Case Nos: CO/5608/2008; CO/8695/2009; CO/6345/2008;
CO/9925/2008; CO/11858/2009; CO/11442/2008;
CO/953/2009; CO/9719/2009; CO/12803/2009;
CO/1684/2010; CO/2631/2010, CO/8620/2010; CO/2242/2004

Neutral Citation Number: [2015] EWHC 1769 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26 June 2015

Before :

MR JUSTICE LEGGATT

- -

Between :

Al-Saadoon & Others	**Claimants**
- and -	
Secretary of State for Defence	**Defendant**

- -

Michael Fordham QC, Danny Friedman QC, Dan Squires and **Jason Pobjoy** (instructed by **Public Interest Lawyers**) for the **Claimants**
James Eadie QC, Karen Steyn QC, Kate Grange and **Melanie Cumberland** (instructed by the **Treasury Solicitor**) for the **Defendant**
Steven Kovats QC for the **Director Service Prosecutions**

Hearing date: 27 April 2015

- -

Judgment

Mr Justice Leggatt:

Introduction

1. This judgment records the reasons for orders made on 12 June 2015 following a case management hearing held on 27 April 2015. The purpose of the hearing (which I will refer to as the "April hearing") was to review whether there are steps which the court should now be taking to procure compliance by the Secretary of State for Defence with the duty of the UK under articles 2 and 3 of the European Convention on Human Rights (the "Convention"), incorporated into English law by the Human Rights Act 1998, to investigate allegations of unlawful killing and ill-treatment made by claimants in these proceedings. The claimants are Iraqi civilians who claim either that a relative was unlawfully killed or that they were themselves subjected to inhuman or degrading treatment by British soldiers (or as a result of actions of British soldiers) during the period when British forces were operating in Iraq between 2003 and 2009.

Background

2. The relevant background has been described in earlier judgments, including the first judgment of the Divisional Court in R (Ali Zaki Mousa) v Secretary of State for Defence (No 2) [2013] EWHC 1412 (Admin) and my judgment in these proceedings given on 17 March 2015: see Al-Saadoon & Others v Secretary of State for Defence [2015] EWHC 715 (Admin) (the "March judgment") at paras 1-30. In short:

   i) The claimants rely on the duty of the state to investigate arguable breaches of articles 2 and 3 of the Convention. Such a duty has been inferred from the state's substantive obligations to protect the right to life under article 2 and the right under article 3 not to be subjected to torture or to inhuman or degrading treatment, read in conjunction with the state's general duty under article 1 to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention". The existence of this investigative duty is well established, as is now the fact that it applies even in difficult security conditions including during armed conflict.[1]

   ii) Where such an investigative duty arises, the case law[2] establishes that the investigation must be effective, albeit that this is "not an obligation of result, but of means", and must have the following characteristics: (1) it must be undertaken by a person or body independent of the state agents who may bear responsibility for the death or alleged ill-treatment; (2) it must be reasonably prompt; (3) it must involve a sufficient element of public scrutiny of the investigation or its results to secure accountability; and (4) the victim's next of kin must be involved to the extent necessary to safeguard their legitimate interests.

   iii) The extent to which the Human Rights Act and the Convention apply to the actions of British forces in Iraq is a question which has given rise to much legal argument. The Secretary of State has accepted for some time that the Act and the Convention apply where the individual in question died or claims to have been ill-treated in the custody of British forces. In what other cases the Convention applies was an issue addressed in the March judgment. At the April hearing I gave both parties permission to appeal from my decision on

---

1 See para 17 of the March judgment.

2 See the authorities cited at para 18 of the March judgment.

that issue. For present purposes it is not necessary to consider the issue further.

iv) On 1 March 2010 the Secretary of State established the Iraq Historic Allegations Team ("IHAT"). The original mandate of IHAT was to investigate cases involving the death or alleged ill-treatment of Iraqi civilians in British custody. This was later widened to include some cases involving the allegedly unlawful killing by British soldiers of Iraqi civilians who were not in custody, without prejudice to the question of whether these cases were covered by the Convention.

v) Apart from the Act and the Convention, the service police have a responsibility to investigate allegations or circumstances which indicate that a criminal offence has or may have been committed by a member of the armed forces. If a service policeman considers that there is sufficient evidence to charge a person with a relevant offence, he has a duty under s.116(4) of the Armed Forces Act 2006 to refer the case to the Director of Service Prosecutions (the "DSP") to decide whether to direct the bringing of a prosecution. In cases investigated by IHAT, such decisions are made by the officer in charge of the Royal Navy Police.

vi) In R (Ali Zaki Mousa) v Secretary of State for Defence (No 2) ("AZM2"), in a judgment given on 24 May 2013,[3] a Divisional Court (consisting of the then President of the Queen's Bench Division and Silber J) found that IHAT is sufficiently independent of the executive to be able to carry out investigations which comply with articles 2 and 3 (see para 109). The Divisional Court nevertheless concluded that the establishment of IHAT and the arrangements associated with it were not by themselves adequate to discharge the duty imposed on the state under article 2 to investigate cases of Iraqis who had died in the custody of British forces and that, in order to secure such compliance, a procedure should be developed based on the model of coroners' inquests involving inquiries into individual deaths. These inquiries should be inquisitorial in nature and conducted by inspectors appointed by the Secretary of State (see paras 179, 212-225).

vii) In a second judgment given on 2 October 2013, the Divisional Court gave guidance as to the form of such inquiries and the general approach that should be followed. In the order made following that judgment at para (i), the court also directed that I be appointed as a designated judge "to have overview of the inquiries and to hear applications relating to general issues in dispute as to the overall conduct of the inquiries and for judicial review of decisions made in the inquiries".[4]

AZM2: the expected timing of inquiries

3. One aspect of the state's investigative duty where it arises under article 2 or article 3 of the Convention is that it should be performed promptly. As the European Court observed in Edwards v United Kingdom [2002] EHRR 487 at para 86:

> "it is crucial in cases of deaths in contentious situations for the investigation to be prompt. The passage of time will inevitably

[3] [2013] EWHC 1412 (Admin).

[4] See further AZM2 [2013] EWHC 2941 (Admin), paras 4-6.

> erode the amount and quality of the evidence available and the appearance of a lack of diligence will cast doubt on the good faith of the investigative efforts, as well as drag out the ordeal for the members of the family".

4. In AZM2 the Divisional Court found that the delays which had occurred in investigating deaths of Iraqis in custody since IHAT was established amounted to a failure to discharge the duty, quite apart from being a source of great and increasing concern (para 186). The Court also noted that "there seems to be recurring slippage" and was driven to conclude that "there are likely to be further long delays before IHAT finishes its work" (para 187).

