

OPUS2

Manchester Arena Inquiry

Day 1

June 2, 2020

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1 Tuesday, 2 June 2020
 2 (10.00 am)
 3 Housekeeping
 4 SIR JOHN SAUNDERS: Good morning. Can everybody hear?
 5 Mr Greaney.
 6 MR GREANEY: Sir, this is the fourth preliminary hearing in
 7 the Manchester Arena Inquiry. As you know, a fifth will
 8 take place on 23 June when important issues, including
 9 the measures that we propose to take to ensure a start
 10 date of 7 September will be considered.
 11 The hearing today however has been convened to
 12 address just a single issue, namely the application of
 13 the Fire Brigades Union, the FBU, along with that of an
 14 individual FBU member, for core participant, CP, status
 15 and we'll explain shortly why we are not naming that
 16 individual in our submissions --
 17 MR SOUTHEY: On that, can I intervene at this point?
 18 Because obviously there were emails in relation to that
 19 and I think I should make clear the FBU's position
 20 because it has changed overnight and I think emails were
 21 sent which hopefully should make that clear --
 22 MR GREANEY: Sorry, no emails have been sent saying anything
 23 other than we could expect that you would address the
 24 issue of the individual member this morning. So we do
 25 not know as matters stand what the position of the FBU

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1 is.
 2 MR SOUTHEY: Yes, sorry. Yes, that was I think what I was
 3 referring to. The position of the FBU is currently,
 4 having seen the emails but probably, more importantly,
 5 having consulted with their member yesterday, because he
 6 got in contact following a meeting that had been held
 7 with him where he'd been shown the inquiry's expert
 8 report, the FBU is no longer seeking to intervene
 9 essentially as representative of that member, the
 10 unnamed member. He does not seek separate
 11 representation by the FBU and so the FBU is not relying
 12 on his interests as a basis for seeking core participant
 13 status.
 14 Obviously, the FBU continues to maintain that given
 15 the inquiry's role in investigating the response of the
 16 Fire and Rescue Service, it still has sufficient
 17 interest to justify it being granted core participant
 18 status, but it does not rely, as I say, on the interests
 19 of the individual member.
 20 MR GREANEY: Thank you very much indeed, Mr Southey. As I'm
 21 sure you and the chairman will appreciate, we'll have
 22 something to say about that during the course of our
 23 submissions.
 24 Sir, I'll return now to deal with the structure that
 25 we propose for today's hearing. It is as follows: we,

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1 as counsel to the inquiry, CTI, propose to go first and
 2 we will set out the position of CTI on the applications
 3 that have been made, albeit one of them has now been
 4 abandoned. That will enable Mr Southey, Queen's
 5 Counsel, on behalf of the FBU, to make his submissions
 6 in a state of knowledge and he should therefore go
 7 second.

8 Mr Warnock, Queen's Counsel, wishes to make
 9 submissions on behalf of the Greater Manchester Combined
 10 Authority, GMCA, and should therefore go first.

11 Fourth, probably after a break for the benefit of
 12 the stenographers, we as CTI may wish to make some short
 13 further submissions in the light of that said by
 14 Mr Southey and Mr Warnock.

15 Fifth, the final word should in our view go to
 16 Mr Southey on behalf of the FBU.

17 Sir, we anticipate that you will give a ruling not
 18 today but in due course as you did on the survivors'
 19 application.

20 Furthermore, sir, you have in the exercise of your
 21 case management powers imposed time limits on the
 22 submissions of those advocates who wish to make
 23 submissions today. Those time limits are as
 24 follows: a total of 60 minutes to CTI, a total of
 25 75 minutes to Mr Southey, and a total of 15 minutes to

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1 Mr Warnock.
 2 SIR JOHN SAUNDERS: Can I just say, I don't mind if any of
 3 you are shorter. You should obviously know that I have
 4 read all the papers and I'm sure you will all complete
 5 your submissions in the time available. I see
 6 Mr Weatherby and Mr Cooper are on the screen. If they
 7 wish to say something at a later stage, no doubt they
 8 will tell me.

Submissions by MR GREANEY

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 10 MR GREANEY: Thank you very much, sir. We were about to say
 11 that in our judgment it's important that all the
 12 advocates should stick to those time limits and that is
 13 so for two connected reasons. Firstly, as you have just
 14 said, sir, the submissions of the parties have been set
 15 out in writing in considerable detail. The submissions
 16 of the FBU run to 37 pages across, I think, four sets of
 17 submissions, and the submissions of CTI run to a total
 18 of 97 pages. Short written submissions have also been
 19 submitted on behalf of GMCA and on behalf of various
 20 family groups, and it follows that you are fully
 21 informed about the parties' positions subject only to
 22 the development overnight to which we shall turn.

23 Accordingly, in our submission, today is not the
 24 opportunity to rehearse every argument but instead to
 25 summarise the main points upon which each advocate

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1 relies and to deal with the development to which we
2 refer . So the time limits you have allowed , sir , should
3 be more than adequate.

