

Ruling on application for Core Participant status on behalf of 56 survivors of the Manchester Arena attack

Introduction

1. This is an application for Core Participant ('CP') status by a number of families and individuals who suffered injuries, both physical and psychological, as a result of the suicide bomb attack by Salman Abedi at the Manchester Arena on 22 May 2017. The applicants have referred to themselves, as a group, as 'survivors' of the Arena attack and I will continue to refer to them as that in this ruling.
2. At the outset of this ruling I wish to thank all those who made submissions to assist me on this issue and to recognise the considerable care taken by all to reflect and understand (despite clear differences between different teams as to how I should proceed) the underlying personal tragedy and impact on so many that was caused by the terrible events of the Arena attack.
3. The submissions made on behalf of the survivors themselves reflected the effects that the events of that night have had on each applicant. No-one who has read the summaries of what happened to the survivors can fail to realise that they have suffered severe life changing injuries which have had a dramatic and lasting effect on them. While everyone is appalled at the pointless and tragic loss of life inflicted by Salman Abedi; they are also appalled at the terrible consequences of what he did to the survivors. I recognise that this application for CP status is borne of the desire of the survivors to ensure that the reasons for the attack are fully understood and that lessons are learned.
4. Before I set out the details of the submissions made to me and my ruling on the application, it is important to understand the role of a CP in a public inquiry conducted under the Inquiries Act 2005 ('the Act'). Designation as a CP entitles that person or organisation to certain procedural rights during the inquiry. The most important of these, some of which are set out in the Inquiry Rules 2006 ('the Rules') and others which are established practice, are: (i) disclosure of materials relevant to the Terms of Reference; (ii) the opportunity to make an opening and closing statement to the Chair of the inquiry (Rule 11); (iii) the right to apply to the Chair of the inquiry for permission to question witnesses during the oral hearings (Rule 10); (iv) the ability to suggest lines of questioning to be pursued by Counsel to the Inquiry ('CTI'); (v) the opportunity to make legal and other submissions; and (vi) receipt of a copy of

the report published by the inquiry (Rule 17). In summary these are procedural rights to ensure that those who played a significant role, those with a significant interest and/or those who may be subject to significant or explicit criticism may participate in the Inquiry. Whether or not I choose to designate any individual or organisation as a CP is a matter for my discretion.

5. It is also important to note that while CP designation confers a number of procedural rights, designation as a CP is not the only way for a person or organisation to engage with, contribute to and participate in an inquiry under the Act. For example, a person or organisation: (i) can provide evidence or documents to the inquiry; (ii) can attend the inquiry's hearings or view them through a livestream available on the inquiry's website; (iii) can access evidence and documents on the inquiry's website; (iv) they may be permitted to suggest lines of enquiry to the Inquiry or lines of questioning to CTI; (v) transcripts of the inquiry's hearings may be made available on the inquiry's website; and (vi) the inquiry may choose to receive written closing submissions from non-CPs.
6. In this regard, it is important to note that I am obliged by section 18 of the Act to take such steps as I consider reasonable to ensure that members of the public are able to attend the Inquiry or to see and hear a simultaneous transmission of its proceedings and to obtain or to view a record of evidence and documents given, produced or provided to the Inquiry. In this Inquiry, I anticipate that this duty will be discharged by posting transcripts of the evidence on the Inquiry's website and uploading material adduced in evidence onto the Inquiry's website. I am also working on a presumption that as much of the hearings as possible will be livestreamed via the Inquiry's website. These are relevant factors to my consideration of how the survivors may follow and engage with what happens at the Inquiry.

Submissions

7. I have considered written and oral submissions from the survivors (made by Brenda Campbell QC), three bereaved family groups and from CTI. I have also considered the written submissions provided by the Home Secretary, SMG Europe Holdings Ltd. (who ran the Arena), and the Greater Manchester Combined Authority ('GMCA'), as well as further written submissions which were provided after the hearing on behalf of Greater Manchester Police ('GMP'). I have read an email response from the survivors to the written submissions submitted by GMP.
8. As a result of the present requirements for social distancing, the oral submissions were made to me by video link. The hearing was livestreamed; all CPs were permitted to join the hearing by video link or telephone; all CPs were afforded the opportunity to make oral submissions if they wished to do so; and participants who did not make oral submissions were permitted an opportunity to make further written submissions before I made my ruling. I am grateful to all who participated in the video link hearing and to those who set it up. It enabled me to hear arguments from all who wished to make them before I made my decision.