5. In these circumstances the question arose whether it was necessary to take further steps to comply with the state's investigative duties, in particular by establishing inquiries, before IHAT had completed its investigation of any case and a decision whether to bring a criminal prosecution had been taken. The Divisional Court was persuaded that the question whether to bring a prosecution should be decided first (para 151), for three reasons:

   i) A properly conducted criminal process may be the most effective way of discharging the state's investigative duty.

   ii) Holding an inquiry in public in circumstances where prosecution is a realistic possibility could prejudice or put at risk the fairness of a subsequent criminal trial.

   iii) The prospect of a prosecution might impede an inquiry by enabling relevant witnesses to refuse to testify by relying on the privilege against self–incrimination.

6. The Divisional Court distinguished three different categories of case (para 152):

   i) Cases where there will be no IHAT investigation and so no prospect of any further prosecution ("Category 1 cases");

   ii) Cases where there has been a previous prosecution but IHAT is investigating or about to investigate with a view to a decision whether there should be a further prosecution ("Category 2 cases"); and

   iii) Cases where there has been no previous prosecution and IHAT is investigating or about to investigate with a view to a decision whether there should be a prosecution ("Category 3 cases").

7. At its request, the Divisional Court was provided with information about 12 specific cases involving civilian deaths which IHAT was then investigating (see paras 131-135). Two of these cases (Hassan Said and Nadhem Abdullah) fell in category 1. In each of these cases there had been a previous (unsuccessful) prosecution; no further investigation by IHAT was contemplated and there was no prospect of any further prosecution. There was therefore no impediment to holding inquiries in these cases – which the Court in its second judgment in AZM2 directed should be established as soon as practicable.

8. In the three category 2 cases and seven category 3 cases examined by the Divisional Court, the Court considered it very unlikely that there would be a criminal prosecution and emphasised the urgent need for decisions about prosecution to be made (paras

158-167). In its second judgment (at para 8), the Court returned to this topic and again stressed the urgent need for realistic decisions to be made. The Court also stated (para 9):

> "As soon as it is clear that there will be no prosecution in cases to which the Article 2 obligation to hold an inquiry attaches, then it is our view an inquiry ought to be commenced as soon as possible thereafter."

9. The Divisional Court expressed similar views in relation to the article 3 cases which involve allegations of serious mistreatment. The Court could see no justification for IHAT to suspend work on these cases until after article 2 cases had been investigated but considered that the procedure for complying with the duty to investigate such cases should be reviewed in the light of the experience in the article 2 cases, and that it might be possible to take a sample of the more serious article 3 cases as a proportionate approach to the discharge of the state's investigative duty.[5]

10. On 27 January 2014 the Secretary of State appointed a retired judge, Sir George Newman, to conduct inquiries into the deaths of Mr Said and Mr Abdullah (the two "category 1" cases identified by the Divisional Court). The terms of reference for these inquiries were promulgated in a written ministerial statement on 27 March 2014. The inspector has completed these inquiries and published his report in March 2015.

Subsequent proceedings

11. Following my appointment as the designated judge, I convened a case management hearing in these proceedings and in the parallel Iraqi civilian litigation which involves claims for damages against the Ministry of Defence. This hearing took place in February 2014. At my request, the DSP was represented and the court was provided with information about the work which IHAT was doing and planning to do.

12. The Divisional Court in AZM2 had given directions for the identification of "appropriate preliminary issues in test cases" to decide unresolved questions about the applicability of the Convention and of the state's duty to investigate alleged breaches of the Convention. I subsequently gave directions for a trial of such issues. My conclusions on the issues tried are set out in the March judgment.

13. When writing the March judgment, I asked for information about the numbers of cases which IHAT had investigated and was still investigating. I was provided with some information by the Secretary of State and was also referred to IHAT's website. On looking at the website at the beginning of February 2015, I was disappointed to find that the most recent quarterly update on the work of IHAT available was for the quarter of April to June 2014. (I have since been told that the failure to keep the website up to date was due to an "administrative error".) The content of that update was also discouraging. It showed that as at 30 June 2014, out of a total caseload of 146 cases (involving 52 deaths and 94 cases of alleged mistreatment), IHAT had completed its investigation of only 8 cases. A further cause for concern was the fact that, so far as I had been informed or could ascertain from publicly available information, no inquiries of the kind envisaged by the Divisional Court in AZM2 had yet been established by the Secretary of State other than those into the deaths of Mr Said and Mr Abdullah.

---

5 See AZM2, first judgment, paras 226-231; second judgment, paras 45-48.

14. I also asked the parties for an update on the number of claims currently comprised in the present proceedings. I was told that, whereas at the beginning of 2014 there were 190 claims, since then another 875 claims had been added and a further substantial number of claims were about to be added to the claims register.

15. It is not necessary to be a mathematician to appreciate that, at this rate, the task of investigating allegations arising from the activities of British armed forces in Iraq will never be completed.

16. It was against this background that I decided to convene the April hearing.

Agenda for the April hearing

17. On 9 February 2015 I wrote to the DSP to inform him of my intention to hold this hearing and ask if he could again arrange to be represented in order to provide an up-to-date report on the work of IHAT and his Directorate. In particular, I requested answers to the following five questions:

    i) In which cases, if any, the Joint Case Review Panel established by IHAT and the DSP has, since October 2013, advised the Secretary of State that there is no realistic case for prosecution;

    ii) In which cases IHAT or the DSP are still considering the possibility of a criminal prosecution;

    iii) What has been done to investigate these cases since October 2013;

    iv) Whether there is any realistic prospect that a prosecution will in fact be brought in any of these cases; and

    v) When a decision whether to prosecute will be made in these cases.

18. The DSP replied to me on 9 March 2015 agreeing to serve evidence and instruct counsel to attend the hearing whilst at the same time making it clear that he is independent of IHAT and that his role (and that of the Service Prosecuting Authority ("SPA") of which he is the Head) is limited to providing advice to IHAT in respect of their investigations. The DSP therefore asked the Director of IHAT, Mr Mark Warwick, to prepare a separate witness statement to update the court on the work of IHAT.

19. On 24 March 2015 I put the parties on notice that at the April hearing I also wished to consider what appeared on the face of things to be the failure of the Secretary of State to comply with the judgment of the Divisional Court in AZM2 regarding the establishment of inquiries under article 2 of the Convention and that, in particular, I wished to receive from the Secretary of State a full explanation of:

    i) Whether any inquiries have been established since the judgments of the Divisional Court in AZM2 were given, apart from the inquiries in the cases of Hassan Said and Nadheem Abdullah which have now been concluded (and, if so, in which cases);

    ii) Why no other inquiries have been established;

    iii) When further inquiries will be established and in which cases; and

iv) Whether the Secretary of State considers the delay in complying with the UK's investigative duty under article 2 to be justifiable and, if so, on what basis.

20. In addition, I invited proposals from any interested party as to any orders which the court should make to secure compliance with the investigative obligations of the UK under articles 2 and 3. The claimants responded to that invitation by making a number of proposals. As discussed below, the Secretary of State objected to many of these but agreed with some. He also put forward a proposal of his own for the trial of an issue as to whether claims are barred by delay.