4 Second, this oral hearing has been requested by the
5 FBU in circumstances in which we considered as CTI that
6 the issue could be dealt with on the papers. You, sir ,
7 granted that request for an oral hearing. We do not,
8 of course, criticise that chain of events, but it is
9 a fact that the inquiry legal team is devoted at the
10 moment to the work of preparing for the work of the
11 inquiry oral evidence hearings on 7 September, so every
12 hour counts and there are good reasons, so far as the
13 preparation for those hearings is concerned, for this
14 hearing to conclude before 1 pm if that is at all
15 possible .

16 Having made those introductions we'll turn to deal
17 with a summary of CTI's position. In headline form,
18 CTI's submissions are, first , the FBU's application is
19 4 months out of time under the inquiry 's CP protocol and
20 it is, in our submission, neither necessary nor
21 appropriate for you to grant further time to allow this
22 application to be considered .

23 The FBU made submissions on its application on
24 23 March, that being the date of the original
25 application , 15 April , 24 April , 30 April and 7 May. At

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1 no stage in those submissions was any explanation
2 advanced for the delay.

3 Belatedly, on 12 May, the FBU did address the issue ,
4 stating in summary that the date for service of the
5 application had been missed, that the FBU has resource
6 issues , and that you have in any event a discretion to
7 extend time.

8 The final point is plainly correct but we must
9 observe that in our judgment the first two points amount
10 to no argument of substance. The time limit on CP
11 applications was imposed by you, sir , for good reason,
12 namely to avoid the inquiry being diverted from its
13 critical work by late applications . It must also be
14 seen in its context. The inquiry was established after
15 the ongoing progress of a lengthy coronial
16 investigation . All current CPs were already interested
17 persons within those inquests . The CP time limit was
18 therefore a backstop.

19 Yet despite this the diversion of resources from the
20 inquiry 's critical work is precisely what has now
21 occurred, and CTI cannot emphasise strongly enough how
22 much time has been lost to this application when much
23 important work of preparation for 7 September is
24 underway.

25 Still dealing with delay , in our written submissions

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1 prior to 12 May, we identified multiple reasons why no
2 good reason had been given for extending time and why
3 there were compelling reasons not to do so. To the
4 extent that the FBU has in its final set of submissions
5 sought to address the substantial delay in submitting
6 its application , that explanation does not alter our
7 position . You should, we submit, reject this
8 application on procedural grounds, although we encourage
9 you to go on also to consider the applications on their
10 merits .

11 Each application , we suggest, lacks merit. Indeed,
12 as we were going to explain , and indeed is now accepted,
13 one of the applications should no longer be an
14 application at all .

15 Second by way of headline , as regards the CP
16 application made on behalf of the individual FBU member,
17 CTI consider that he does have relevant evidence to
18 provide. Indeed, our firm intention is that he should
19 be called , indeed must be called , to give evidence
20 at the evidence hearings. CTI also consider that the
21 FBU member appears to meet the criteria in rule 5(2)(a)
22 and (c) and maybe the criteria in rule 5(2)(b).
23 However, as we've explained in writing , the fact that he
24 can provide witness evidence and appears to meet some of
25 the rule 5(2) criteria does not require CP status for

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1 him. His interests can be represented by GMCA, as GMCA
2 has confirmed in writing , and as we anticipate
3 Mr Warnock will do orally today.

4 That alone would have been sufficient to dispose of
5 that application , but in fact its hopeless nature has
6 been further and completely, we suggest, exposed by the
7 recent events to which Mr Southey has referred .

8 Some background is we consider still necessary to
9 explain this point, which cannot be allowed to pass
10 without comment.

11 The FBU's original application and early submissions
12 indicated that multiple FBU members were seeking CP
13 status but did not identify them. Following the
14 submissions of CPs and CTI, you, sir , made a request for
15 further information to the FBU asking the FBU to
16 identify the individual members, as it was understood to
17 be, on whose behalf the application was being made. The
18 FBU then explained that the application for CP status
19 was in fact made on behalf of itself and a single FBU
20 member, that being the person to whom we have referred.

21 Even securing that information wasted time for the
22 inquiry legal team and CPs, which time would otherwise
23 have been used on the ongoing work of preparation of the
24 inquiry . Furthermore, sir , as you've been told, it has
25 now been established that the individual FBU member does

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1 not in fact seek CP status and appears to have informed
 2 GMCA's lawyers that he was unaware that steps had been
 3 taken to progress an application on his behalf. This
 4 development is, we suggest, troubling and demands an
 5 explanation at some stage. To say the least, in dealing
 6 with the application made on behalf of the individual,
 7 considerable time and financial resources have been
 8 thoroughly wasted.

