core participants and  
13 approved by the Inquiry, I shall seek representations in  
14 writing from them with a view to determining the  
15 arrangements myself at the first directions hearing.

16 I should indicate that the module arrangements for  
17 the Inquiry may well result in core participants who are  
18 separately represented for one module of the Inquiry,  
19 but who have a mutuality of interest in another or other  
20 modules, being required to combine representation under  
21 one lawyer for the latter modules. I am grateful to  
22 those who are participating in these ongoing efforts and  
23 I wish to encourage agreement wherever possible.

24 Timetable and venue. I propose to hold the first  
25 directions hearing on a convenient date in the week

1 starting 1 December 2008. Provisionally 3 December has  
2 been suggested. I will hold another directions hearing  
3 in the week starting 19 January 2009, if it is required.

4 An agenda for the first directions hearing will be  
5 circulated in due course and I invite prospective core  
6 participants to give an early indication to the Inquiry  
7 team of any preliminary matters which they may seek to  
8 raise. I can say that any outstanding issues in  
9 relation to representation as well as the matters I have  
10 highlighted in this opening statement will be considered  
11 then.

12 The process of evidence gathering has already begun  
13 in earnest and we are becoming aware of the extent and  
14 scale of the vast documentation involved. The gathering  
15 and analysis of all relevant material as well as the  
16 preparation for, and taking of, statements will be  
17 a lengthy process and I can say now that the Inquiry  
18 will not begin to hear openings and evidence before the  
19 spring of next year. I hope to be in a better position  
20 to indicate a more definite date for the start of the  
21 oral hearing at the first directions hearing. I wish to  
22 make it quite clear that I shall do my level best to  
23 ensure that this date is not delayed long beyond the  
24 spring. I urge all parties to cooperate with my Inquiry  
25 team in bringing this about.

1           When we do sit, I propose to sit conventional court  
2 hours, generally Monday to Thursday, although I do not  
3 rule out sitting on occasional Fridays if there is a  
4 particular need to do so.

5           Finally, I am aware of and have encouraged the  
6 informal meetings that have so far taken place between  
7 counsel to the Inquiry and counsel presently  
8 representing the prospective core participants with  
9 a view to identifying as early as possible areas of  
10 common ground and possible differences of approach in  
11 relation to procedural or other administrative issues.  
12 I understand that these meetings have been fruitful and  
13 constructive and in thanking the prospective core  
14 participants for their cooperation, I would urge  
15 a continuation of dialogue where it may help to make the  
16 wheels of the Inquiry run more smoothly.

17           I wish to emphasise that I am determined that the  
18 Inquiry should transact its business efficiently,  
19 effectively and as expeditiously as possible. I shall  
20 be seeking and expect the help of all parties to carry  
21 this through. Equally, I am conscious of the overriding  
22 need to ensure fairness and justice for all who appear  
23 before me. This will be at the forefront of my mind  
24 every step of the way.

25           Thank you all very much for attending this morning.

1 (10.51 am)

2 (The hearing adjourned)

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