

The Baha Mousa Public Inquiry

Inquiry Chairman: The Right Honourable Sir William Gage

Chairman's opening statement: 15 October 2008

The Right Honourable Sir William Gage

1. On 21 July 2008, I was asked by The Right Hon Desmond Browne MP, then Secretary of State for Defence, to chair this Public Inquiry, which was formally set up under the Inquiries Act 2005 with effect from 1 August 2008. Details of my judicial experience can be found on the Inquiry website. By mid-November I shall have retired as a Lord Justice of Appeal. It is my intention to sit alone to hear the evidence given in this Inquiry. I should add that I am aware that I have power under the 2005 Act during the course of the Inquiry to appoint assessors. At present I can see no reason to do so.
2. The Inquiry is primarily concerned with the circumstances surrounding the death in 2003 of one man, Baha Mousa, and the treatment of others detained with him in Basra, Iraq, by soldiers of the 1st Battalion The Queen's Lancashire Regiment. Whatever my ultimate findings in this matter, it is right that at the outset we express our sincere regret at the loss of life of a man in army custody. It is also right that we do not forget the loss of life of British servicemen in Iraq in 2003 and thereafter.
3. The Inquiry's Terms of Reference have been published but it may be useful if I were to repeat them here. They are:

"To investigate and report on the circumstances surrounding the death of Baha Mousa and the treatment of those detained with him, taking account of the investigations which have already taken place, in particular where responsibility lay for approving the practice of conditioning detainees by any members of the 1st Battalion, The Queen's Lancashire Regiment in Iraq in 2003, and to make recommendations."
4. The gravity and importance of the events that this Inquiry is to investigate require little explanation. The Courts, and the public in general, have long recognised that the death of any person in the custody of the state other than by natural causes is always a ground for serious concern. Where the death has occurred in the custody of British forces serving abroad and there has at the same time been the infliction of injury to other detainees, in circumstances in which the issue of the use of

conditioning techniques is raised, these matters are of clear and obvious public concern and importance.

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

The Inquiry Team

6. To assist me in this task and in the broader running of the Inquiry I have appointed an Inquiry Team. They are as follows:

The Secretary to the Inquiry is Lee Hughes, a Senior Civil Servant seconded to the Inquiry from the Ministry of Justice, who is primarily responsible for the administration of the business of the Inquiry. Queries in this regard should normally be addressed to him.

The Solicitor to the Inquiry is Duncan Henderson, a Senior Civil Servant who has been seconded to the Inquiry from the Treasury Solicitor's Department. He will be responsible for gathering the evidence relating to matters I am investigating. As such, he will normally be the first point of contact for matters relating to documents or witnesses.

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

The Oral Hearings

7. I am sitting today at the International Dispute Resolution Centre, where the Inquiry's offices are located for the time being. From next week, however, the Inquiry is to be based at Finlaison House in Furnival Street, London, which is where it is intended that all future hearings will take place. Further details about them will be published in due course on the Inquiry's website which can be found at www.bahamousainquiry.org. Details for making contact with the Inquiry Team in the meantime are set out in the hand-outs available here this morning and on the website. In due course the transcript of today's proceedings and any rulings and directions which I may make from time to time will be posted on the website. The oral hearings themselves will be simultaneously recorded and available in real time for the legal representatives present; verbatim transcripts will be made available to the Core Participants shortly after the close of a day's proceedings and also posted to the website so that the general public can follow the proceedings. Similarly, it is intended to scan all relevant and publishable documents into a system which will permit them to be called up onto screens in the Inquiry Room and then published on the website after they have been adduced in evidence.
8. In accordance with the presumption of openness, the hearings will be in public to the greatest degree practicable. Any possible exceptions to this position will be addressed in written procedures, which I anticipate will be available for consideration at the first Directions Hearing. Facilities will be made available at the hearings for members of the public and representatives of the press and media organisations.
9. I take the opportunity to mention now that at the Court Martial of seven servicemen arising out of these events, the presiding Judge Advocate made an order, which I am advised remains in force, requiring the media not to publish certain features and information in relation to the Defendants. If anybody has submissions to make in relation to this order, or any related matter affecting other service personnel, they must be made to me in writing by 14 November 2008, and I shall consider them and any further argument at the first Directions Hearing.