Submissions on behalf of the survivors

9. Ms Campbell QC in a well-argued, constructive and appropriately emotive submission argued that the survivors had a significant interest in the Inquiry's proceedings and it was necessary

for the proper participation of the survivors, and for the Inquiry to benefit from their experiences, for them to have CP status and be entitled to representation. She identified a number of areas where it was suggested the survivors could provide evidence to the Inquiry and argued that without representation it would not be possible to identify which survivors had experiences which would inform and assist the Inquiry. She argued that not only did they have a unique perspective as eye-witnesses to the events but they also have qualifications and experiences which will enable them to make suggestions for lines of inquiry that could be usefully pursued by the Inquiry. One of the survivors is a doctor who can give an insight into the way the medical response was carried out. Another is a former Counter Terrorism ('CT') police officer who, it is said, tried to contact CT police but got no response. She is keen to know why the attack was not prevented. That participation could only be done comprehensively, Ms Campbell QC argued, with the assistance of prior disclosure and an experienced legal team to review all the information.

10. Ms Campbell QC undertook that if granted CP status, the survivors would not be asking for a delay to the start date in order to prepare and would be 'hearing ready' for the Inquiry's start date. While that was described by others as a bold submission without knowledge of the amount of material involved, I am happy to rely on her professional judgment.
11. Ms Campbell QC accepted that the addition of another party would add to the length of the Inquiry's hearings. If it was not going to, it would suggest that she would expect to have little input, but she said that it would be perfectly possible for me to ensure that that additional time would be kept within reasonable proportions. She also submitted that practical concerns raised by a number of CPs – over access to footage and the impact of CP designation on existing restriction orders and hearing facilities – could be addressed through pragmatic solutions. Ms Campbell QC also assured me that the centrality of the bereaved families would be maintained and the survivors would not seek to extend the Terms of Reference.
12. It was argued against the survivors' submissions that, if this application was granted, it could open the floodgates to other applications. Ms Campbell QC accepted that there can be no guarantee that other legal teams would not make similar applications on behalf of other survivors, and there are a large number who come within that category, but she said that there was no sign of that at the moment and no reason to suppose there would be.

Submissions on behalf of the bereaved families, other CPs and CTI

13. While I received a number of submissions inviting me to exercise my discretion against including the survivors as CPs, and providing a number of reasons for that approach, all of the submissions recognised the terrible suffering that the survivors have experienced.
14. Submissions were made to warn me, particularly on behalf of a number of the bereaved families, of the possible detrimental effects of granting this application. Concerns were raised that the application would or might dilute the central role of the bereaved families and the deceased in the Inquiry; that designation of the survivors would distract the Inquiry from its main purpose; and that if successful the application would or might delay the Inquiry's start date, restrict the smooth running of the Inquiry, result in significant further applications for

CP designation, and delay the Inquiry's conclusion. I have always made plain that the bereaved families are and must remain at the heart of the Inquiry and clearly this application brings that issue even more to the fore. There can be no valid criticism of the decision of some bereaved families to object to the application. This Inquiry began as 22 inquests with the purpose of understanding how and in what circumstances each deceased person died. The Inquiry's purpose and scope is focused on the deceased. It is not surprising that some of the bereaved families feel strongly that the survivors should not be given CP status as they fear it may affect or dilute their central role and divert the Inquiry from its proper and essential focus. It is equally not surprising that the survivors feel strongly that they want to have the greatest possible involvement in the Inquiry because of what has happened to them.

