

Long waiting times for inquests into military fatalities in Iraq and Afghanistan: breach of UK's covenant with military families.

Sheila M. Bird, MRC Biostatistics Unit, CAMBRIDGE CB2 0SR

{Report 1: posted on 13 June 2008. Please see end for Report 2: posted on 30 July 2008.}

Background

With waiting times for fatal accident inquiries into prisoner deaths as background¹⁻³, we analyse the waiting times for inquest verdicts into UK military fatalities in Iraq and Afghanistan in two periods: i) deaths prior to 1 May 2005 (which includes the initial brief period of major combat in Iraq⁴) and ii) deaths during 1 May 2005 to 30 April 2007 (which includes a sustained period of major combat in Afghanistan in summer 2006⁴).

The wait for inquest verdicts into prisoner deaths in Scotland over a 5-year period (1999-2003)³ was longer than 3 years in only three out of 97 fatal accident inquiries, but longer than 455 days in 13/97 prisoner deaths (13%).

In autumn 2007, I initiated inquiries via the Oxford coroner's office into the dates of verdicts, often narrative⁵⁻¹⁰, from inquests into military fatalities in Iraq and Afghanistan. By comparing with icasualties.org (which gives name, date and apparent cause of death for UK military fatalities), it quickly became apparent that the list of fatalities which the Oxford coroner's office was working with was incomplete. Since lists being tabled by ministers were likewise incomplete, resolution was unlikely to be achieved in Oxford.

I made inquiries via the Ministry of Justice but also raised the incompleteness of ministerially-tabled lists with Patrick Mercer OBE MP. Formerly a colonel in the British Army, he had asked parliamentary questions and made public his concern about delays in military inquests¹¹ (see House of Commons Hansard Written Answers: 14 February 2006, column 1857W and 11 December 2006, column 790W). As a result of his further parliamentary questions (Hansard Written Answers: 13 November 2007, column 142W and 31 January 2008, column 565W), or for coincident other reasons, the most recently tabled ministerial lists, such as in April 2008, accounted completely for UK military fatalities in Iraq or Afghanistan.

Methods

Using life-table techniques (see **Figure 1**), waiting times in days (from date of death to verdict date) are compared for: i) 90 military fatalities prior to 1 May 2005; and ii) 109 military fatalities between 1 May 2005 and 30 April 2007. The first series includes Trooper David Jeffrey Clarke whose death was taken into consideration at the inquest for Corporal Stephen Allbutt; Lieutenant Alexander Tweedie who died in Scotland from injuries in the vehicle accident that also caused the death of Lance Corporal Karl Shearer; and Staff Sergeant Chris McDonald who, having been due to leave the army in June 2003, was apparently working as a civilian security guard at the time of his death in Mosul.

In particular, we estimate the proportion of military inquests to reach a verdict within 2 years+90days (820 days: allowing 1 year for a Board of Inquiry, if convened, to report), and within 1 year+90 days (455 days) as for inquests into prisoner deaths.

Findings

Table 1 shows separately the waiting time distribution for i) 90 military fatalities prior to 1 May 2005); and ii) 109 military fatalities between 1 May 2005 and 30 April 2007. Censored waiting times (time to verdict exceeds d days) are asterisked, and multiple fatalities from the same incident are indexed by a superscript which identifies the associated number of fatalities. Typically, the inquests into linked fatalities are contemporaneous. However, life-table calculations are presented initially from the perspective of a military family: the families are distinct although there is dependency of inquests. Ideally, all inquests that made critical findings should be shown in **BOLD**. Further work is required to establish this information. As a proxy, in **Table 1**, those inquests with a narrative verdict are shown in **BOLD**.

First series: Of the initial 90 military fatalities, only three were in Afghanistan (all non-hostile, including a linked homicide and suicide). There were four suicides in all, and an open verdict, among the 90 initial military fatalities which were investigated by 52 inquests. Unlawful killing was listed as the verdict (after 1446 days) in the inquest into the death by friendly fire of Lance Corporal of Horse Matthew Hull. Five other deaths by friendly fire had narrative verdicts in three linked inquests.

Verdict within 455 days was achieved in only 14/90 military fatalities (16%; se = 4%) in Iraq and Afghanistan prior to 1 May 2005; or in 11/52 linked inquests (21%; se = 6%). Verdict within 820 days was achieved in only 33/90 fatalities (37%; se = 5%); or in 27/52 linked inquests (52%; se = 7%).