Format of the Inquiry

10. I propose to conduct the Inquiry in four Modules:

Module 1: The History

I propose to examine the history of the use of what has been labelled “conditioning techniques”. This will entail consideration of the Government, Ministry of Defence and Army approaches to such techniques from the time of internment in Northern Ireland in the early 1970s up to and including March 2003 – the date of the invasion of Iraq.

Module 2: Baha Mousa and the other detainees

I propose to examine the circumstances of their arrest and subsequent detention and seek to ascertain what happened to them and who was involved.

Module 3: Training and the chain of command

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

Module 4: The future

I propose to consider what has happened since 2003 in relation to conditioning techniques and to examine any appropriate recommendations for the future. I shall give consideration to holding a seminar type hearing as part of this Module.

11. The Inquiry Team has already identified a preliminary list of issues falling under each Module heading. As is inevitable with an inquisitorial process, no-one should take the issues list as being final. It is always possible that further issues will emerge as the Inquiry progresses. But I intend shortly to circulate the draft list of issues to the prospective Core Participants in case they have particular comments on it. In all cases, the decision on the relevant issues to be examined will be for me to take, based on the Terms of Reference. I appreciate that there may be elements of overlap between the Modules but so far as possible I shall require Core Participants to confine themselves to the issues falling within the relevant Module. To promote the orderly running of the Inquiry, I may take a short break between Modules.

Procedures

12. In outline, the full Inquiry hearings will be conducted as follows:

Firstly, there will be an Opening Statement by Counsel to the Inquiry outlining the nature of the evidence to be called in relation to the first three Modules and, to the extent that it may be necessary, a short further opening before each succeeding Module. I shall consider the appropriate timetabling of Opening Statements by or on behalf of Core Participants (as provided for in Rule 11 of the Inquiry Rules 2006) at the first Directions Hearing.

Secondly, all witnesses will be the Inquiry's witnesses. They will be called and examined by Counsel to the Inquiry. Further, the Inquiry intends to be directly and closely involved in the taking of witness statements.

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

Fourthly, in due course and before the first Directions Hearing, I propose to publish the procedures to be adopted for notification of possible criticism of Core Participants and/or witnesses.

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

Witnesses and documentary evidence

13. I have powers under section 21 of the 2005 Act to require the attendance of witnesses and the production of documents. Where necessary I shall not hesitate to use them. I am aware that the Inquiry team has already made formal approaches to certain parties for the production of relevant evidence and documentation and that such are being provided. This will be an ongoing process.

14. To those not already approached in this way, I take this opportunity to request that anyone who is in possession of any information, evidence or any document relevant to the matters I am looking into, should communicate that fact to the Inquiry forthwith.
15. To seek to ascertain the truth of what occurred in 2003 and of related matters, the Inquiry must rely upon the cooperation of witnesses in giving the fullest and frankest accounts of events which occurred. To assist this aim, I have sought, and the Attorney General, The Right Honourable The Baroness Scotland QC, has provided, an undertaking in the following terms:
- “An undertaking in respect of any person who provides evidence to the Inquiry that no evidence he or she may give before the Inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence, nor any document or information produced by that person to the Inquiry, will be used in evidence against him or her in any criminal proceedings (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), except:*
- (a) *A prosecution (whether for a civil offence or a military offence) where he or she is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or*
- (b) *In proceedings where he or she is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence”*
16. Thus no person giving evidence before me need fear that his or her evidence can itself be used as evidence against him or herself in any criminal proceedings, and neither shall any statement or document made for the purposes of this Inquiry be used against the maker, save for the purposes stated in the Undertaking, that is, in relation to a prosecution for the giving, or conspiring or agreeing to give or provide, false evidence to this Inquiry or procuring another so to do.
17. At this time, I have left open the question of whether it is necessary or desirable that I should seek a similar undertaking from the Permanent Secretary at the Ministry of Defence in relation to the taking of administrative action against Crown Servants who may give evidence before me. Should any prospective Core Participant wish to raise that matter, I invite written submissions on the subject to be made to me no later than