15. In addition to the submissions summarised above, it was submitted by both a number of the bereaved families and CTI that the survivors, as CPs, would not add materially to the Inquiry achieving its aims and fulfilling its Terms of Reference. The interest in the Terms of Reference are the same for the survivors as for the bereaved families and the families' legal teams, of whom there are four (all legally represented), would be assisting the Inquiry team in investigating matters within the Terms of Reference. Between them they have a great deal of experience and expertise and can be relied on to assist with the Inquiry's investigation. Experts have also been instructed who are able to look critically at the overall evidence which the Inquiry has obtained.
16. It was submitted that without CP designation the survivors can still engage with, contribute to and participate in the Inquiry in a number of meaningful ways (references to the matters summarised at paragraphs 5 and 6 above were made to me in support of this submission). It was said that the survivors could play a part as witnesses and in that capacity would have a central role in influencing the final report. As witnesses they would be provided with prior disclosure of material relevant to their evidence. While there were some survivors whose assistance could go beyond what they saw because of their experience and expertise, they would be relatively small in number and they could feed their information into the Inquiry team who would then pursue those matters as appropriate.
17. My attention was also drawn to the increased costs that would result were I to grant the survivors' application and my duty under section 17(3) of the Act to have regard to the need to avoid any unnecessary costs.

Criteria for CP designation

18. Section 17(3) of the Inquiries Act 2005 requires 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).'* In order to reach a fair decision it is necessary for me to consider not simply the fact that a number of people oppose or support this application but the reasons for that and the source of that opposition or support. It is of course the validity of the reasons which must carry the greater weight.
19. The first matter that I need to consider is whether to grant additional time for the making of this application. The Protocol for considering applications for Core Participant status provides

in paragraph 10: *'Applications for core participant status should be submitted to the Inquiry in writing by 20 November 2019. Further time will be granted by the Chairman for such applications if it is necessary and appropriate to do so.'* 'Necessary and appropriate' may not be the easiest words to interpret in this context but if I am going to consider the application, it is necessary for me to give further time so the relevant consideration for me is whether it is 'appropriate' to allow additional time.

20. The application is substantially out of time. The explanation that has been given for the delay is the traumatic experiences of the survivors, the impact that those experiences have had on the applicants (including the lengthy medical treatment that many of the survivors have had to go through, which is continuing in some cases), and a lack of knowledge of the possibility of being added as CPs. This is not surprising given the fact that what is now an Inquiry started as 22 joined inquests into the deaths of those who were killed in the Arena attack. It seems, although it was not expressly stated, that the catalyst for the application may have been the criminal trial and meetings between bereaved families and survivors that took place during it. It may well be that it was not until then that the survivors realised that it was possible for them to be CPs in the Inquiry.
21. In any event, I accept that on the particular facts of this application, there is good reason for the timing of the application and, having taken into account other matters, such as whether the survivors could be ready for the oral hearings if granted CP status, I have decided to allow this application to proceed. Had I formed the view that there was more than a possibility that it would delay the start of the Inquiry, I would have not allowed the extra time required to consider this application now, some months after the deadline for CP applications has passed.
22. In connection with that issue, the question was raised at one stage in the oral submissions whether the survivors had shown sufficient interest in the workings and conclusions of the Inquiry (and the preceding inquests), prior to this application, to justify now being granted CP status. That was one of the criteria identified by the Chairman of the Infected Blood Inquiry against which CP applications should be decided in that Inquiry. Once the submissions of Ms Campbell QC were made in relation to that issue, it was accepted that the survivors had shown sufficient interest and that matter was no longer pursued as a reason not to grant CP status. As it is for me to make the decision, I make it clear that I never regarded it as a matter which would affect the exercise of my discretion and, while it could arise as a relevant issue in other applications, it does not arise in this case.
23. My power to designate a person as a CP in the Inquiry is to be found in Rule 5 of the Inquiry Rules 2006.
24. By virtue of Rule 5(1) I *may* designate a person as a CP at any time during the course of the Inquiry provided that the person consents to being so designated. I have a discretion whether to designate CPs and the way that Rule 5 is structured indicates that this is a wide discretion. The breadth of my discretion was noted by a number of the bereaved family CPs and CTI in their submissions.

25. Rule 5(2) sets out the matters which I must consider, in particular, in deciding whether to exercise my discretion. They are whether:
- a. *the person played, or may have played a significant role in relation to the matters to which the inquiry relates;*
 - b. *the person has a significant interest in an important aspect of the matters to which the inquiry relates; or*
 - c. *the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*
26. I may also, of course, take into account other relevant matters when determining whether to exercise my discretion.