Twenty-eight fatalities in 25 linked inquests were non-hostile deaths. Nine and 16 of these 25 linked inquests reached a verdict within 455 and 820 days respectively. Narrative verdicts were given in five, all of which took more than 820 days. Verdicts are outstanding after 1339 days for 10 families of military personnel who died in a hostile transport plane crash on 30 January 2005. Of the 26 linked inquests into hostile military deaths in Iraq prior to 1 May 2005 which have concluded, eight recorded narrative verdicts.

Only one of the 13 linked inquests into military deaths prior to 1 May 2005 which recorded a narrative verdict concluded within 820 days – that which inquired into the death by hostile fire of Lance Corporal Paul Thomas at which the Powys coroner presided.

The longest waiting time to date has been 4 years+109 days but, quite unacceptably, 44/90 military families (49%; 95% CI: 39% to 59%) have had to wait for more than 3 years for an inquest verdict into their family's military death in Iraq prior to 1 May 2005. The families of those who died in Scottish prison custody in 1999-2003 were better

served as far as the timeliness of verdicts is concerned than have been the families of UK service personnel in the first series of deaths.

Unlike in the second series, only three of the initial 90 fatalities were ascribed to improvised explosive devices (IEDs).

Second series: In the second series of 71 inquests into 109 military fatalities in Iraq and Afghanistan which occurred between 1 May 2005 and 30 April 2007, 49/109 fatalities (45%) were in Afghanistan. Thus far, there have been recorded two suicides and one death ascribed to friendly fire (Private Andrew Cutts), with IEDs (only) having claimed 33 lives (30%; 95% CI from 22% to 39%) compared to three in the first series.

To date, eight of the 53 completed inquests have recorded narrative verdicts for 21 military fatalities. Of these eight inquests, the longest waiting time for families was 754 days for the inquest verdict into the 14 Nimrod deaths⁵.

Verdicts have been reached within 455 days for 46% (se = 5%) of the 109 fatalities, which is a marked improvement on the first series. It still falls considerably short of a proposed civilian target that 90% of fatal accident inquiries into prisoner deaths should report within 455 days³. Reassuringly, however, only one inquest to date in the second series has taken longer than 820 days to conclude but verdicts are awaited in 18 inquests into 22 deaths. At 30 April 2008, these had censoring times in the range from 377 to 631 days.

Non-hostile causes accounted for 28/90 deaths in the initial series, with at most two linked fatalities in any incident; and for 26/109 deaths in the second series - 10 singleton deaths, one pair and the single large cluster of 14 Nimrod deaths.

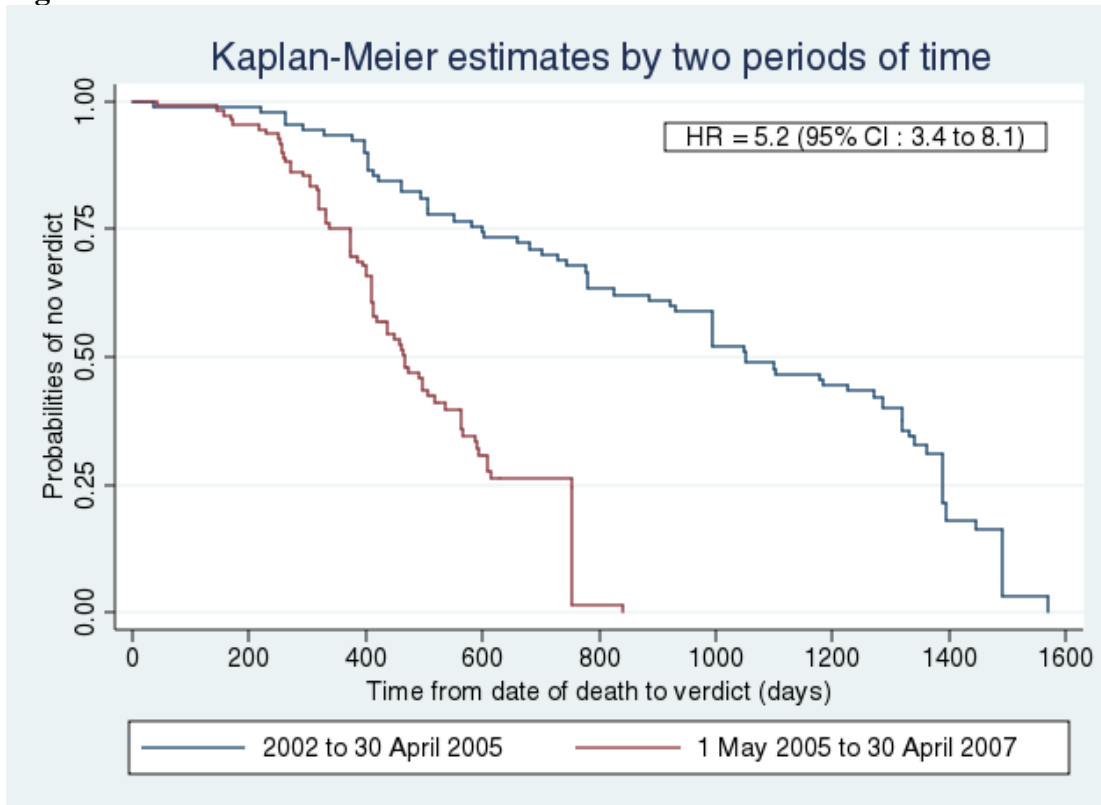
Table 1: Stem and leave diagrams display the distribution of waiting times from date of military death to verdict date