Evidence about the work of IHAT

21. To answer the questions which I had raised, detailed evidence was provided consisting of witness statements made by the Director of IHAT, the DSP, and Mr Peter Ryan who is the Director of Judicial Engagement Policy at the Ministry of Defence. This evidence included the following information about the work which IHAT is undertaking and the arrangements for carrying out that work:

i) IHAT has a staff of 144 personnel. Within IHAT there are seven investigative units charged with investigating specific cases. Four of these units are currently investigating allegations of unlawful killing and three units are investigating allegations of serious ill-treatment.

ii) The management and conduct of investigations is entirely a matter for IHAT, and not for the DSP. Nevertheless, the DSP can and does provide advice to IHAT in connection with investigations, and he has established a dedicated team of six lawyers (the Iraq Historic Allegations Prosecutions Team) for this purpose. In addition, IHAT and the SPA have agreed a protocol in May 2013 which sets out the process to be followed in cases referred to IHAT involving allegations of unlawful killing. Under this protocol a panel known as the Joint Case Review Panel has been established to review cases after IHAT has conducted a pre-investigation assessment (which involves the recovery and assessment of all available documentary material). As its name indicates, the membership of the Joint Case Review Panel (the "JCRP") is drawn from both IHAT and the SPA and includes both the Director of IHAT and the DSP.

iii) After reviewing a case, the JCRP makes a recommendation about next steps including whether the case should proceed to a full investigation. The final decision about which cases should proceed to a full investigation is, however, that of the Director of IHAT.

iv) If on completing an investigation IHAT considers that there is sufficient evidence to charge, then it will refer the case to the DSP to decide whether to prosecute. The DSP will only direct a prosecution to be brought if satisfied that there is a realistic prospect of conviction and that it is in the public and service interest to bring charges.

v) If on completing an investigation IHAT considers that there is not sufficient evidence to charge, then it will consult with the DSP before discontinuing the case.

IHAT's initial caseload

22. Up until November 2014 IHAT's caseload consisted of 165 cases involving 279 victims. These cases comprised 53 cases of unlawful killing (with 64 victims) and 112 cases of ill-treatment (with 215 victims).

23. The Director of IHAT, Mr Warwick, provided the following information about IHAT's progress (as at 13 April 2015, when his statement was made) in investigating the 53 cases involving allegations of unlawful killing:

    i) 31 of these cases have been considered by the JCRP following a pre-investigation assessment.

    ii) In 14 of the cases considered by the JCRP, a decision has been made that there are no further viable and proportionate lines of inquiry which could lead to there being sufficient evidence to charge. All investigative work in these cases has therefore ceased. Seven of the cases have been formally discontinued and in the other seven cases IHAT is in the process of consulting the DSP before discontinuing the case.

    iii) In one case IHAT has completed a full investigation, concluded that there is sufficient evidence to charge and referred the case to the DSP.

    iv) Of the remaining 17 cases which have been considered by the JCRP, 12 cases are currently the subject of a full investigation and in the other five cases focused lines of inquiry are being undertaken with a view to resubmitting the case to the JCRP for further consideration of whether a full investigation is necessary.

    v) Of the 22 cases which have not been considered by the JCRP, three cases were already the subject of a full investigation before the JCRP was established and another case had been passed to the RAF Police for investigation. Two other cases were regarded as "missing person" investigations rather than criminal investigations. In both these cases work has ceased and in two further cases it has been determined that, for particular reasons, no further work by IHAT is necessary. That leaves 14 cases which are still at the pre-investigative stage and have not yet been presented to the JCRP.

24. In relation to the ill-treatment cases, there have been two substantial investigations into the activities of the Joint Forces Interrogation Team, which was a dedicated unit responsible for the interrogation of Iraqi internees. These investigations have included reviews of many thousands of hours of video recordings of interrogation sessions. As a result of these investigations, one suspect has been referred to the DSP. However, the DSP decided in December 2014 that charges would not be brought. There are also three separate investigations ongoing into individual allegations of ill-treatment involving over 30 potential victims. These investigations mainly centre on allegations of rape and serious sexual assaults.

Expansion of IHAT's caseload

25. Since November 2014, there has been a vast expansion in IHAT's caseload. The main source of these additional cases has been new claims added by the claimants' solicitors (PIL) to the claims register in these proceedings, which have also been notified to IHAT. In particular:

i) Claims notified by PIL to IHAT between August and October 2014 resulted in an additional caseload comprising 313 victims being allocated to IHAT in November 2014.

ii) Further cases involving 152 victims were allocated to IHAT in November 2014 which derived from criminal allegations identified within claims made in the Iraqi civilian litigation.

iii) Further claims notified by PIL to IHAT between November 2014 and March 2015 have resulted in an additional caseload consisting of approximately 761 victims (a full analysis has not yet been completed).

iv) Further allegations have been identified in the narratives of cases on the claims register in these proceedings albeit that no specific complaint has been made by PIL. These cases have not yet been fully analysed but consist of an estimated 147 victims.

v) Cases involving nine alleged victims have been added to IHAT's caseload arising out of allegations which were the subject of the Al-Sweady public inquiry.

26. It is apparent that IHAT's investigative task has grown hugely in the last few months and is still growing. As at 18 November 2014 the cases allocated to IHAT comprised 279 victims. By the time Mr Warwick made his witness statement on 13 April 2015 this number had increased to 762. If all of the additional criminal allegations which had been notified to the service police by that date are formally allocated to IHAT, its caseload will increase to approximately 1758 victims – a more than sixfold increase since last November.

27. Mr Warwick explained that the receipt of this very large number of new allegations has required him to divert resources away from dealing with IHAT's existing caseload. That is because it is necessary to assess the new allegations in order to identify (a) whether there are very serious allegations which should be prioritised over the less serious cases in the existing caseload and (b) whether there are allegations among the new cases which are linked to allegations which are the subject of ongoing investigations. IHAT cannot therefore simply continue dealing with its existing caseload and leave the new cases to be considered after those investigations are completed.

28. Mr Warwick said that he has been giving thought to how IHAT can deal with the additional caseload as efficiently as possible, whilst still complying with all criminal investigative obligations. IHAT has been working on an approach of developing "problem profiles" in relation to allegations of ill-treatment with a view to identifying patterns and groups of allegations which can be investigated together, while accepting that the most serious allegations such as rape and serious sexual assaults will require individual investigation. Mr Warwick has also introduced, in collaboration with the SPA, an initial screening stage to the investigative process. The object of this procedure is to identify at the outset cases in which the allegation or circumstances would not indicate to a reasonable person that a service offence has or may have been committed. Mr Warwick regards this as particularly significant in the unlawful killing cases, as many of the deaths may have occurred in circumstances where the use of force was lawful under international humanitarian law.