Decision on the discretion whether to designate the survivors as CPs

27. In making their application the survivors rely on the significant interest criterion in Rule 5(2)(b). While CTI and some of the CPs have reserved their position on whether all the survivor applicants come within Rule 5(2)(b), they accept that at least some of the survivors can demonstrate a *'significant interest in an important aspect of the matters to which the inquiry relates'*. A number of the survivors were close to the blast when it occurred and have suffered serious injuries, both psychological and physical, as a result. There can be no dispute but that they have a significant interest in matters under investigation by this Inquiry, such as whether the attack could have been prevented. That topic will include the security arrangements at the Arena, details about Salman Abedi's background and his radicalisation, and what steps were taken by the Security Service and others to prevent the attack. The survivors also have a significant interest in the general response of the emergency services to the attack. The Terms of Reference require me to carry out a detailed investigation of the emergency response in relation to the 22 deceased. The survivors accept that they do not wish to ask that I conduct a detailed investigation of the emergency response to their individual circumstances as I am required to do for the 22 deceased. However, in so far as the survivors' experiences are relevant to the experiences of the deceased they will come within the Terms of Reference. These areas where the survivors have a significant interest are not intended to be a comprehensive list but those I have mentioned are undoubtedly *'important aspects of the matters to which the inquiry relates'*. I am content to deal with this application on the basis that at least some of the survivors come within Rule 5(2)(b) and, if it becomes necessary, I will decide whether all or only some meet that test.
28. Because this understanding has been reached, I have not heard detailed argument about what *'a significant interest in an important aspect of the matters to which the inquiry relates'* means in the context of the facts of this application. I have been referred to the interpretation put on the phrase in other inquiries, including that it denotes more than a mere interest and that the use of the word 'significant' imports an 'emphatic threshold'. While this has been of assistance, it is a fact sensitive decision and I would have to decide for myself what it means in the context of this Inquiry.
29. I have dealt with the application on the basis that the survivors meet one of the Rule 5(2) criteria to which I must have particular regard in deciding how to exercise my discretion, namely significant interest in an important matter to which the Inquiry relates. While I must

have particular regard to this factor in the exercise of my discretion, that does not mean that it cannot be outweighed by other factors nor would it be necessary to demonstrate that one of the considerations set out in Rule 5(2) is met in order to be granted CP status. They are factors in the exercise of my discretion to which I must give particular consideration but they are neither a condition precedent to a grant of CP status, nor decisive of the application if any one of them is met.

30. Having considered carefully the arguments advanced on both sides, I consider that the survivors' significant interest is outweighed by a number of other relevant factors against CP designation.
31. **First**, the background to this Inquiry is, I consider, relevant to the exercise of my discretion. The Inquiry started off as inquests investigating the deaths of the 22 people killed in the Arena attack. Those inquests were only suspended and an Inquiry established because I determined that in order to properly investigate the deaths, and examine the matters within the scope of the inquests, I needed to hold closed hearings to consider evidence about whether the attack could have been prevented. Closed hearings, which exclude Interested Persons ('IPs'), cannot take place as part of any inquest.
32. None of the IPs in the inquests, in particular the families of the bereaved, objected to that request for an inquiry to be established. For obvious reasons, some of the families had reservations at being excluded from closed hearings. I therefore undertook to the families that I would keep the differences between holding the inquests and an inquiry as limited as I could. The only substantial difference I anticipated was that there would be a closed section of the hearings in light of my ruling on 13 September 2019 upholding claims for public interest immunity made by the Secretary of State for the Home Department and Counter Terrorism Police North West.
33. When I wrote to the Home Secretary requesting that an inquiry be established I explained that it was a matter of vital public importance that a full, fair and fearless Article 2 compliant investigation was conducted into the terrible events that resulted in the 22 deaths. I provided details about my decision on the scope of the inquests and asked that any Terms of Reference for an inquiry should include those matters I had already indicated were within the remit of the inquests. Accordingly, the Terms of Reference of the Inquiry are the same as the scope of the Inquests. The clear purpose of the Terms of Reference, stated in the preamble, is to investigate how and in what circumstances 22 people came to lose their lives and to make appropriate recommendations. The Terms of Reference do not involve a detailed investigation of the survivors' experiences. The survivors have not asked me to alter the Terms of Reference and they appreciate that some of the matters which concern them, such as their treatment in hospital, do not come within the Terms of Reference. They accept that it would be very difficult for them to persuade me to alter the Terms of Reference when we are so advanced in the preparations for the oral hearings and Ms Campbell QC confirmed that the survivors do not seek to extend the Terms of Reference.