9 This also means, of course, that the application in
 10 respect of the individual member is now utterly
 11 hopeless, as has been recognised. If it should ever
 12 have been advanced, which may be open to doubt, you,
 13 sir, should now recognise formally that it has been
 14 withdrawn.

15 We should add, before we turn to the third headline,
 16 that the apparent lack of consultation with the
 17 individual member is the reason we will not be
 18 mentioning his name.

19 Third, as regards the FBU's application for CP
 20 status as a representative body, at the present time,
 21 taking matters at their highest, it appears that the FBU
 22 may be able to assist the inquiry with relevant
 23 evidence, including on recommendations. However, the
 24 prospect that the FBU may be asked to provide evidence
 25 at a future stage does not, in our submission, require

1 CP status. The FBU's application should therefore be
 2 refused on the basis it is currently made. It may
 3 become appropriate -- emphasising the word "may" -- for
 4 the FBU to have CP status at the recommendation stage of
 5 the inquiry proceedings only. You, sir, may therefore
 6 wish to consider an application from the FBU at
 7 a suitable moment prior to that stage and limited to
 8 that narrow purpose. But there is, in our submission,
 9 no requirement to determine the issue now, but it would
 10 be appropriate to keep the matter under review and
 11 consider it as and when it truly arises.

12 Accordingly, sir, we invite you to take the
 13 following approach in your ruling: (1), formally to note
 14 the withdrawal of the individual member's application;
 15 (2), refuse the FBU's application for CP status as
 16 a representative body or, alternatively, keep the matter
 17 under review to be determined at a later and appropriate
 18 stage.

19 So we will turn, having dealt with matters in
 20 headline form, to summarise our reasoning in a little
 21 more detail, still anticipating that our total time will
 22 be no more than 60 minutes.

23 First, the relevance of delay. We would draw
 24 attention to the following factors.

25 (1). The date by which the inquiry's protocol

1 required CP applications was 20 November of last year.
 2 The protocol stated:

3 "Applications for core participant status should be
 4 submitted to the inquiry in writing by 20 November 2019.
 5 Further time will be granted by the chairman for such
 6 applications if it is necessary and appropriate to do
 7 so."

8 The FBU's application, as we have indicated, was
 9 made on 23 March of this year, over 4 months out of
 10 time.

11 (2). The protocol was available on the inquiry's
 12 website shortly following the establishment of the
 13 inquiry on 22 October. The issue of designation of CPs
 14 was raised at the first preliminary hearing of the
 15 inquiry on 22 November when CTI made explicit reference
 16 during the hearing to the inquiry's CP protocol and the
 17 deadline for CP applications was publicly restated.

18 Sir, of course, a copy of that transcript was made
 19 available that day, if not the next, on the inquiry's
 20 website. So it comes to this, that there can be no
 21 excuse for a representative body to have been unaware of
 22 the time limit.

23 (3). As the FBU has emphasised in its submissions,
 24 it is a CP at the Grenfell Inquiry. It must therefore
 25 to be taken to be fully familiar with the 2005 Act and

1 the 2006 Rules and the fact that, as the
 2 Grenfell Inquiry did, public inquiries set time limits
 3 for CP applications to ensure the proper management of
 4 their proceedings.

5 (4). In any event, the FBU has not suggested that
 6 it was unaware of the possibility of applying for CP
 7 status. What the FBU has said is that:

8 "FBU and their solicitors were not aware of the
 9 deadline of 20 November until after it passed. The
 10 posting on the website was missed."

11 The FBU has also indicated that it had instructed
 12 solicitors to advise members in relation to the giving
 13 of statements and that one of its solicitors was present
 14 when the individual FBU member to whom we have referred
 15 provided his statement, which statement is dated
 16 25 November of last year.

17 The FBU has therefore had legal representation
 18 during the life of this inquiry.

19 (5). The FBU relied and relied heavily, moreover,
 20 in its application on the contents of the
 21 Kerslake Report. That report was published on
 22 27 March 2018, nearly 2 years before the FBU's CP
 23 application was made.

24 (6). Prior to the establishment of your inquiry, so
 25 far as we are aware, the FBU did not make contact with

1 STI, with you, sir, when sitting as a coroner, or with
 2 the previous coroner during the coronial investigation .
 3 At no stage during the inquest did the FBU seek
 4 interested person status or request any formal status to
 5 participate in the coronial investigation .
 6 (7). In making its application , the FBU was not
 7 clear as to who the application was made on behalf of.
 8 As we have indicated , in its original application the
 9 FBU gave a clear and strong indication that multiple FBU
 10 members were seeking CP status and that such members had
 11 asked the FBU to represent their interests in making
 12 such an application .
 13 In relation to each of the rule 5(2) criteria , the
 14 application stated that FBU members, plural, met the
 15 criteria and that the FBU represented such persons in
 16 making the application . It was only following your
 17 request for information from the FBU on 30 April that
 18 the FBU confirmed that the actual position namely that
 19 the application was made on behalf of just one member as
 20 a member of the FBU and for the FBU as a representative
 21 body. Of course, it has now proved the case that this
 22 individual member does not seek CP status, contrary to
 23 the assertions that have been made by the FBU. That
 24 raises , as we have said , concerns about the basis for
 25 this application .