Funding

29. In July 2014, the Secretary of State recognised that IHAT's work was not going to be completed by the end of 2016. He approved additional funding of £24m to cover the period from the end of 2016 to the end of 2019 – which increased the total level of funding of IHAT to £57.2m.

Mr Ryan's evidence

30. Mr Ryan asserted in his witness statement that the fact that no further inquiries of the kind outlined in AZM2 had yet been established was not due to any resource constraints but was due only to the need to wait for IHAT to complete its investigations and then to consider the detailed form that an inquiry should take. He said that, as at 17 March 2015, there were only six cases in which IHAT had concluded its investigation into a death and which had therefore been referred to the Directorate of Judicial Engagement Policy at the Ministry of Defence (the "DJEP"). In one of those cases (Muhammad Abdul Ridha Salim), which was referred to the DJEP on 17 February 2015, the Secretary of State had decided on 2 April 2015 that an inquiry should be established. In each of the other five cases a decision had been taken that an inquiry was not required. In addition, IHAT had provided the DJEP with details of four completed investigations in cases of alleged ill-treatment but the Secretary of State had not considered it necessary to establish an inquiry in any of these cases.

31. In four of the cases involving deaths in which the Secretary of State did not consider that an inquiry was required, Mr Ryan said that the case nevertheless had been or would be referred to the Systemic Issues Working Group ("SIWG") within the Ministry of Defence to review the case for any systemic issues. Mr Ryan also said that the SIWG has now started to publish annual reports (the first of which was issued in July 2014) explaining what the Secretary of State has done to address systemic issues identified from its review of IHAT investigations and other information.

Expectations not fulfilled

32. As mentioned earlier, the Divisional Court in AZM2 specifically considered three "category 2" cases under investigation by IHAT in which there had been a previous failed prosecution. In its judgment dated 2 October 2013, the Court stated at para 8(i):

> "in respect of the category 2 cases (those where there have been previous failed prosecutions), realistic decisions must be made in the very near future. Any further delay will have to be explained to the Designated Judge who will hold IHAT and the Director of Service Prosecutions to account. We cannot emphasise too strongly the need for urgent and realistic decision-making on these cases."

33. Over one and a half years later the position remains that a final decision whether to bring a further prosecution has not yet been made in any of the three cases. In one of them (Ahmed Jabber Kareem Ali) IHAT has recently concluded that there are no viable and proportionate lines of inquiry which can lead to there being sufficient evidence to charge. At the date of Mr Warwick's witness statement (13 April 2015) IHAT had consulted the DSP and was waiting for his response before discontinuing the investigation. In the second case (Shaheed Shabram) Mr Warwick reported in his

witness statement that IHAT "is moving towards the final stages of this investigation and it is expected that it will be complete by the end of June 2015". This may be compared with the information given to the Divisional Court in March 2013 that "[t]he matter is being reviewed by IHAT and it is expected that a final report will be produced shortly": see AZM2, first judgment, para 160. The third case is that of Baha Mousa. The Divisional Court considered that there was a particularly pressing need for a decision about prosecution to be made very soon in that case, as the death of Baha Mousa had already been the subject of a major public inquiry. That inquiry had taken more than three years to complete, had cost £25m and had resulted in a detailed three volume report published in September 2011. According to Mr Warwick, however, a team of 13 people is still working on the case. As part of the investigation, a number of other incidents which occurred around the time of Mr Mousa's death are also being considered and Mr Warwick envisages that the investigation will take until December 2016 to complete. In his witness statement, he likened the investigation in terms of its complexity to the case of Stephen Lawrence.

34. In relation to the seven "category 3" cases (those where there has been no criminal process) examined by the Divisional Court, the Court noted at para 8(ii) of its second judgment that these deaths occurred more than 10 years ago, and stated:

> "We would find it difficult to see what justification there could be for failing to reach a decision on prosecution by the end of 2013."

In the event, IHAT has since concluded its investigation in two of the seven cases. In each of the other cases the investigation is said now to be nearing completion.

35. In comparison with the expectations of the Divisional Court, this state of affairs is deeply disappointing. So too is the fact that, except for the two cases in which the Divisional Court specifically directed that inquiries should be established as soon as practicable, at the time of the April hearing no further inquiries had yet been established and only one further inquiry was in the process of being established. When one adds the fact that since November 2014 IHAT's caseload has increased massively from 165 cases involving 279 victims to 762 victims, with the possibility of up to 1000 further victims to be added, the situation looks bleak indeed.

Discussion

36. It is clear from the evidence with which the court has been provided that considerable efforts and resources have been and are being devoted to the work of IHAT. It is also clear that the investigative work which IHAT is undertaking poses immense challenges. The difficulty and complexity of the task is increased by, amongst other factors:

    i) The length of time which has elapsed since the relevant events occurred;

    ii) The difficulties of collecting evidence from complainants and witnesses who live in Iraq and whose language is Arabic; and

    iii) The huge recent expansion in the number of cases which have been referred to IHAT.

37. It may well be that, as the Divisional Court considered, it is very unlikely that there will be a criminal prosecution in at least the vast majority of the cases referred to IHAT. I accept, however, that this does not remove the need for IHAT carefully to

examine what evidence is or may be available and to explore all viable and proportionate lines of inquiry before reaching a conclusion about the sufficiency of the evidence in each case. That is unavoidably a time-consuming process. I also accept that it is only once such a conclusion has been reached that a final decision can be taken that there will be no prosecution.

38. I do not doubt the thoroughness with which IHAT is carrying out its work. Whether IHAT is working in the most efficient way is not for me to say nor something that I am in a position to judge. I do, however, welcome two developments. The first is a plan mentioned by Mr Warwick to increase the resources allocated to interviewing complainants and witnesses. Such interviews are conducted in a third country and require arrangements to be made for the individuals who are to be interviewed to travel to that country, often with chaperones, and for the deployment of IHAT staff, plus interpreters and medical experts. At present, IHAT is interviewing on average 100 complainants and witnesses a year. The plan is, with effect from August 2015, to double this rate so as to complete 200 interviews a year.

39. Secondly, I am encouraged that serious consideration is being given to how IHAT's resources can be targeted most effectively. It seems to me essential, given the large number of cases recently added to its caseload, that IHAT should continue to develop processes for sifting cases so as to identify those involving the most serious allegations to which priority needs to be given and also to identify at as early a stage as possible those cases where there is no credible allegation that an unlawful killing or ill-treatment amounting to a serious criminal offence occurred, and which it is therefore not necessary for IHAT to investigate.

Why have so few inquiries been established?

40. As mentioned earlier, the Divisional Court in AZM2 considered that inquiries should not be commenced in cases which are being or will be investigated by IHAT until the investigation is concluded and a decision has been made that no prosecution will be brought. It is apparent that the main reason why only two inquiries have so far taken place and only one further inquiry is currently being established is that IHAT has only completed its investigations of a few cases.