34. Ms Campbell QC in her submissions relied on the terms of the announcement by the Home Secretary of the setting up of this Inquiry as supporting her application. The Home Secretary began that announcement by saying that *'it is vital that those who survived or lost loved ones in the Manchester Arena attack get the answers that they need and that we learn the lessons, whatever they may be.'* That does have to be read in context, however. Later on in the press statement the point is made that *'The Inquiry to investigate the deaths of (the names of those who died are then listed) in the horrific attack at Manchester Arena on 22 May 2017 will have the same scope as the current inquest.'* When read as a whole, I do not consider that the statement of the Home Secretary lends support to Ms Campbell QC's submission. The Home Secretary expressed a hope that the bereaved families and the survivors will get answers to questions previously within the scope of the inquests and now within the Terms of Reference of the Inquiry which are common to both the survivors and the bereaved families. That is a hope that I share. However, it does not follow that the survivors can only get those answers if they are CPs.
35. I have asked myself whether the survivors have a different perspective or a unique interest in matters falling within the Inquiry's Terms of Reference and whether the survivors therefore require CP designation in order for the Inquiry to fulfil its Terms of Reference. Having considered the matter carefully, I have decided that they do not. The Inquiry's Terms of Reference are focused on the deaths of the 22 people killed at the Arena. They do not include a detailed investigation of the survivors' experiences. The survivors have confirmed that they do not seek to expand the Terms of Reference. As I have already stated, the survivors do have a significant interest in a number of matters within the Inquiry's Terms of Reference; see paragraph 27 above. However, that interest is shared with the four groups of bereaved family CPs, all of whom are legally represented and actively engaged in the Inquiry. The survivors' interest is therefore not unique (this was identified as relevant by Hallett LJ in her ruling on the survivors' application during the inquests into the 7/7 bombings) and they have not identified that they have a perspective to the Inquiry that is different to all the other CPs (as Sir Brian Leveson identified as relevant during the Leveson Inquiry). As a number of the families have said in their submissions, the bereaved will assist the Inquiry to fulfil its Terms of Reference, alongside a number of other CPs and the Inquiry's Legal Team. Ultimately, the survivors have not identified a different perspective or a unique interest in a matter or matters falling within the Terms of Reference that requires them to be designated as CPs, nor have they identified why they require CP designation in order to assist the Inquiry in fulfilling its Terms of Reference.
36. **Second**, having heard from Ms Campbell QC and read the documents, including in particular the details of the experiences of the survivor applicants, I have no doubt that the experiences of a number of them would inform the Inquiry. They are able to assist with their observations of what they saw in the City Room before the attack, including observations in some cases of a person who may have been Salman Abedi, although that would need to be confirmed by consideration of the CCTV evidence. They were able to observe and can comment on the security on-site and the manner in which security staff carried out their jobs. They can give first-hand evidence about the emergency response, including the way triage was conducted. They can recount what they consider to be errors which were made. They were the recipients

of treatment from the emergency responders. Ms Campbell QC identified as examples six survivors who she said were able to give relevant evidence, all of which she submitted would be of value to the Inquiry. Part of this is already known to the Inquiry from other sources but the survivors were at the scene when it happened and therefore can properly claim to have evidence to give from their own perspectives. If the Inquiry does not have input from the survivors, the final report will not be as comprehensive in identifying what occurred in the City Room prior to and in the immediate aftermath of the attack and in deciding what, if anything, went wrong (within the Inquiry's Terms of Reference). This may in turn effect the efficacy of any recommendations I make.