1 (8). The FBU provided no explanation for serving
 2 the application substantially out of time in its
 3 original application , or in its subsequent sets of
 4 written submissions , until its final written submissions
 5 of 12 May, and only following CTI's two detailed
 6 submissions touching on this important issue .
 7 Furthermore, the explanation that is now given,
 8 which we've summarised already, is , in our submission,
 9 no kind of explanation at all .
 10 (9). If this application is granted, it may well
 11 generate further applications from organisations ,
 12 including representative organisations , and individuals
 13 who will feel that they can make late applications for
 14 CP status with impunity, and if that occurs it will have
 15 the very consequences that the time limit in the
 16 inquiry 's CP protocol sought to avoid.
 17 The question for you, sir , is of course whether
 18 it is necessary and appropriate for you to consider the
 19 FBU application out of time under the inquiry 's CP
 20 protocol . We submit that in light of the nine factors
 21 we've identified , there is no good reason to conclude
 22 that it is necessary or appropriate to extend time .
 23 Conversely, there are good reasons to conclude that is
 24 not so, and those include the following .
 25 (1). Ensuring compliance with the inquiry 's

1 deadlines , including on CP applications . That is
 2 central , we submit, to maintaining the inquiry 's start
 3 date, to the efficient progress of the inquiry , and
 4 reaching a conclusion as speedily as possible . Adopting
 5 an appropriately rigorous approach to the CP deadline
 6 therefore serves , in our judgment, the crucial interests
 7 of existing CPs, in particular the bereaved families ,
 8 and the wider public .
 9 The suggestion from the FBU that as the work on the
 10 application has now already been done, the failure to
 11 meet the deadline is irrelevant is not accepted by CTI
 12 and ignores the important reality of the situation , and
 13 that reality is that much time has been lost to this
 14 application at a critical period and costs have already
 15 been incurred, and this applies not only to CTI,
 16 although it does so principally , but also to other CPs.
 17 (2). The FBU's application poses some, albeit we
 18 acknowledge limited , risk to the inquiry 's start date
 19 and the date of its conclusion , as we have explained in
 20 further detail in our written submissions. Such risks ,
 21 even where limited , should, in our submission, be taken
 22 very seriously given the background to the current start
 23 date of 7 September.
 24 (3). The CP applications by the individual member
 25 and the FBU as a representative body are not, in our

1 submission, of such merit that there is a strong reason
 2 to extend time.
 3 Sir, we therefore invite you to refuse the
 4 application on the grounds of delay .
 5 That takes us to the individual FBU member's
 6 application for CP status, which we can now deal with
 7 more shortly than would otherwise have been the case,
 8 but as we have said already, this issue cannot simply be
 9 passed over .
 10 As we have made clear already , we accept that the
 11 member has relevant evidence to provide to your inquiry .
 12 Furthermore, he meets or at any rate may meet the
 13 rule 5(2) criteria . However, that does not require CP
 14 status .
 15 As is clear from the terms of rule 5 and extensive
 16 practice under the 2005 Act and the 2006 Rules, you have
 17 a broad discretion determining applications for CP
 18 status . There is no requirement to designate all who
 19 meet some or all of the rule 5(2) criteria . A range of
 20 other relevant factors are likely to apply and may tip
 21 the balance against CP designation.
 22 That, we suggest, is the case here. A number of
 23 relevant factors always weighed heavily against the
 24 member's application for CP status. We have set those
 25 out in detail in our various written submissions and

1 there is no need now even to summarise what they are.
 2 That's because, sir, as has been indicated, there have
 3 been developments.
 4 Those developments are as follows. At 1.35 pm
 5 yesterday the solicitors for GMCA emailed the member
 6 concerned in the following terms:
 7 "When we spoke late on Friday afternoon, you
 8 indicated that you did not wish for the FBU to seek core
 9 participant (CP) status on your behalf and that you were
 10 unaware of the steps that had been taken to progress an
 11 application in your name. The application in respect of
 12 both the FBU as a representative body and on your behalf
 13 are listed for a public hearing at 10 am tomorrow
 14 morning. Please can you urgently confirm your
 15 intentions. If it remains the case that you do not wish
 16 to seek CP status in your own right, then please can you
 17 confirm so by return of email to me and I will ensure
 18 that the inquiry are notified. In the alternative, if
 19 you have had a change of heart and now wish to support
 20 the application, then it is important that we are aware
 21 as we have briefed counsel thus far on the basis of the
 22 information that you provided last Friday."
 23 The individual FBU member replied to that email at
 24 6.50 pm yesterday to say that he had instructed his FBU
 25 representative not to seek CP status on his behalf.