41. I am not convinced that the reasons which persuaded the Divisional Court that an inquiry should not be established until prosecution has been ruled out remain applicable. Given the length of time since the relevant events occurred, the possibility that the state's investigative duty will be discharged through a criminal process, the risk of prejudicing a future criminal trial if an inquiry is held, and the prospect that relevant witnesses will invoke the privilege against self-incrimination, may in many cases be remote. Furthermore, in the Baha Mousa case the fact that a major public inquiry has already taken place which reported in September 2011 has not prevented or inhibited IHAT from continuing to investigate the possibility of bringing a further prosecution.

42. I nevertheless accept that there are substantial advantages in terms of efficiency in waiting for IHAT to conclude its investigation of any case before an inquiry is established. This avoids duplication of effort and will enable the inspector to build on the work done by IHAT, thus greatly facilitating the inspector's task. A further benefit of waiting for the investigation to be completed is that it is possible that the result of IHAT's investigation may in some cases be to obviate the need for an inquiry – a point to which I will return. Despite these advantages, I do not exclude the possibility that there may be serious cases in which the delay and prospect of future

delay is such that it will be necessary to consider whether an inquiry should be established before IHAT has completed its investigatory work.

Notification of decisions

43. Counsel for the claimants pointed out that, until they saw the evidence prepared for the April hearing, the claimants' solicitors had not been notified of any decisions about whether there would be prosecutions, nor had they been informed of any decisions made by the Secretary of State about whether to establish inquiries. In particular, the claimants had not been told that in five cases which have been referred to the DJEP on the basis that there is no realistic case for prosecution, the Secretary of State has decided that he will not establish an inquiry. In these circumstances the claimants asked the court to order that there be prompt notification in future (a) by the DSP of any decision as to whether or not there is to be a prosecution in relation to any allegation investigated by IHAT and (b) by the Secretary of State of any decision as to whether or not an inquiry is to be established in relation to any allegation investigated by IHAT.

44. I agree that such procedures are needed to ensure that relevant decisions are in future notified to the claimant (and to the court) in a timely way. I have accepted the point made by Mr Eadie QC on behalf of the Secretary of State that, should a decision be made to bring a prosecution in any case, that is not a decision of which the claimants' solicitors need to be notified. However, when any decision is taken which has the result that there will be no prosecution in relation to any allegation made by a claimant, I consider that the claimants' solicitors ought to be notified of the decision. Not only will this ensure that they are aware of a matter which is obviously of great importance to their client but it will also enable them to know when the question whether to hold an inquiry has arisen. That in turn will enable them to follow up the matter if there appears to be unreasonable delay in addressing that question.

45. It is all the more important that the claimants' solicitors are notified, and notified promptly, of any decision taken by the Secretary of State to establish, or not to establish, an inquiry in relation to any allegation made by a claimant. In the latter case the claimant also needs to be told the reasons for the decision so that an informed judgment can be made about whether to seek a judicial review.

46. Accordingly, the order made following the April hearing sets out requirements for the notification of relevant decisions to the claimants' solicitors (and to the court). In the case of any decision not to establish an inquiry, the order also requires the notification to be accompanied by reasons and by disclosure of any report made by IHAT to the Secretary of State (subject to a right of the Secretary of State to object to disclosure of any part of a report on the ground that its disclosure would be contrary to the public interest).

47. I did not accept the claimants' contention that reasons should also be required for decisions which have the result that there will not be a prosecution. That is because such decisions are not themselves decisions which claimants in these proceedings might seek to challenge.

Challenging decisions not to establish inquiries

48. The claimants have made it clear that in four of the cases where they now know that a decision has been taken by the Secretary of State not to establish an inquiry they wish

to challenge the lawfulness of that decision. They asked the court to give directions for a hearing for this purpose.

49. In two of these cases the reason given in the witness statement of Mr Ryan for the decision not to establish an inquiry is that there was no evidence that the death was caused by UK forces. In the other two cases the reasons given were (1) that the Secretary of State does not accept that the death occurred within the jurisdiction of the UK under the Convention and (2) that there is in any event no credible case of a breach of article 2, as the level of force used was appropriate. I understand the Secretary of State to accept that the first of these reasons can only be maintained if he succeeds on his appeal from relevant conclusions on the article 1 jurisdiction issue reached in the March judgment.

50. The approach taken in these four cases would appear potentially to raise questions about whether, and if so when, it is lawful for the Secretary of State to decide that it is unnecessary to establish an inquiry into a death because he does not regard it as arguable in the light of IHAT's investigation that there has been a breach by the UK of article 2. These questions are likely to have implications for many future cases referred to the Secretary of State by IHAT. It is therefore desirable that the court should determine these questions at the earliest opportunity.

51. Counsel for the Secretary of State raised the objection that any challenge to the decision not to establish an inquiry in any of these cases would need to be the subject of a fresh claim for judicial review. That is because, although the existing claims for judicial review complain that the Secretary of State has failed to investigate the claimants' allegations in accordance with the state's duty under article 2 of the Convention, the claims do not specifically seek a review of the recent decisions of the Secretary of State that no further investigation is required following the conclusion of IHAT's investigation – necessarily so since these decisions had not been made when the proceedings were brought. On behalf of the Secretary of State, Mr Eadie QC further objected that allowing the claimants to proceed straight to a substantive hearing of their challenge to the Secretary of State's decision would bypass the requirement to obtain permission, which is a necessary preliminary step in proceedings for judicial review.

52. In many cases it is not appropriate to allow a claimant to challenge a new decision taken after the claim has been brought, and which supersedes the decision originally challenged, by amending the claim form. Instead, the proper course is for the claimant to issue fresh proceedings. This ensures clarity and prevents claimants from avoiding the need to apply for and obtain public funding for what is in substance a different claim. In the present cases, however, I cannot see that any useful purpose would be served by requiring fresh proceedings to be issued – particularly as the challenge to the continuing failure of the Secretary of State to establish an inquiry effectively encompasses a decision not to do so. Refusing to allow the claim form to be amended and requiring a new claim form to be issued and served would simply cause delay and additional cost. That said, allowing a claimant to amend the claim does not avoid the need to obtain permission to proceed to a substantive hearing. Nor can I see any good reason to dispense with that requirement.

53. I have therefore put in place a procedure in a form agreed by the parties which will apply, unless otherwise directed, in any case where a claimant wishes to challenge a decision by the Secretary of State not to establish an inquiry. This procedure requires an initial letter before claim and letter of response to be sent of the kind which parties are normally expected to send under the Pre-Action Protocol. If the claim is pursued,

the claimant must then file and serve within 21 days amended grounds and any evidence relied on; the Secretary of State has an equivalent period in which to file and serve summary grounds and any evidence relied on in response to the amended grounds. The question whether to grant permission to proceed will then be dealt with in the ordinary way – with a decision being made in the first instance on the papers, but with the opportunity to request reconsideration at a hearing if permission is refused.