37. However, it does not necessarily follow from the above that the survivors require designation as CPs. I have considered whether it is necessary in order to identify the help that the survivors can give as witnesses for them to be designated as CPs. Having considered this issue, I am satisfied that the requirements of carrying out a thorough investigation and coming up with appropriate recommendations can be carried out without the need to make the survivors CPs. It is the job of the Inquiry team to identify potential witnesses and identify the areas where they can help. The team has already done a lot of work with the assistance of GMP in identifying witnesses who can assist me. For the events in the City Room in particular, this has involved consideration of witness statements but also comparing that with CCTV and contemporaneous documentation. Of the 56 applicants, GMP already have accounts in relation to 54 of them. Ms Campbell QC has identified a number of matters not included in the survivors' GMP statements. It appears that some do appear in other materials held by the Inquiry, but in other cases, it may well be the case that Ms Campbell QC has raised evidential issues of which the Inquiry was unaware. It may therefore be necessary to go back and re-interview survivors to assist the Inquiry. However, that does not of itself require CP status. In the end I am satisfied that this important function can be and should be carried out by the Inquiry team. I will undoubtedly still be assisted by survivors in this continuing investigation but as witnesses rather than by the designation of the survivors as CPs.
38. **Third**, as well as providing evidence and assisting the Inquiry as witnesses, the survivors can engage with and participate in the Inquiry in a number of additional ways without CP designation. This is relevant to the exercise of my discretion. I have summarised these additional avenues for engagement and participation at paragraphs 5 and 6 above. In providing their evidence to the Inquiry, I anticipate that the survivors will have the necessary disclosure relevant to their accounts to enable them to do this effectively. They can attend the Inquiry's hearings or view them through the livestream available on the Inquiry's website. They can access transcripts, evidence and documents on the Inquiry's website. They will be encouraged to raise any issues that they have with the Inquiry team which may suggest lines of enquiry which need to be pursued or lines of questioning which need to be followed. I will ask the Inquiry team to ensure that straightforward mechanisms are put in place to allow survivors to communicate with the Inquiry team, including having a channel for direct communication with the Solicitor to the Inquiry.
39. **Fourth**, I have considered what impact, if any, granting the current application would have on the efficient management and progress of the Inquiry. I am conscious that the combination of the criminal trial of Hashem Abedi and the COVID-19 outbreak have resulted in two

unavoidable, but nonetheless significant postponements to the Inquiry's start date. This has been particularly difficult for the bereaved families. In these circumstances, any risk of delay must be taken seriously and must weigh in the balance when considering this application.

40. Relying on Ms Campbell QC's judgment, I have determined this application on the basis that designation of the survivors will not result in a delay to the current start date. However, designating a significant number of survivors as CPs will inevitably add to the length of the Inquiry's hearings and cause some delay to the conclusion of the Inquiry. Ms Campbell QC accepted as much; she was right to do so. While I do not consider that the length of the Inquiry is likely to increase dramatically, I consider that a delay to the Inquiry's conclusion is relevant and weighs against the survivors' application.
41. **Fifth**, I have an obligation to have regard to the need not to incur unnecessary costs. Designation of the survivors as CPs would undoubtedly increase, at least to some extent, the duration and therefore the costs of the Inquiry. I can of course control the extent of that increase, but Ms Campbell QC sensibly accepted that the addition of another represented party would add to the length of the Inquiry's hearings and that would increase the costs. While this is not in itself a determinative factor, it is nonetheless relevant and weighs against the survivors' application.
42. For these reasons, having considered carefully the arguments advanced on both sides, I decline to exercise my discretion to designate the survivors as CPs.

Engagement of Articles 2 and 3 of the European Convention of Human Rights

43. I turn now to the issue of the engagement of Articles 2 and 3 of the European Convention of Human Rights ('the ECHR') and, if they are engaged, whether that results in a different outcome to that under my Rule 5 discretion. Some of the factors which affect my decision on the ECHR are common to my consideration of the position under Rule 5(2).
44. By section 6(1) of the Human Rights Act 1998 *'it is unlawful for a public authority to act in a way which is incompatible with a Convention right.'* By section 6(3), a public authority includes *'a court or tribunal'* and *'any person certain of whose functions are functions of a public nature.'* Section 6 applies to my position as Chairman of this Inquiry and it would be unlawful for me to act in a way which is incompatible with a Convention right.
45. The Convention right with which I am concerned is Article 2. While the submissions have grouped together Article 2 and Article 3, they are not the same. They are different and individual rights. Article 2 protects the right to life. Article 3 prohibits torture and inhuman or degrading treatment or punishment. I have already ruled that Article 2 is engaged by the circumstances of the deaths of the 22 deceased victims. CTI conclude in their submissions on the relevant law that as a result of my ruling on Article 2 (made during the inquests), Article 2 is also likely to be engaged in the cases of those survivors who suffered very serious injuries as a result of the Arena attack.