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1 In that email, he did not challenge the suggestion in
 2 any way that he had been unaware of the steps taken by
 3 the FBU to make an application on his behalf.
 4 As we have indicated already, this is a troubling
 5 development. On the face of it, the FBU suggested that
 6 it represented multiple members, then when pressed
 7 identified only one, but that one does not, in the
 8 result, wish an application to be made on his behalf,
 9 and at some stage we submit that state of affairs should
 10 be explained.
 11 But for the purposes of this aspect of our
 12 submissions, namely whether the application of the
 13 individual FBU member should be granted, the position is
 14 now clear and is acknowledged on behalf of the FBU.
 15 The application, we submit, was always about merit
 16 and in any event is not now made on behalf of the member
 17 concerned. Therefore, sir, you should, we submit,
 18 formally note its withdrawal.
 19 So we turn to the FBU's application for CP status as
 20 a representative body. That application, we suggest,
 21 also always lacked merit but is diminished further by
 22 the events in relation to the individual member.
 23 Sir, we accept that the FBU as a representative body
 24 may be able to assist the inquiry with relevant
 25 evidence, including on recommendations, and we have

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1 acknowledged that already this morning. However, the
 2 prospect that the FBU may be asked to provide evidence
 3 at a future stage does not require CP status.
 4 In our submission, a number of relevant factors
 5 weigh against the FBU's application for CP status and do
 6 so heavily. Those factors are fully set out in CTI's
 7 previous written submissions and we'll therefore merely
 8 summarise them as follows, bearing in mind the public
 9 nature of this hearing.
 10 (1). It is not clear at this stage, prior to the
 11 inquiry's evidence hearings and well before the
 12 consideration of recommendations, that the FBU meets any
 13 of the rule 5(2) criteria. It does not in our
 14 submission meet the direct and significant role or
 15 explicit significant criticism criteria in rule 5(2)(a)
 16 and (c). It is, we recognise, possible that it may in
 17 due course meet the significant interest criterion,
 18 rule 5(2)(b), on the basis that its members or
 19 a sufficient number of them have a significant interest
 20 in the recommendations that you make. While it's not
 21 yet known whether recommendations will be made in this
 22 area, and, if they are, their content, scope and reach.
 23 If recommendations are made FBU members are likely
 24 to have an interest in such recommendations and the FBU
 25 might therefore be able to demonstrate at that stage

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1 a significant interest but that, of course, will be at
 2 a future point in the inquiry.
 3 At this stage, the engagement of the rule 5(2)(b)
 4 criterion in the case of the FBU is, we suggest, limited
 5 and somewhat speculative, and that submission is
 6 supported by recent developments in the application on
 7 behalf of the individual member.
 8 (2), the FBU has suggested that it has a significant
 9 interest as a representative body because, in its
 10 submission, it can provide expertise to the inquiry. In
 11 our submission, the FBU does not meet the rule 5(2)(b)
 12 criterion on that basis. The fact of having expertise,
 13 even if that is accepted to be the case, does not in
 14 itself give rise to a significant interest, much less
 15 lead to CP status. The inquiry has access to
 16 significant expertise, for example from expert
 17 witnesses. Any relevant expertise of the FBU, were it
 18 deemed to have such value, would not require CP status
 19 because it could be provided in a number of other ways,
 20 as we've said in our written submissions.
 21 (3). At this stage, taking its position at its
 22 highest, the FBU may be able to provide relevant
 23 evidence to the inquiry at some future stage. That is
 24 not a basis for CP designation. Even if evidence is
 25 sought from the FBU, it will be providing it as material

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1 provider and/or as a witness. There is no requirement,
2 in our submission, to designate all material providers
3 or witnesses as CPs; far from it. That is for obvious
4 and sensible reasons. The consequences of such an
5 approach would be far-reaching and highly detrimental to
6 the management, efficient progress, and costs of the
7 inquiry.

8 (4). We submit that the FBU's interests coincide
9 substantially with other existing CPs and with the aims
10 of the inquiry team. Based upon its application, the
11 FBU's interests are broadly in ensuring that failings by
12 GMFRS, the Fire and Rescue Service, and/or NWFC,
13 North West Fire Control, if any, are investigated,
14 criticism of firefighters, if any, is justified by the
15 evidence, and recommendations, if any are made, are
16 necessary and appropriate. Those are the FBU's
17 interests.

18 Those interests are shared by at least the inquiry
19 team, the bereaved families, and GMCA, and quite
20 possibly by NWFC as well. The FBU therefore do not have
21 a unique interest or a different perspective to all
22 other CPs that requires CP status.

23 Their claim to a unique or different interest is
24 further diminished, we suggest, by the fact that the
25 central FBU member, the individual we've referred to, is

1 happy for his interests, including on recommendations,
2 as we have understood it, to be represented by GMCA.

