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**INQUIRIES INTO UNNATURAL DEATH AND SERIOUS INJURY ON OPERATIONS:
IMPROVEMENTS IN PROCESS AND BRIEFING**

ISSUE

1. To update Minister(AF) on proposals for improvement in process and briefing for investigations, inquiries and related issues concerning unnatural death and serious injury on operations.

RECOMMENDATION

2. Minister (AF) is invited to note the following areas of improvement:

Process:

- presumption of Board of Inquiry (BoI) common to all three Services,
- higher command to have discretion in exceptional cases,
- presidents to have overall co-ordination role and to be released from other duties,
- priority to be given to determining cause when imminent risk of recurrence.

Timescale:

- emphasis on earliest commencement and conclusion of all stages,
- target timescales to be shortened, maximum concurrent working,
- urgent lessons to be disseminated and implemented ahead of main reports.

Disclosure:

- next of kin (NoK) communications to be routed through single point,
- NoK to be briefed on realistic expectations from each stage of process,
- NoK to be briefed on factual information, whenever practicable, ahead of final BoI report,
- clear robust disclosure policy to be developed in light of recent legislation.

Co-ordination and Audit:

- senior focal point in commands/TLBs to exercise co-ordination of overall process,
- effectiveness and timeliness to be ensured without compromise to independence,
- processes to be defined for overall dissemination, implementation, audit and assurance.

Reports to Ministers:

- Routine comprehensive reports to ministers every two months, plus ad hoc.

TIMING

3. Routine

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BACKGROUNDProcess:

4. Op Telic has exposed weaknesses of process and reporting, notwithstanding the difficulty in conducting investigations under adverse operational conditions, and there is recognition of the need for improvement – particularly in dealing with NoK.
5. The last substantial direction on Bol relating to unnatural deaths and serious accidents was given by the then Minister(AF) in 1998¹ following the Chinook crash on the Mull of Kintyre. Its main direction was that there should be no explicit attribution of blame; that reports should be made available to NoK, who should be handled with sensitivity and consistency; and that Bol should convene and conclude as quickly as possible, with legal advice, independently of any other inquest or inquiry, unless, exceptionally, there was clearly no need. In particular, whilst RN and RAF practice was to convene an immediate Bol, it was accepted that given the much larger number of fatalities in the Army, and the consequent staffing implications, this should not be automatic for the Army in cases where there was nothing to add to an SIB investigation – subject to the Minister's other concerns being met.
6. The current proposals are based on a recent Study and Report² commissioned by VCDS, the 15 recommendations of which have found consensus with the PPOs. The main advance from the earlier Direction might be seen as the Bol presumption now being applicable to all three services. The presumption would be that a Bol president would normally be appointed within 48 hours in all cases of unnatural death or serious injury unless, exceptionally, judged and recorded as unnecessary or inappropriate by higher authority. This is in line with current proposals for the Tri-Service Act. The president would normally be released from other duties and would play a wider role in determining and co-ordinating the activities of any other necessary investigations, notwithstanding that he might decide not to convene his own board immediately.
7. The main circumstance when a Bol might be deemed unnecessary would be where the facts were perfectly clear and no useful purpose would be served, as might be the case in a straightforward road traffic accident. Operational priority and practicality would also have to be factors in determining deployment and timing. The local commander would be also be able, in exceptional cases, to give immediate priority to identification of cause when judged necessary to avoid imminent risk of recurrence.
8. Combat death is an exception. It is subject to command scrutiny, as with any death or injury, but there is no specific legislative or regulatory requirement for any form of inquiry into clearcut cases of combat death, nor is this envisaged in the tri-Service Act. It would be both impractical and damaging to operational effectiveness for junior commanders in particular to feel unduly constrained by the prospect of investigation when taking intrinsically high risk intuitive decisions in the heat of operations, and there is in any case a fairly well developed precedent of combat immunity. That said, there will no doubt at times be less clear circumstances that do warrant investigation, such as specific blue-on-blue incidents.

Timing

9. The main recommendations are being implemented with immediate effect, recognising that some elements are already in effect in some places, but are listed here by way of best practice and tri-Service harmonisation, and that further development will be required in areas like disclosure policy and priority of investigations.