46. I agree. I have ruled that the circumstances of the Arena attack give rise to an arguable breach of the Article 2 rights of the deceased, i.e. it appears that the substantive obligations under Article 2 have been, or may have been, violated, and it appears that agents of the state and/or systemic defects in a state system are, or may be, in some way implicated. In those circumstances, I accept that the Article 2 rights of at least some of the most seriously injured survivors are engaged on the basis that a potentially fatal incident resulting in serious but non-fatal injury can engage Articles 2.
47. I would need to hear further argument before I concluded that the survivors' Article 3 rights were engaged, and I make no finding about that at this stage. It does not seem to me to be necessary to consider that as I accept that Article 2 is engaged for at least some of the survivor applicants and, on the facts of this application, there is no suggestion that the investigative duty under Article 3 would be more exacting than under Article 2.
48. I would also need to hear further argument before I concluded that the Article 2 rights of survivors who did not suffer very serious injury were not engaged. I make no ruling on that issue. It is unnecessary for similar reasons for that decision to be made at the moment as I accept that Article 2 is engaged for at least some of the survivor applicants.
49. Once Article 2 rights are engaged, which I accept they are for at least some survivors, there is a procedural obligation on the state to carry out an effective investigation. The state's obligation can be met through a number of mechanisms and discharge of the procedural obligation should be assessed against the totality of the investigations conducted by, or on behalf of the state. As the submissions from CTI made clear, there have been a number of investigations which preceded this Inquiry, including the Kerslake Report into the emergency preparedness and the emergency response to the attack, the criminal investigation into those responsible for the attack and the contested trial of Hashem Abedi (resulting in his conviction), and the reports on the attack by Lord Anderson QC, the Independent Reviewer of Counter-Terrorism Legislation, and the Intelligence and Security Committee. I have already indicated that my Inquiry intends to build on the work of those investigations. In addition, the investigative measures that could consider the Arena attack in future, including the possibility of disciplinary proceedings and the availability of civil proceedings, are also relevant.
50. Some of the matters to be considered in the Inquiry have already been investigated by those earlier investigations and other matters are only likely to be investigated, at least in detail, by this Inquiry. There is also, as was acknowledged in some submissions, a considerable overlap and community of interest between the interests of survivors and the bereaved families, in particular on the issue of whether the attack could have been prevented, the security arrangements at the Arena and the emergency response. The Inquiry will examine a number of matters that are relevant to the survivors (see paragraph 27 above) and so will form a part of the state's effective investigation into the circumstances of the Arena attack.
51. The investigative duty under Article 2 requires that there should be effective participation of the victims in the state's investigation. There is of course a question as to what is meant by 'effective' in this context. In non-fatal cases the requirements of the investigative duty are

more flexible and may be less stringent than in fatal cases. The requirements of effective participation may be less than would be required in a fatal case. Where the potential breach of Article 2 has resulted in a death, effective participation normally requires state funded legal representation, disclosure and the ability to ask questions or suggest lines of inquiry or questioning. That is not surprising where a death is involved because the victim is unable to participate in the investigation on his or her own behalf and usually does so through his or her family. They need representation and certain procedural rights in order to participate in a meaningful way. Where the victim has survived the attack, the requirement of effective participation may be less stringent and it may be possible for the victim to participate effectively without the assistance of funded legal representation and enhanced procedural rights. In a non-fatal Article 2 case, compliance with the investigative duty is assessed against the totality of the investigative measures that the state has put in place.