3 (5). This is the final point before we get on to
4 address some of the submissions made in the FBU's
5 submissions of 12 May. To the extent that the FBU can
6 provide evidence to the inquiry on possible
7 recommendations, the FBU can make that contribution by
8 liaison falling short of CP status certainly at this
9 stage. FBU members have provided evidence to the
10 inquiry and will give evidence. That is a form of
11 direct participation. You may, sir, permit the FBU to
12 propose relevant lines of inquiry, to suggest areas of
13 questioning and/or to make representations upon
14 recommendations, all without CP status. These are
15 matters that can be kept under review and reconsidered
16 prior to the inquiry's chapter on recommendations if you
17 consider, sir, that is necessary and would assist in the
18 fulfilment of the inquiry's terms of reference.

19 Questioning from CTI and other CPs, with your
20 permission, will be informed by the evidence of FBU
21 members, the work of the inquiry team, the inquiry's
22 expert witness evidence and the evidence of other
23 relevant witnesses. Should it wish to do so, the FBU
24 can review the evidence available on the inquiry's
25 website and transcripts of the inquiry's evidence

1 hearings as the inquiry progresses and inform the
2 inquiry team if it considers that the FBU could assist
3 the inquiry on a particular issue. Any suggestions
4 will, sir, of course, and as you would expect, be
5 considered by the inquiry team carefully.

6 In our written submissions we have developed further
7 points to which we know you will have regard on the
8 FBU's application for CP status as a representative
9 body. Those submissions are summarised at
10 paragraphs 11(e) and (j) of the CTI submissions dated
11 28 May, which are at pages 147 and 148 of the bundle.
12 We will not rehearse them orally.

13 We do, however, have observations, short
14 observations, to make on the FBU's submissions dated
15 12 May. Many of the points made we have addressed in
16 our oral submissions today and in our earlier written
17 submissions but where not already addressed, and to the
18 extent we think helpful, we make the following
19 submissions.

20 First, it appears to be suggested by the FBU that
21 CTI has not adequately considered section 1 of the 2005
22 Act and/or the purpose of the inquiry. We assure them
23 and everyone more generally that that is certainly not
24 the case. CTI has referred in detail to the inquiry's
25 terms of reference, the establishment of the inquiry and

1 the importance, above all, of the inquiry's work. And
2 sir, no doubt you will also have those matters well in
3 mind when exercising your broad discretion in response
4 to this application.

5 Second, the FBU submit that CTI appear to have
6 suggested that CP status is of limited value. That is
7 not the case. CTI's submissions -- and we hope, sir,
8 you will agree -- set out neutrally in detail and from
9 an independent perspective the purpose of CP status, its
10 consequences and the different ways in which CPs and
11 non-CPs can engage with and participate in an inquiry
12 under the 2005 Act.

13 CTI's submissions refer directly to the rulings that
14 the FBU rely upon. Far from being ignored, they've been
15 brought to your attention and that of CPs and the FBU.
16 The crux of the FBU's submission is not in fact that the
17 CTI have misrepresented what CP status involves. CTI
18 has not done that. But CTI suggest that:

19 "The FBU can participate effectively without that
20 status."

21 For the reasons we've set out in detail, the FBU can
22 engage with and participate in the inquiry to the extent
23 required without CP status, given the range of other
24 relevant factors that apply, including that: (a) at this
25 stage and taking its position at its highest, the FBU

1 may be able to provide relevant evidence to the inquiry
 2 at some future stage; (b) the FBU's interest overlaps
 3 considerably with others involved in the inquiry; and
 4 (c) the only individual FBU member in respect of whom CP
 5 status was claimed has said that his interests can
 6 properly be represented by GMCA and furthermore does not
 7 in fact seek that status on his own behalf.

8 In those circumstances, CP status for the FBU is
 9 not, in our submission, required. CTI have not failed
 10 to recognise that CP status affords, for example,
 11 disclosure and the ability to apply for permission to
 12 question witnesses as the FBU suggest; rather, the FBU
 13 do not require such status given that which we have
 14 explained.

15 Third, the FBU suggests that the comments of
 16 Sir Brian Leveson indicating that "there need not be
 17 a significant bright line between CPs and non-CPs"
 18 should be restricted to their specific context. We as
 19 CTI do not agree. While no ruling from another inquiry
 20 has binding effect upon you, sir, plainly such rulings
 21 provide useful guidance and can properly be considered
 22 and, if appropriate, relied upon. The suggestion that
 23 there need not be a significant bright line between CPs
 24 and non-CPs and that an organisation may engage with,
 25 contribute to, and participate in an inquiry in a range

1 of ways without being designated as a CP is clear from,
 2 for example, the Infected Blood Inquiry and, sir, your
 3 own ruling in the survivor CP application, as well as
 4 Sir Brian Leveson's ruling.