54. In the four cases where the claimants have already indicated that they wish to challenge the Secretary of State's decision not to establish an inquiry, I have dispensed with the need for an initial exchange of correspondence. I have also fixed a hearing for the first week of November which will encompass the substantive hearing of the claim for judicial review of the Secretary of State's decision in any of these cases for which permission to proceed is granted.

Systemic issues

55. The duty to investigate alleged violations of article 2 or 3 may require an independent examination not only of the particular acts complained of but also of the surrounding circumstances and of wider or systemic issues which the case may raise. Such issues may relate, for example, to the planning and control of operations or to the training, instructions and supervision which soldiers have received. In the first AZM2 judgment (at paras 192-193) the Divisional Court found that IHAT was not structured or staffed to examine such issues. The Court described (at paras 86-92) the role of the DJEP in reviewing systemic issues and the processes by which the DJEP identifies such issues emerging from the investigations carried out by IHAT. The Court concluded (at para 93) that, despite its work being done in a "conscientious manner", the DJEP "cannot be described as independent" as it "acts on behalf of the Secretary of State and is an integral part of the defence and military hierarchy".

56. The claimants noted from the evidence of Mr Ryan to which I referred earlier that consideration of systemic issues is still a matter for which responsibility lies with the DJEP (and the Systemic Issues Working Group which it has established). The claimants submitted that this amounts to a clear breach of the UK's investigative obligations as the DJEP continues to lack the necessary independence to discharge those obligations. They asked the court to declare that the arrangements for the DJEP to deal with systemic issues are unlawful and to order that the Secretary of State file and serve a witness statement identifying steps he proposes to take to address that unlawfulness.

57. I do not think that the adequacy of arrangements for considering systemic issues can properly be determined in isolation from specific cases. The need to examine such issues, where it arises, can only arise out of and in relation to allegations that particular individuals were unlawfully killed or mistreated. Thus, in order to establish a breach of the UK's investigative duties in this regard, a claimant would need to show that his case raised systemic issues which require investigation and which either have not been investigated or have not been investigated by a person or body which is independent of the executive.

58. The appropriate context for advancing such a contention, as I see it, is in challenging a decision by the Secretary of State not to establish an inquiry in a particular case. One ground on which such a challenge could in principle be brought is that an inquiry is necessary because the case raises systemic issues which require independent investigation in order to discharge the state's investigative duty under article 2 or 3.

Any challenge based on such a ground should be made in the same way as any other challenge to a decision not to establish an inquiry. Accordingly, it has been made expressly clear in the order that the procedure for challenging such decisions applies to decisions regarding the investigation of systemic issues as well as specific allegations.

Requests for further information

59. The claimants have asked the Secretary of State to provide information about matters such as the number of Iraqis known to have died in custody, the number of deaths of Iraqis known to have occurred from the use of lethal force by British soldiers, the number of Iraqis detained or interned and the number known or believed to have been ill-treated in detention. I understand these questions to relate to the entire period during which British forces were present in Iraq.

60. A response to these requests was provided in a letter from the Assistant Head of the DJEP, Mr Sanders, on 13 April 2015. The claimants are not satisfied with the answers given to their questions. They have expressed concern that the information given may be incomplete and that the sources from which it was derived are unclear. At the April hearing the claimants sought an order requiring the Secretary of State to file and serve a witness statement (a) verifying whether the contents of the letter of 13 April 2015 were full and accurate answers to the questions to which it was responding and (b) identifying the sources of the information supplied in the letter and the witness statement and giving details of the searches and inquiries undertaken.

61. I declined to make such an order. I do not consider that the claimants have shown any sufficient reason why the provision of such a witness statement is necessary. It is not apparent to me why the information is relevant to the claims made by the claimants in this litigation (as opposed to the possibility that other people who have not made claims might wish to do so). Nor do I accept the claimants' assertion that it is "obviously a matter of the utmost importance" that the numbers of known deaths and cases of ill treatment are definitively established. To put it bluntly, in circumstances where there is a vast amount of work to be done for which there is currently no end in sight to investigate the cases which have already been referred to IHAT, devoting time and resources to trying to establish whether there may be yet further potential cases, not currently the subject of any complaint, which IHAT ought to consider must be a very low priority.

62. The claimants also submitted that, following the March judgment, it is important to ascertain whether there is any remaining dispute about which cases on the claims register fall within the UK's jurisdiction and investigative obligations under the Convention. To this end, the claimants sought an order requiring the Secretary of State to file and serve a notice identifying any cases on the claims register in which he disputes (i) the jurisdiction of the UK under article 1 of the Convention or (ii) the existence of a duty to investigate the violations of Convention rights alleged by the claimants. The claimants recognised that this task might take some time to complete.

63. The Secretary of State accepted that there will need to be clarity, in due course, about which cases are accepted as falling within the UK's article 1 jurisdiction and which cases are accepted as requiring investigation, but submitted that it would be premature to undertake that exercise now in circumstances where permission has been given to both the claimants and the Secretary of State to appeal from my decision on these issues.

64. I agree that it would be potentially wasteful to require the Secretary of State to examine the allegations made in each of the very large number of claims on the claims register and to state his position on jurisdiction and whether there is an investigative duty in each case until the applicable principles have been finally determined. If the exercise were to be performed now and an appellate court later reaches different conclusions from those which I have reached in the March judgment, then some or all of the exercise would have to be done afresh. Nor can I see that any benefit would be gained from carrying out the exercise at all before the applicable principles have been finally determined. I therefore declined to make the order sought.

Issue concerning article 5

65. Another issue considered in the March judgment was whether article 5 of the Convention is modified or displaced by international humanitarian law ("IHL") during an international armed conflict. By the time that this issue came to be argued, the European Court had given judgment in the case of Hassan v United Kingdom [2014] ECHR 936. In the light of that judgment it became common ground between the parties that article 5 is not displaced by IHL during an international armed conflict but is modified in that its provisions must be interpreted in a manner which takes into account the applicable rules of IHL. The March judgment left open the question of the precise extent of the modification to article 5 required to take account of IHL and what it involves in practice, while noting that this question may need to be addressed on a later occasion (para 254).

66. The claimants asked the court to give directions for a further hearing to address this question by reference to test cases. The response of the Secretary of State was that, given the conclusion in the March judgment (para 294) that there is no duty to investigate arguable breaches of article 5 save in a case of enforced disappearance, this question has no practical relevance for the claims for judicial review made in these proceedings and therefore does not need to be decided. To this the claimants answered that their claims include allegations that there have been substantive violations of the claimants' Convention rights as well breaches of a duty to investigate those allegations, and include claims for damages for those substantive violations. They submitted that the issue therefore does arise in the present proceedings.