52. It is for me to assess whether it is necessary for the survivors, on the facts of this case, to be designated as CPs in order for their Article 2 rights to effective participation to be met, having regard to the totality of the investigations the state has put in place to consider the Arena attack.
53. CTI's review of the law governing this application, and particularly the effect of the engagement of Article 2, is thorough, comprehensive and clear. I do not understand that anyone, including the survivors, take issue with it. In particular Ms Campbell QC has not argued with the proposition that in a non-fatal Article 2 case it is not always necessary for provision to be made for the victim to be made a CP for Article 2 to be met. What Ms Campbell QC argues with is the way that CTI in their submissions have applied the law to the facts of this case.
54. What is clear from the authorities is that in a non-fatal Article 2 investigation, the question of what is required for there to be effective participation for the victim or victims is fact specific. In **MA, BB -v-Secretary of State -v- Home Secretary [2019] EWHC 1523 (Admin)**, which was an Article 3 case, the Judge, having reviewed the authorities, said at para 45: '*All parties were agreed that the requirements of an effective investigation, including the level of public scrutiny and the extent of victim involvement that will be necessary will depend upon the facts of any particular case.*' The decision in the House of Lords case of **R (L) -v- Justice Secretary [2009] 1 AC 588**, which was a non-fatal Article 2 case, was made on the basis that it was not always necessary for the victim to be represented but there had to be some involvement of the victim's family in the investigation process. That case concerned an attempted suicide in prison.
55. Duncan Atkinson QC in his submissions (on behalf of one of the groups of bereaved families) summed up the decision that I have to make under Article 2 as follows: do the survivors have to be designated as CPs in order to exercise a sufficient degree of participation in the process or can they participate effectively by being called as witnesses and having other input into and engagement with the proceedings, including through the Inquiry's legal team?

56. Having considered this question carefully, and applying the relevant principles identified above to the particular facts of this application, I conclude that the survivors' rights to effective participation will be met without CP designation. There have been extensive investigations into the Arena attack; these are relevant and the Inquiry is one of a number of means by which the state's obligation to conduct an effective investigation is being carried out. The Inquiry will be a thorough and effective investigation. The requirements of effective participation in the state's investigations are more flexible in respect of the survivors given the particular facts involved here. These facts include the Inquiry's focus on the deceased; the limits of its Terms of Reference (see paragraphs 31-35); the effective participation of the bereaved families in the Inquiry (see paragraph 35 above); and the direct overlap of interests between the bereaved families and the survivors (see paragraph 35 above). Further, and importantly in respect of the survivors' rights to effective participation, they can contribute to the Inquiry as witnesses which I would very much wish them to do. They can also engage with and participate in the Inquiry in a number of additional ways (see paragraphs 5, 6 and 38 above). Taking these matters together, the survivors' rights to effective participation will be met without CP designation.

Conclusion

57. I hope that this decision is not too much of a disappointment to survivors. As I have said at the outset, the survivors clearly have significant evidence to contribute and I invite them to assist me as witnesses. They will be provided with the necessary disclosure relevant to their accounts to enable them to do this effectively and I would ask them to provide me with any insights and observations that they have so that they can be investigated in so far as they come within the Terms of Reference. I consider the survivors' input to be of great importance and I will ask the Inquiry team to ensure that straightforward mechanisms are put in place to allow survivors to communicate with the Inquiry team.

58. I am determined that the survivors will have an important role in the Inquiry. In my view, it is inevitable that they will, even without designation as CPs. Assistance can and will be provided to them by the Inquiry team. The evidence they give is important to me and I will try and ensure that questions that they want answered are answered.

59. The issue in this application has not been whether the evidence and the questions of the survivors should be heard or whether they are entitled to engage with and participate in this Inquiry; they are. The issue has been whether in order to do so they need to be designated as CPs. Having considered carefully the arguments on both sides I consider that the survivors do not need to be designated as CPs in order to contribute to and engage with the Inquiry and there are a number of factors that weigh against CP designation (to which I have referred at paragraphs 31-41 above). I wish to ensure that that the survivors are able to contribute to and participate in this Inquiry; it is important that they are able to, I consider that they can without CP designation, and the Inquiry will ensure that the survivors are able to. Their voice is an important one and it will be heard.

Sir John Saunders

21 April 2020