¹ D/MIN(AF)/JR/5/3/1 dated 22 Apr 98

² *Inquiries/Investigations into Death or Serious Injury on Operations: Scope for Improvement and Tri-Service Harmonisation* D-DSPPolSC/2/3/1/10 dated 26 Feb 04

Disclosure

10. All communications with next of kin (NoK) are to be routed through a single personal contact point who is to remain in close touch, accompanying specialist advisers, and acting as a broad sift on any insensitive or inconsistent drafting. NoK are to be briefed clearly, comprehensively and regularly so that they have a realistic expectation of what each stage of the investigation and inquiry process is or is not likely to accomplish, and how the process fits together overall. Interim information that would not compromise the inquiry, non-contentious facts for example, could be released to NoK without necessarily waiting for issue of a final report. A clear and robust disclosure policy is to be developed, taking account of practicalities of NoK release and effect of recent legislation, Data Protection Act (DPA) and Freedom of Information Act (FoIA) in particular.

Co-ordination and Audit:

11. Commands/TLBs are to establish a senior focal point with explicit authority to monitor and co-ordinate all stages of investigation and inquiry process from determination of appropriate structure and sequence through to implementation and audit and related issues, including dealing with NoK and liaison with external bodies like Police and Coroner. A careful balance is to be maintained in the exercise of sufficient visibility and co-ordination of specialist activities to ensure effective and timely function whilst not compromising the independence and impartiality of BoI and SIB in particular. A central register for wider Departmental dissemination, independent audit and assurance is to be established.

Reports to Ministers:

12. Routine reports are to be submitted to Minister(AF) on progress and issues on all investigations and inquiries into unnatural deaths and serious injuries on current operations. These would take the form of a succinct covering brief highlighting issues of particular or potential concern, and annexed summaries of each current case. Current, non-operational, unnatural deaths and serious injuries would be included in this reporting structure for completeness, where appropriate, as would briefer record of combat deaths and serious injuries. Reports and briefs are also to be submitted ad hoc when pressing issues arise.

13. Prime responsibility for Inquiries and investigations lies with the chain of command so it would be the command secretariats in TLBs who would provide the main input for the regular reports to minister(AF). The Services would route these reports through their own single Service points of contact to DCDS(Pers) who would add his tri-Service overview, with particular reference to matters of policy, before submitting them to Minister(AF) in the consolidated form outlined at annex A. For ad hoc reporting, the command secretariats would consult DCDS(Pers) on a case by case basis to agree the most appropriate routing, depending again upon the need for a wider overview.

Further Work:

14. There are three main areas where further work is required. First, the balance between the protection requirements of DPA and the disclosure requirements and limited exemptions of FoIA will no doubt take time to evolve, though for practical purposes it is already assumed that release of BoI reports to NoK effectively places them in the public domain, so this need not delay unduly the promulgation of a clear policy. Second, the proposal for a central register, dissemination, audit and assurance function operated by D(S&C) (Director of Safety & Claims, who has reporting lines to both DCDS(Pers) and to Personnel Director) is currently being addressed by DESB (Defence Environment and Safety Board, chaired by 2nd PUS and attended by VCDS and Service Chiefs.) And third, further legal consideration needs to be given to the balance between the need for the local

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commander to take whatever immediate action he might judge necessary to avoid imminent risk of recurrence, and the risk that this might exceptionally taint evidence for criminal or disciplinary investigations that would normally take priority.

RESOURCES:

15: The proposals would impose an additional load on existing staff, both in finding additional presidents whose normal duties would have to be borne by others, and in service and civilian effort in co-ordination and briefing. The Army in particular tends inevitably to sustain higher numbers of deaths and injuries. Staff are already stretched in dealing with existing investigations and inquiries, where Op Telic has seen a major increase in expectation and volume, and it would take little in the way of increase to cause serious difficulties.

PRESENTATION:

16. The main benefit from the changes should arise partly from better co-ordination of the processes themselves, and partly from improvements in NoK perception and consequent media coverage. A clear and robust disclosure policy should go some way to disabusing the media and the public of the erroneous expectation that virtually all deaths and injuries will be the subject of a Bol.

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