{PLEASE NOTE: censored waiting times (time to verdict exceeds d days) are asterisked*, and multiple fatalities from the same incident are indexed by a superscript which identifies the associated number of fatalities^{2 say}, or by +. To interpret other superscripts, please see footnotes. Fatalities in Afghanistan are in *italics*. Non-hostile deaths are shown in **blue**. Inquests with a narrative verdict are shown in **BOLD**. Stem 200-299 and leaf 21 denotes waiting time of 200+21 = 221 days}

Stem	i) Military fatalities in Iraq and Afghanistan: 2002 to 30 April 2005	ii) Military fatalities in Iraq and Afghanistan: 1 May 2005 to 30 April 2007
Under 100 days	36	42 (? misprinted – perhaps 408)
100 - 199 days		43 56 68 70 ^E
200 - 299 days	21 61 61 ^S 92	18 29 ^E 49 ^E 53 ^E 55 ^S 55 58 62 ^E 72 ^{2E} 91
300 - 399 days	27 76 98 ^{2H+S}	03 ^{2E} 20 ^{4E} 16 31(<i>misprinted</i>) 32 ^E 32 37 ^S 72 73 ^{4E} 74 77 ^{2E*} 82* 82 ^{2*} 86 94 94*
400 - 499 days	05 ³ 13 21 61 ^E 61 95	02 02 10 ⁵ 12 ³ 20 ^E 24 ^{2*} 28* 30* 34* 36 ^{2E} 48 57 61 63 67 ² 71* 73* 74 90 ^E 98 ^{2E}
500 - 599 days	05 ² 07 ^S 52 82 99	05* 06+11 12* 23* 37 ^{FF} 59* 63 ^{3E} 65 87 ^E 89 ^E 94
600 - 699 days	04 ^E 61 81	01* 02* 04 ^{2*} 10 ² 14 31*
700 - 799 days	02 28 45 ^S 76 80 ³	52 ^E 54 ¹⁴
800 - 899 days	25 87	42 ^E
900 - 999 days	22 31 ^{OV} 93 ⁶	
1000 - 1099 days	50 52 ²	
1100 - 1199 days	00 02 79 85	
1200 - 1299 days	27 ^E 71 87 ²	
1300 - 1399 days	19 ^{2FF} 21 ² 31 39 ^{10*} 41 62 ^{FF} 88 ⁶ 96 ^{2(AT)}	
1400 - 1499 days	46 ^{FF} 91 ⁸	
1500 - 1599 days	70 ^{2FF(DJC)}	
Totals: inquests	52	71
Totals: military fatalities	90	109
Fatalities in Afghanistan	3	49
Probability of verdict for family within 455 days :	16% (se = 4%)	46% (se = 5%)
Probability of verdict for family within 820 days:	37% (se = 5%)	Poorly estimated: risk set of 9 inquests beyond 600 days.

H = homicide, S = probable suicide, OV = open verdict, FF = probable friendly fire, and E = improvised explosive device.

Figure 1



Summary

The need for resources to assist coroners in undertaking inquests into military fatalities in Iraq and Afghanistan was not sufficiently anticipated to avoid unacceptably long waiting times to inquest verdict for the 90 families of service personnel who died in Iraq (all but three) or Afghanistan prior to 1 May 2005. Thereafter, waiting times have fallen dramatically with 46%, rather than 16%, of inquests into 109 military deaths in Iraq and Afghanistan from 1 May 2005 to 30 April 2007 having reported within 455 days, and only one of the 53 completed inquests in the second series has exceeded 820 days.