14 November 2008, and I shall hear any argument addressed to me at the first Directions Hearing.

Core Participants and Legal Representation

18. The Inquiry Rules 2006 place certain duties upon me in relation to the designation of Core Participants and of lawyers as recognised legal representatives. I am actively considering the position in this regard and, through the Inquiry Solicitor, have given indications in a number of cases of those who are likely to be so designated.
19. I am aware that discussions are proceeding between some of the prospective Core Participants to seek to reach agreement on sensible arrangements for representation which reduces the number of separate legal representatives appearing before the Inquiry without sacrificing the essential elements of fairness and justice, and which can properly be approved by the Inquiry. I am grateful to those who are participating in these ongoing efforts and encourage agreement where possible.
20. I underline my mandatory duty under Rule 7 in relation to those prospective Core Participants who have a mutuality of interest in the Inquiry. In the event that satisfactory arrangements for representation cannot be agreed between the prospective Core Participants and approved by the Inquiry, I shall seek representations in writing from them with a view to determining the arrangements myself at the first Directions Hearing.
21. I should indicate that the Module arrangements for the Inquiry may well result in Core Participants who are separately represented for one Module of the Inquiry, but who have a mutuality of interest in another or other Modules, being required to combine representation under one lawyer for the latter Modules. I am grateful to those who are participating in these ongoing efforts and I wish to encourage agreement wherever possible.

Timetable and Venue

22. I propose to hold the first Directions Hearing on a convenient date in the week starting 1 December 2008. Provisionally 3 December has been suggested. I will

hold another Directions Hearing in the week starting 19 January 2009, if it is required.

23. An Agenda for the first Directions Hearing will be circulated in due course, and I invite prospective Core Participants to give an early indication to the Inquiry Team of any preliminary matters which they may seek to raise. I can say that any outstanding issues in relation to representation as well as the matters I have highlighted in this Opening Statement will be considered then.
24. The process of evidence gathering has already begun in earnest and we are becoming aware of the extent and scale of the vast documentation involved. The gathering and analysis of all relevant material as well as the preparation for, and taking of, statements will be a lengthy process and I can say now that the Inquiry will not begin to hear openings and evidence before the spring of next year. I hope to be in a better position to indicate a more definite date for the start of the oral hearing at the first Directions Hearing. I wish to make it quite clear that I shall do my level best to ensure that this date is not delayed long beyond the spring. I urge all parties to co-operate with my Inquiry Team in bringing this about.
25. When we do sit, I propose to sit conventional court hours, generally Monday to Thursday, although I do not rule out sitting on occasional Fridays if there is a particular need to do so.
26. Finally, I am aware of and have encouraged the informal meetings that have so far taken place between Counsel to the Inquiry and Counsel presently representing the prospective Core Participants with a view to identifying as early as possible areas of common ground and possible differences of approach in relation to procedural or other administrative issues. I understand that these meetings have been fruitful and constructive and in thanking the prospective Core Participants for their co-operation, I would urge a continuation of dialogue where it may help to make the wheels of the Inquiry run more smoothly.
27. I wish to emphasise that I am determined that the Inquiry should transact its business efficiently, effectively and as expeditiously as possible. I shall be seeking

and expect the help of all parties to carry this through. Equally, I am conscious of the overriding need to ensure fairness and justice for all who appear before me. This will be at the forefront of my mind every step of the way.

Sir William Gage
Inquiry Chairman

15 October 2008