5 Fourth, it is suggested by the FBU that the
 6 threshold for a conflict of interest should not be set
 7 too high. It has not been. The FBU has made what we
 8 submit are a wide range of unevenced, general and
 9 speculative aversions of potential conflict, of interest
 10 between the individual member and GMCA. In the result,
 11 that member does not seek CP status and the irrelevance
 12 of the purported conflict addressed repeatedly and in
 13 detail by the FBU has, we regret to say, been exposed:
 14 the individual member has no wish to be represented
 15 separately from GMCA and GMCA consider there is no
 16 conflict.

17 Fifth, it is suggested by the FBU that there is some
 18 problem with disclosure. The FBU accepts that it has no
 19 entitlement to disclosure under the 2006 Rules. CTI
 20 agree for the reasons set out previously. Common law
 21 fairness, we suggest, does not alter the position.
 22 Under section 17(3) of the 2005 Act, you, sir, are under
 23 a duty to act with fairness and the previous submissions
 24 of CTI in writing have addressed this issue directly.

25 Sixth, the FBU submit that CP status is required in

1 order to access disclosure so as to make effective
 2 submissions. This argument is circular in the extreme.
 3 The FBU only require disclosure if you, sir, consider
 4 that they should be designated as CPs. For the reasons
 5 we have set out today and previously, that is simply not
 6 the case. Should you in due course consider that
 7 evidence and/or submissions from the FBU would assist
 8 you, you would be entitled to tailor disclosure to the
 9 FBU, if any was required, as you saw fit. That does not
 10 mean that the FBU should be designated as a CP.

11 The seventh of these eight points is in specific
 12 response to the submissions of 12 May. The FBU suggests
 13 that CTI ignores the potential importance of
 14 recommendations for the future. Again, that is not the
 15 case. As is clear from both CTI's earlier submissions
 16 and from what we've said today, the possible ability of
 17 the FBU at a future stage to provide evidence on
 18 recommendations appears to be the only proper basis on
 19 which the FBU as a representative body might be entitled
 20 to CP status. That issue has been addressed in detail.
 21 The time for a decision upon it is not now, we suggest.

22 Eighth and finally, the FBU seek to characterise the
 23 inquiry in the following terms:

24 "Employers are afforded a position from which to
 25 influence recommendations while employees are denied

1 it."

2 Again, that is simply not the case. Numerous
 3 employees will give evidence. They can address matters
 4 relevant to recommendations. Independent expert
 5 witnesses will provide evidence, including by reference
 6 to witnesses' evidence, CTI and others will ask relevant
 7 questions, and those CPs representing the interests of
 8 witnesses can make submissions. If you consider that
 9 assistance from the FBU would assist, including through
 10 evidence and/or submissions, you can request it at the
 11 appropriate time.

12 The FBU's submission also ignores the inquisitorial
 13 nature of an inquiry under the 2005 Act. The inquiry is
 14 not adversarial litigation between employers and
 15 employees. It is also not a form of industrial
 16 relations involving employers and employees. The
 17 suggestion in these circumstances that there is an
 18 inequality of arms is simply, we suggest, misplaced, and
 19 that is also further supported by the recent
 20 developments with the application on behalf of the
 21 individual member.

22 Sir, in light of all that we have said over the
 23 course of about 35 or 40 minutes, CTI consider that this
 24 application falls to be determined by reference to three
 25 questions.

1 (1). Is it necessary and appropriate for you to
 2 consider the FBU application out of time under the
 3 inquiry's CP protocol? In CTI's submission, it is not.
 4 (2). On the basis that the individual member
 5 appears to meet the criteria in rule 5(2)(a) and (c) and
 6 may meet the criteria in rule 5.2(b), are you required
 7 to designate him as a CP given the range of other
 8 relevant factors that apply? In CTI's submission, no,
 9 and in any event the member concerned now does not seek
 10 CP status and you should formally note that his
 11 application has been withdrawn, sir.
 12 (3). On the basis that the FBU may have relevant
 13 evidence to provide on possible recommendations, are you
 14 required to designate the FBU as a CP now? In CTI's
 15 submission, no.
 16 The FBU's application should therefore be refused on
 17 the basis it is currently made. It may become
 18 appropriate for the FBU to have CP status at the
 19 recommendation stage of the inquiry proceedings only.
 20 You may therefore wish to consider an application from
 21 the FBU at a suitable moment prior to that stage,
 22 limited to that narrow purpose. There is, in our
 23 submission, no requirement to determine the issue now
 24 and it would be appropriate to keep the matter under
 25 review and consider it as and when it arises.

