

Ruling on Position Statements

1. I am grateful for the written and oral submissions made on this topic in advance of and at the hearing on 28th January 2020.
2. Having considered the competing submissions, Counsel to the Inquiry ('CTI') were able to make submissions to me based to a large extent on common ground between the Core Participants ('CPs'). CTI's submissions were generally accepted.
3. I am grateful for the co-operation between the parties in reaching this consensus which demonstrates to me that the Inquiry process is functioning properly and that everyone is working to assist the Inquiry as much as is possible.
4. **My power to request position statements:** It is unnecessary for me to deal with this in any detail as a result of the large measure of agreement.
5. Section 17(1) of the Inquiries Act 2005 provides that '*subject to any provision of this Act or of or of rules under section 41, the procedure and conduct of an inquiry are to be such as the chairman of the inquiry may direct.*'
6. The only restriction on this general power relevant to the current issue is contained in s.17(3) which provides that '*In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others).*'
7. I do therefore have the power to request that position statements are produced.
8. There may be an issue as to whether I have the power to require the production of position statements, but it is not necessary for me to decide that, as no party has suggested that they would not comply with any request that I might make.
9. It is therefore for me to decide whether position statements will assist me in my search for the truth and assist me to make appropriate recommendations having reached my factual conclusions.

10. We are now approaching the third anniversary of this appalling tragedy. All the organisations involved are very likely to have looked carefully at what happened; what may have gone wrong from their perspective and what steps have been taken to try and ensure that things do not go wrong again. Sometimes where two organisations have been working together, things may have gone wrong in their joint working. All these matters are likely to have been analysed and steps taken to try and ensure that things work better in the future. In their written submissions for the preliminary hearing on 28th January 2020, CTI made this point and, moreover, repeated it in their oral submissions at the hearing itself. No CP to whom this might apply suggested it was not correct.
11. External bodies, such as the panel under the chairmanship of Lord Kerslake who reported to the Mayor of Manchester and the Intelligence and Security Committee, have reached factual conclusions and made recommendations which I have no doubt have been considered and reflected in current practice by CPs.
12. While I will be looking afresh and in greater depth at some of these areas, I am keen that we do not lose the benefit of work which has already been done.
13. So a process either of position statements or something which will achieve the same ends is sensible and will assist me in my task.
14. The arguments against position statements are that they will have a tendency to change what is an investigatory procedure into an adversarial one. Further, position statements as proposed would require an organisation to commit itself to an account before it had had an opportunity to consider all the available evidence.
15. While I do not necessarily see that provision of a position statement need make the proceedings more adversarial, I do understand how requiring a CP to commit to a position on everything prior to receiving the available evidence could affect the inquisitorial nature of the proceedings. Rather than trying to assist in a search for truth, a CP may instead be defending a position statement made in advance of considering the available evidence and which might prove not to be accurate.
16. The families have submitted that position statements should cover four areas:
 1. An explanation of the CP's responsibilities, processes, policies and resources.
 2. A narrative of the CP's performance with the respect to the Terms of Reference of the Inquiry.
 3. Learning since the events of 22nd May 2017.
 4. The performance of others in so far as it affected the CP and was within their knowledge.
17. CTI agrees that the Inquiry would benefit from all that information being supplied but submits that it is only fair to require CPs to supply 1 and 3 in advance of the completion of disclosure and the provision of the Inquiry experts' reports. The

information at 2 and 4 should await complete or almost complete disclosure and provision of experts' reports. CTI also considers that the information can best be provided in a somewhat different way than that suggested by the families.

18. CTI suggests that 1 will be met by inclusion in the corporate statements or command and control statements being provided by CPs. From what I have so far seen that seems to be happening and should continue to do so.
19. CTI suggests 2 could best be supplied by opening statements from the CPs. By that stage all the available evidence is likely to have been received or certainly enough to enable a narrative of the CP's performance with respect to the Terms of Reference.
20. In respect of the information at item 3, internal as well as some external investigations conducted by or involving the CPs about matters relating to the events at the Arena will have concluded and there is no reason why such a statement should not be provided well in advance of the start of the oral hearings. What I am most interested in seeing is a list of those changes which have been made as a result of those investigations. As part of my role will be to make recommendations for the future, this will be a great help. It may be that everything that needs to change has changed and it will at least give me a starting point.
21. As to the information at item 4, it is suggested that this should wait until closing statements after the conclusion of the evidence. That is the best way, it is suggested, to ensure that any criticisms are evidence-based and, whatever the initial thoughts of a CP as to the performance of others, that may change in the light of the evidence. There is some danger in this as it would be unhelpful if a CP came up with a criticism of another CP after all the evidence had closed and without giving the subject of criticism a chance to respond.
22. In so far as these proposals by CTI are a compromise, it is a compromise which everyone can accept.
23. I would be helped by having the information sought by the families in their initial application. I also see the merit in the compromise and I will make the appropriate orders. No one has put forward serious objections to this course and I expect that everyone will not only comply with the letter of the orders but also the spirit.
24. One of the arguments put forward on behalf of the families to justify the need for position statements was to encourage candour on behalf of the CPs. That means in practice that if they recognise that mistakes have been made by their organisation or their employees, to make that clear to the Inquiry so that remedial action can be taken. The families have pointed to other inquiries in which criticisms have been made of organisations who have tried to cover up their mistakes, adopt an obstructive approach to the inquiry or, on occasions, to mislead the inquiry.

25. All the CPs in this inquiry accept that they owe a duty of candour to the inquiry. I take them at their word but will ensure compliance if necessary. I hope it will not be necessary and I have no reason to suppose that it will be.
26. Accordingly I make the following orders:
1. I would be assisted by and will expect to receive from each of the CPs an opening statement dealing with the matters set out in item 2 above. It does not need to be lengthy. It should be served 6 weeks before the start of the oral hearings. A timetable for the provision of written opening statements and the delivery of oral opening submissions will be provided by STI in due course.
 2. I will be helped and expect to be supplied by each CP with a brief statement setting out the changes that have been made as a result of their inquiries into their performance on 22nd May 2017. That should be relatively simple to produce and should be supplied by 1st April 2020.
 3. I will expect any CP who is going to criticise any other CP to make a closing statement which I will expect to be served in writing in advance of it being made. I will expect any criticism that is made to have been foreshadowed in questions asked during the oral hearing.

Sir John Saunders

30 January 2020