67. I mentioned earlier the separate set of proceedings, known as the "Iraqi civilian litigation", comprising claims for damages against the Ministry of Defence. There are now more than 1,000 claimants in those proceedings. The injuries for which damages are claimed include allegedly unlawful detention by British forces, as well as alleged ill-treatment and in some cases unlawful killing. All the claims in the Iraqi civilian litigation have been issued in the Queen's Bench Division under Part 7 of the Civil Procedure Rules and include claims for damages in tort (which are governed by Iraqi law) as well as under the Human Rights Act 1998. There is a substantial overlap between the claimants in the Iraqi civilian litigation and the claimants in the present judicial review proceedings. The two sets of proceedings are, however, being managed separately.

68. I have made it clear at a case management hearing in the Iraqi civilian litigation held on 23 April 2015 that I regard that litigation as the appropriate forum for dealing with the damages claims. It would be hopelessly inefficient and a recipe for confusion to deal with claims for damages under the Human Rights Act concurrently in both sets of proceedings – in one of which those claims are combined with claims for judicial review and in the other of which they are combined with claims for damages in tort.

Furthermore, it is convenient to deal with claims for damages under the Human Rights Act at the same time as the claims for damages in tort which arise out of the same facts. In addition, the claims by Iraqis alleging substantive violations of Convention rights – as opposed to claims seeking an investigation of such allegations – involve substantial questions of fact which are best decided in proceedings begun under Part 7 and with which the Part 54 procedure is not designed to deal. I have therefore taken the view that all damages claims which claimants wish to pursue need to be made by issuing proceedings in the Queen's Bench Division which will then be managed under the umbrella of the Iraqi civilian litigation.

69. Although no dates have yet been fixed, the current intention is that trials will take place in the first half of next year in a group of cases in the Iraqi civilian litigation which have been fully pleaded and in which disclosure is currently being given. Questions concerning the extent of the modification to article 5 required to take account of IHL arise in some of those cases. At trial those questions can and will be decided on the basis of evidence and factual findings about the practices and procedures which were in fact followed at the times when and places where the relevant claimants were detained.

70. In these circumstances it is unnecessary to address any such issue in the present proceedings.

Orders in aid of inquiries

71. A further topic raised by the claimants at the April hearing was the need for a speedy procedure to enable inspectors in inquiries established in accordance with the judgments in AZM2 to obtain an order from the court to compel a witness to attend or provide evidence to the inquiry where the inspector considers it appropriate.

72. The claimants pointed out that in its second judgment in AZM2 (paras 15-16) the Divisional Court expressed the view that "a form of inquiry where [witnesses] can be compelled to attend will be the only fair way of determining what happened" and that "a way must be found" of providing inspectors with powers of compulsion and appropriate sanctions for non-compliance. In fact, because the two inquiries which have so far been held were not set up under the Inquiries Act 2005, the inspector did not have such powers. It is, however, common ground that it would have been open to the inspector to ask the court to exercise its power under CPR 34.4 to issue a witness summons in aid of the inquiry.

73. Counsel for the claimants drew attention to the fact that during the inquiry into the death of Hassan Said the soldier who shot Mr Said refused to give evidence. The inspector decided not to seek an order from the High Court to compel the soldier to attend, as he did not consider the soldier's attendance necessary to enable him to complete his investigation. That was because (a) the key facts were already established and (b) the inspector did not believe the soldier would say any more than he had already said in previous testimony which was available to the inquiry. When the question was raised, however, the inspector indicated to the lawyer representing Mr Said's family that, in order to compel the soldier's attendance, the inspector "would have to win an application to the High Court and that ... could take some time, namely a number of weeks if not months, to get a final result" (Report, Appendix 13, p.134). Counsel for the claimants submitted that a procedure is needed to ensure that, as and when such an issue arises on any future occasion, an order can be obtained from the High Court in an appropriate case with the minimum of cost and delay.

74. I agree that it is desirable to establish a procedure which, in the absence of any direction to the contrary, will apply in any case in which an appointed inspector considers it appropriate to compel a witness to attend or provide evidence to an inquiry, or seeks any other assistance from the High Court. The order made on 12 June 2015 makes provision for this.

Time bar issues

75. I have mentioned the very large number of claims which have recently been added to the register of claims in these proceedings. At the time of the April hearing the total number of claims had reached 1,268. More than 1,000 of these claims have been commenced since the Divisional Court gave its judgments in AZM2 in 2013. Many of the claims raise complaints about events occurring as long ago as 2003. It is the Secretary of State's position that these claims have been brought long after the expiry of the time limits applicable under the Human Rights Act 1998 and CPR 54.5(1), that there is no good reason to extend time, and that the court should refuse permission to proceed with the claims or should refuse to grant the relief sought (applying s.31(7) of the Senior Courts Act 1981). Counsel for the Secretary of State proposed that the issue whether claims are barred by delay should be decided by reference to a sample of test cases.

76. The claimants made it clear that they have no objection to the time bar issues raised by the Secretary of State being decided by the court, and decided as soon as possible.

77. It will be sensible to decide these issues at the hearing which is to take place in November 2015. I have accordingly given directions in terms agreed between the parties to enable this to be done.

Further case management hearing

78. The claimants proposed that there should be a further case management hearing during the Autumn Term of 2015, at which (a) the court is to be updated by the DSP, IHAT and the Secretary of State on progress in the investigations, decisions regarding prosecution and the establishment of inquiries in the article 2 and article 3 cases, and (b) the court can consider what, if any, further orders are appropriate. In support of this proposal, counsel for the claimants suggested that the communications from the court which preceded the April hearing had prompted a "surge in activity" and submitted that ongoing proactive judicial supervision will be critical to securing compliance with the UK's investigative obligations.

79. The Secretary of State maintained that it is unnecessary to hold a further hearing so soon after the April hearing.

80. Although I am conscious of the imposition involved, I consider that the April hearing has been a very useful exercise which has helped to concentrate minds on the need to find the most efficient ways of accomplishing the enormous task facing IHAT and the Ministry of Defence. Moreover, the evidence served for the April hearing asserted that IHAT will soon conclude its investigations in a significant number of cases. In the circumstances I think there will be value in a further update and review in the autumn. This will therefore be a further purpose of the hearing which has been fixed for November.

Order made

81. Although I indicated at the April hearing the substance of the orders which I intended to make, it took a considerable amount of discussion between the parties and correspondence with the court to work out all the details and finalise the terms of the order. I am very grateful to the parties for the cooperative and constructive way in which this has been accomplished. A copy of the order made on 12 June 2015 is appended to this judgment.

