

ARMY BOARDS OF INQUIRY

The object of any Service Board of Inquiry (BOI) into an incident is to ascertain what went wrong and why, in order to prevent a recurrence. The BOI process is enshrined in the Army Act 1955. The BOI is not, however, a court of law and it cannot assume the authority of such a court. Neither do its proceedings form part of the disciplinary process.

A BOI is a wholly internal, domestic investigation. It embodies the following principles:

- It does not explicitly attribute blame or negligence to individuals.
- It must collect and evaluate all relevant evidence.
- It must be conducted thoroughly.

As the object of a BOI is to prevent recurrence its Terms of Reference (TOR) must be framed accordingly. TOR range from general statements such as *'Investigate the circumstances of...'* to a more specific remit *'To establish whether the welfare support and pastoral care provided was adequate'*

A BOI can be convened at any time but must be adjourned if a criminal prosecution is likely and cannot be reconvened until such disciplinary and criminal proceedings have concluded.

The BOI And The Coroner's Role

In cases of unnatural death it is usual practice for MOD not to wait for the Coroner's Inquest before conducting a BOI. Coroners in England, Wales and Northern Ireland and the Procurator Fiscal in Scotland have the absolute responsibility and authority to hold inquests into the death of any person who dies in their area of jurisdiction or where a body is repatriated to that jurisdiction. The Coroner is completely independent and can look to initiate post-mortem examinations and establish details regarding the cause of death at anytime (see Annex A). A Board of Inquiry will proceed independently of the Coroner's inquest.

The objectives of a BOI and an Inquest are different as the former seeks to prevent recurrence whilst the latter aims to establish the cause of death. Nevertheless, the Coroner may wish to wait for the completion of the BOI before holding his Inquest.

The Make-Up Of The Board

An Inquiry consists of a President and two or more members.

The President is the focal point for the conduct of the inquiry. He or she is responsible for ensuring that proceedings are conducted with a view to

drawing appropriate conclusions from the evidence obtained. In particular, the President ensures that the Board:

- Does not explicitly attribute blame/negligence.
- Elicits all the facts.
- If there is conflicting evidence, endeavour to obtain independent evidence to enable an opinion to be given as to what facts have been proven to the satisfaction of the Inquiry.
- Avoids conjecture.
- Avoids giving opinion not supported by evidence.

The role of the BOI members is to hear evidence and deduce conclusions from factual evidence in order to assist the President in the completion of the Inquiry.

Witnesses

The Inquiry will normally call witnesses to the incident in addition to those with specialist expertise as required. There are a number of points that apply to witnesses

- Evidence is given to a BOI under oath or by affirmation.
- An Inquiry cannot force any witness to answer questions that may subsequently incriminate him or her.
- Any evidence in a BOI will not be admissible in subsequent military disciplinary proceeding other than in the case of perjury.

Serving personnel may be ordered to attend Inquiries. Civilian witnesses, including former Service personnel cannot be compelled to attend nor are they bound to answer questions. Neither the official record of the BOI nor any extracts from the information relating to the record may be disclosed. All concerned are informed that the proceedings will be considered privileged and are not disclosed to any third party except to officers or soldiers whose duty it is to consider them or to persons who have the right to see them either under a regulation or by some exception to the general rule. In practice copies of the BOI report may be made available to the Coroner and to the Next of Kin. Neither members of the public, including Next of Kin, nor the press have the right to be present at an Inquiry.

Persons who may be adversely affected and those whose character or professional reputation may be affected by the proceedings may choose to be represented legally or otherwise at their own expense. Representatives may question witnesses but may not address the Board without the permission of the President

BOI Recommendations

The recommendations of the BOI should be in line with its TOR but need not be restricted to them. The Board has a duty to ensure that all findings and recommendations are supported by evidence. It is the duty of the chain of command to record progress on individual recommendations and to promulgate them periodically throughout the Service in a consolidated list of lessons learned.

Location

BOIs are not static, and may take evidence in a number of locations.

Duration

BOIs have no set duration. The overriding need is for thoroughness. The length of time an Inquiry takes will therefore be determined largely by the complexity of the case

Staffing Of The BOI Report

The staffing process, which follows the completion of the Inquiry, should be undertaken with a sense of urgency by the chain of command. Each level of the chain of command must demand the highest standards of thoroughness and analytical rigour and must itself comment on and add value to the report. From June 2004 it has been MOD policy that BOIs should convene within 24 hours of the incident and should conclude within 14 weeks.