Parliamentary questions have succeeded in achieving a complete listing of military inquests.

The next task, in accordance with international good practice (such as on prisoner inquests³), is for critical findings made by a completed inquest to be added to the quarterly listing lodged by Ministers in the House of Commons library. In addition, parliamentarians (and thereby the press and the public) should be updated every six months on the actions taken by departments and Ministers to implement the recommendations made in good faith by coroners; if the reasons given for setting them aside. Only by doing so, can the public be assured that its covenant with the armed forces is upheld, for and on behalf of those in uniform who serve their country. Lest we forget.

Recommendations

First, critical findings made at inquests into UK military fatalities should be detailed on the ministerially-tabled quarterly listing which is placed in the House of Commons library. The ministerial listing could then also indicate the action taken, and date thereof, in response to critical comments, not all of which may be accepted.

Secondly, additional work is required, and should be done, to partition the overall waiting time to inquest verdict into: a) waiting time from date of death to report by Board of Inquiry + b) waiting time from Board of Inquiry's report date to inquest verdict date. This requires an extra column on the ministerial listing to show whether a Board of Inquiry was convened and, if so, its report date.

Thirdly, cause of death - as determined by the inquest (which may differ from the cause as registered on icasualties.org) – should appear on the tabled listing.

Report 2: posted on 30 July 2008

Additional Background and Methods

On 16 July 2008, the Parliamentary Under-Secretary of State for Justice and Secretary of State for Defence made a statement to the House on the inquests of service personnel who have died overseas. The statement announced progress since the written ministerial statement of 30 April 2008 (*on which Report 1 was based*), and gave the position at 8 July 2008. In the analyses which follow, I have applied censoring at 30 June 2008. Two apparent misprints in the written ministerial statement of 30 April 2008 remain unaltered in the information tabled on 16 July 2008 (see **Table 1**) – they remain questionable.

For the first time, and in accordance with the second of three recommendations in the above *Report 1*, the tables that accompanied the ministerial statement on 16 July 2008 included information on whether a Board of Inquiry (BoI) had been convened and, if so, its report date. Report date for BoIs has been given as month+year, and so I have estimated the report day as 15th of the month.

Information on BoIs was *only provided for* service deaths in Iraq and Afghanistan after 15 May 2006; not before. It is therefore not possible to update the analysis in section i) of **Table 1** to take waiting times for BoI reports into account.

Findings

Table 2, which for the first time is able to separate waiting time for inquest verdict into waiting time for BoI report + interval from BoI report to inquest verdict, is therefore based on the first 100 service deaths in Iraq and Afghanistan after 15 May 2006 (that is: from 16 May 2006 to 30 June 2007).

Sixty-nine inquests were required into these 100 fatalities, 55 of which occurred in Afghanistan. Boards of Inquiries were held into nine of the 69 fatal incidents.

These fatal nine incidents for which BoI was convened – four of them non-hostile - claimed the lives of 23 service personnel as follows: 5 singleton hostile deaths; two singleton non-hostile deaths in vehicle accidents (both BoIs ongoing), two fatalities in a non-hostile helicopter crash, and the 14 Nimrod fatalities. One BoI, the briefest at 249 days to report, into the death in Afghanistan by hostile fire of Captain Jim Philippon, is to be reconvened after a narrative verdict at inquest¹² (“They (the soldiers) were defeated not by the terrorists but by the lack of basic equipment”) which concluded on 15 February 2008, a year after the initial BoI had reported.

Column b) in **Table 2 highlights** that the fatalities for which a BoI was convened inevitably featured among the longer waiting times for inquest verdicts. This is because inquests usually await the BoI’s report. One exception is evident, in that a narrative inquest verdict was reached on 8 April 2008 into the death in a vehicle accident of Sergeant Wayne Douglas Rees but the BoI into this fatal incident has yet to report (censored at 540 days). Including the wait for BoIs to report, **around half** of military families wait more than 455 days for there to be an inquest verdict (95% CI: 39% to 59%), see **Figure 2 (top panel)**.

The median waiting time for the nine BoIs to report was 517 days – but reports were outstanding still for 17 families. For families, the median waiting time for BoI reports was 594 days.