IN THE ADMINISTRATIVE COURT

Before the Honourable Mr Justice Leggatt

Claim Nos: CO/5608/2008 and others

R (Al-Saadoon & Others)

Claimants

-v-

Secretary of State for Defence

Defendant

Claim No: CO/17549/2013

R (Yunus Rahmatullah & Amanatullah Ali)

Claimants

-v-

(1) Secretary of State for Defence

(2) Secretary of State for Foreign and Commonwealth Affairs

Defendants

O R D E R

ON HEARING leading counsel for the Claimants, the Director of Service Prosecutions and the Defendants at a hearing on 27 April 2015

IT IS ORDERED THAT:

1.1. Subject to paragraph 3:

(i) The Director of Service Prosecutions shall, within 14 days of the decision or if subject to the victim right of review process within 14 days of the decision made following completion of that process, notify the Designated Judge and the Claimants' solicitors of any decision made by the Director that there will

not be a prosecution in relation to any allegation investigated by the IHAT relating to a Claimant.

(ii) The IHAT shall, within 14 days of the decision, notify the Designated Judge and the Claimants' solicitors of any decision by the IHAT to terminate any investigation relating to a Claimant.

(iii) The Secretary of State for Defence (Secretary of State) shall, within 28 days of the decision, notify the Designated Judge and the Claimants' solicitors of any decision by the Commanding Officer to bring no charges relating to a Claimant.

(iv) The Secretary of State shall, within 28 days of the decision, notify the Designated Judge and the Claimants' solicitors of any decision as to whether or not an inquiry is to be established in accordance with the judgments in *Ali Zaki Mousa (No 2)* ([2013] EWHC 1412 (Admin) and [2013] EWHC 2941 (Admin)) in relation to (a) any allegation made by a Claimant which has been investigated by the IHAT or (b) any systemic issues.

2. (i) Notification of any decision not to establish an inquiry covered by paragraph 1(iv) above shall be accompanied by reasons and, subject to sub-paragraph (ii) below, by disclosure of any report made by the IHAT to the Secretary of State.

(ii) If the Secretary of State considers that the disclosure of any part of any IHAT report would be contrary to the public interest, he should so indicate and explain the basis upon which disclosure of such part of the report is being withheld.

3. The notification requirements specified in paragraph 1 above shall apply to any decision taken before (as well as after) the date of this order which has not already been notified in the witness statements of Mark Warwick and Peter Ryan dated 13 April 2015, save that in the case of any decision taken before the date of this order the relevant notification shall be given by whichever is the later of (a) the date specified in paragraph 1 above and (b) 19 June 2015.

4. Save as specified in paragraph 5 below, there shall be the following procedure by which any decision made by the Secretary of State not to establish an inquiry (whether into specific allegations or systemic issues) can be challenged:

(i) If, after receiving notification of any such decision, any Claimant seeks to challenge the decision, the Claimant shall write to the Secretary of State within 21 days setting out the basis for the challenge.

(ii) Within 21 days of receiving such a letter the Secretary of State shall write to the Claimant's solicitors setting out his response.

(iii) The Claimant shall have 21 days from receiving the Secretary of State's response in which to file and serve amended grounds and any evidence relied on in support of a claim for judicial review of the Secretary of State's decision.

(iv) The Secretary of State shall within 21 days file and serve summary grounds and any evidence relied on in response to the amended grounds.

(v) The question whether to grant permission to proceed with the claim for judicial review is to be considered in the first instance on the papers by the Designated Judge.

(vi) If permission is refused on the papers, the Claimant may within 7 days make a request that the application for permission be renewed before the Designated Judge at an oral hearing.

(vii) If permission is given, the Designated Judge will give directions for a substantive hearing of the claim.

5. In relation to the four cases mentioned in paragraph 36(ii)-(v) of the witness statement of Peter Ryan dated 13 April 2015 (Majeed, Owaid, Hassam and Naser):

(i) The Secretary of State shall by 15 June 2015 provide the Claimants' solicitors with a statement of the reasons for the decision and (subject to paragraph 2(ii) above) a copy any relevant report made by the IHAT to the Secretary of State.

(ii) Thereafter the procedure specified in paragraph 4(iii)-(vi) shall apply, save that the period of 21 days referred to in paragraph 4(iii) shall run from 15 June 2015.

6. There shall be fixed a 4 day hearing from 3-6 November 2015 to encompass (a) the substantive hearing of any claim for judicial review of the Secretary of State's decision not to establish an inquiry in relation to any of the four cases referred to in paragraph 5 above for which permission to proceed has been granted; (b) the issue whether (if so contended by the Secretary of State) a sample of judicial review claims are barred by delay; and (c) any case management issues. It is directed that any issue involving the DSP be dealt with on the last day of that hearing.

7. As to the time bar issue (paragraph 6(b) above):

(i) The Secretary of State, if maintaining that cases should be dismissed on grounds of delay in bringing the claim, shall by 26 June 2015 write to the Claimants' solicitors identifying four proposed test cases where the Secretary of State seeks the dismissal of the judicial review claim on that basis.

(ii) Following notification by the Secretary of State in accordance with sub-paragraph (i) above, the parties shall seek to agree four test cases. The parties shall, by 24 July 2015, notify the Designated Judge of the agreed test cases or, in the event of disagreement, file and serve written submissions on the basis of which the Designated Judge will select the test cases.

(iii) The Claimants and the Secretary of State shall by 7 September 2015 serve any evidence relevant to the time bar issue.

(iv) The Claimants and the Secretary of State may by 5 October 2015 serve any evidence in reply.

(v) The Secretary of State shall file and serve a skeleton argument by 4pm on 19 October 2015.

(vi) The Claimants shall file and serve a skeleton argument by 4pm on 26 October 2015.

8. As to the case management issues (paragraph 6(c) above), (a) the Court is to be updated by the IHAT, the DSP and the Secretary of State on progress in the investigations and/or prosecutions and/or establishment of inquiries in the Arts 2 and 3 ECHR cases, and (b) the Court will consider what if any further orders are appropriate. The following directions apply in relation to this hearing:

(i) By 4pm on 13 October 2015 the IHAT, the DSP and the Secretary of State shall file with the Designated Judge and serve further witness statements describing the current position and state of progress in the Art 2 and 3 cases.

(ii) By 4pm on 20 October 2015 any party wishing to raise an issue to be considered at the hearing shall file with the Designated Judge and serve a notice identifying the issue and any order sought.

9. Further to the judgment in *Ali Zaki Mousa (No 2)* [2013] EWHC 2941 (Admin) §§15-16 and the Order of the Divisional Court dated 31 October 2013 §(vii), and in the absence of any direction to the contrary, it is directed that in any case in which an appointed inspector considers it appropriate to compel a witness to attend or to provide evidence to an Iraq Art 2 or Art 3 inquiry, or to seek any other order:

(i) The inspector may apply to the Designated Judge on notice for an order identifying the grounds on which it is sought and attaching a draft order.

(ii) Any person on whom the application is served shall have 14 days from service to file with the Designated Judge and serve any response including any request for directions.

(iii) The inspector shall have 7 working days from the date of any response to file with the Designated Judge and serve a reply.

(iv) The application will be dealt with by the Designated Judge in the first instance on the papers.

10. Costs in the case, save that there be no order for costs against the DSP.

Dated: 12 June 2015