From column b) in **Table 2**, it is clear that, even having discounted the waiting time for BoI reports, the inquest process takes more than 455 days to reach a verdict for **one third** of military families, see **Figure 2 (bottom panel)**.

Summary

Only when the Ministries of Justice and Defence release data on waiting times for BoIs for the initial series of 90 deaths of service personnel in Iraq and Afghanistan will it be apparent what contribution waiting for BoI reports made to those very long waiting times.

Compared with reasonable expectations³ – that only 10% of families should wait for more than 455 days – waiting times for inquest verdicts (even having discounted time to BoI report) are still too long for military families, since one third waited for more than 455 days (95% CI: 24% to 43%).

When a BoI was convened, the median time that had to be discounted was itself more than 455 days, indeed between 500 and 600 days for BoI reports.

Table 2: Stem and leaf diagrams display the distribution of waiting times from date of military death to verdict date

{PLEASE NOTE: censored waiting times (time to verdict exceeds d days) are asterisked*, and multiple fatalities from the same incident are indexed by a superscript which identifies the associated number of fatalities^{2 say}, or by +. To interpret other superscripts, please see footnotes. Fatalities in Afghanistan are in *italics*. Non-hostile deaths are shown in blue. Inquests with a narrative verdict are shown in **BOLD**. Stem 200-299 and leaf 21 denotes waiting time of 200+21 = 221 days}

Stem	a) Military fatalities in Iraq and Afghanistan: 16 May 2006 to 30 June 2007 with follow-up to 30 June 2008. {minus wait for BoI report; or BOI incomplete}	b) Military fatalities in Iraq and Afghanistan: 16 May 2006 to 30 June 2007 with follow-up to 30 June 2008. {Board of Inquiry (BoI)}
Under 100 days	15* 42 (? misprinted – perhaps 408) 46 ^{2*}	42 (? misprinted – perhaps 408)
100 - 199 days	36* 43 56 60 ¹⁴ 66 68 70 ^E 74 ^E 75 82 89 96	43 56 66 68 70 ^E 74 ^E 75 82 89 96
200 - 299 days	27 ^E 29 ^E 29 38 55 58 60 ^{3E} 62 ^E 89*	27 ^E 29 ^E 29 38 55 58 60 ^{3E} 62 ^E
300 - 399 days	20 ^{4E} 29 ^{2E} 16 31(misprinted) 65 66 ^{E*} 69 ^E 71 72 73 ^{4E} 73 74 90 94 97*	20 ^{4E} 29 ^{2E} 16 31(misprinted) 66 ^{E*} 69 ^E 71 72 73 ^{4E} 73 74 90 94 97*
400 - 499 days	02 02 06* 12 ³ 19 ^E 21 ^{E*} 39 43* 48 56 57 61 63 67 ² 74 85 ^{2*} 91* 95* 98 ^{2E}	02 02 06* 12 ³ 19 ^E 21 ^{E*} 39 43* 43 ^{2*} 48 56 57 61 63 67 ² 74 85 ^{2*} 91* 95* 98 ^{2E}
500 - 599 days	07 06+11 31 37 ^{FF} 51* ^E 84* 92 ^{2Esaf} 94	07 06+11 31 32* 37 ^{FF} 51* ^E 73* 84* 92 ^{2Esaf} 94
600 - 699 days	10 ² 17 91*	10 ² 14 17 63* 91*
700 - 799 days		54 ¹⁴
800 - 899 days		
Waiting times for Board of Inquiry report (BoI)		Icasualties.org cause of death
100 – 199 days		
200 - 299 days	49 (new BOI to be convened)	Hostile fire
300 - 399 days	74 97 ²	Land-mine Helicopter crash ²
400 - 499 days	37	Hostile fire
500 - 599 days	17 40* 51* ^E 94 ¹⁴	Hostile fire Vehicle accident* IED* Nimrod ¹⁴
600 - 699 days	91*	Vehicle accident*
700 - 799 days		
Totals: inquests	69 (3 with BoI ongoing)	69 (9 with BoI)
Totals: military fatalities	100 (3 with BoI ongoing)	100 (23 with BoI)
Fatalities in Afghanistan	55	55
Probability of verdict for family within 455 days :	67% (95% CI: 57% to 76%)	49% (95% CI: 39% to 59%)

H = homicide, S = probable suicide, OV = open verdict, FF = probable friendly fire, and E = improvised explosive device.

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Figure 2