1 Sir, those are our submissions as CTI. As we it
 2 indicated earlier, we next invite submissions from
 3 Mr Southey on behalf of the FBU, followed by Mr Warnock
 4 on behalf of GMCA, and anyone else who wishes to make
 5 submissions in light of what they've heard today and/or
 6 in light of the development. We may at some appropriate
 7 stage wish to make some further short submissions.
 8 SIR JOHN SAUNDERS: Thank you, Mr Greaney. Mr Southey.
 9 Submissions by MR SOUTHEY
 10 MR SOUTHEY: Thank you, sir.
 11 Can I first thank you on behalf of the FBU for
 12 hearing this application. Certainly our position
 13 is that ultimately oral hearings are the best way of
 14 resolving matters such as this, which are important for
 15 reasons I am going to come to, to bodies such as the
 16 FBU. So we thank you, and indeed everybody involved,
 17 for facilitating this hearing.
 18 SIR JOHN SAUNDERS: Mr Southey, I agree that an oral hearing
 19 is necessary. I won't interrupt you again, I assure
 20 you, having not interrupted Mr Greaney.
 21 I wanted to remark that I don't think the case of
 22 Osborn is very persuasive on this particular matter.
 23 I'm not sure the same criteria actually apply.
 24 MR SOUTHEY: I don't think I need to argue about that then
 25 at the moment, given that we're having an oral hearing

1 anyway.
 2 Can I then just turn briefly to the FBU member who
 3 should remain unnamed and perhaps more generally the
 4 basis upon which this application was always put.
 5 The letter of 23 March 2020 -- and I refer to page 5
 6 of that -- made it clear that it was the FBU that was
 7 applying for designation as a core participant, and that
 8 remains the case.
 9 If one looks at the detail of that application, and
 10 in particular where the rule 5(2) criteria were
 11 addressed, the first part of those criteria that was
 12 addressed was essentially sub-rule (b). That was
 13 addressed on the basis that -- and one sees this at
 14 paragraph 11:
 15 "The FBU is properly interested in the health and
 16 safety of firefighters in Greater Manchester and across
 17 the UK and that, consistent with this, there would be
 18 significant recommendations made, or there will likely
 19 to be significant recommendations made, at the end of
 20 the inquiry."
 21 I'll come back to those later, but I just want to at
 22 the moment make it clear what the application was. That
 23 continues to be the FBU's primary basis for applying for
 24 core participant status.
 25 What the FBU then went on to do was not to apply for

1 core participant status for any individual, it was to
 2 point out that when looking at the criteria to be
 3 considered, the FBU represent people who were at the
 4 heart of the incident and who, in one case, might be
 5 subject to criticism. I shouldn't say one case because
 6 I accept the letter goes broader than that.
 7 The reason it was doing that in part was because,
 8 of course -- and this comes back to a point I will
 9 make -- that it lacked, and it still lacks, access to
 10 much of the material that the inquiry will have seen.
 11 It was making the more general point that it has
 12 a membership who both were heavily involved in
 13 a criticised aspect of the response and that it has
 14 members who will be affected by recommendations that are
 15 likely to be made. That remains the FBU's position and
 16 it is the recommendations or the possibility of
 17 recommendations, rather, that caused this application to
 18 be made.
 19 A couple of things about developments that have
 20 occurred very recently: firstly, the member has
 21 apparently said that he was unaware of what was
 22 happening. My instructions are that that is not
 23 accepted to be correct. The FBU is obviously
 24 a responsible trade union, a large trade union, which
 25 seeks to act in a manner that is in the public interest

1 as well as in the interest of its members.
 2 We would submit getting into a dispute as to who
 3 said what and when is not necessarily going to be
 4 particularly productive, but it is not, I should make it
 5 clear, accepted that the member was unaware of what was
 6 happening.

7 Secondly, although the response to the inquiry from
 8 you, sir, as to which members were likely to potentially
 9 meet the requirements of rule 5(2)(b) focused on the
 10 unnamed member, for good reason, it was also made clear
 11 that he was not the only member who was involved in the
 12 response; another member, consistent with the practice
 13 that's been adopted in relation to the first member --
 14 I'm not going to name him but another member is named
 15 in the response to your query at page 97. It remains
 16 the position that the FBU membership includes
 17 a significant number of firefighters who were involved
 18 in the response on the night.

19 Can I turn to the substance of the application,
 20 having dealt with that preliminary matter? What
 21 I intend to do is deal with five topics if I may.

22 Firstly, the timing of the application. Secondly, the
 23 interests --

24 SIR JOHN SAUNDERS: Having said I won't interrupt you again,
 25 do you mind if I do? Just before we leave the first

1 issue, I also think it is not helpful in this hearing to
 2 have a discussion about who said what to whom and when.
 3 But I would like, please, when people have had time to
 4 look at it -- and this is all very last minute --
 5 I would like a detailed explanation, please, in writing
 6 of what went on, which can be copied to the other people
 7 who may be interested in that. I am concerned that this
 8 particular member is said to have indicated to the union
 9 that he wanted to be represented by them and that seems
 10 to be a matter of some conflict. So if I could in due
 11 course, when people have had time to look at it and
 12 think about it, be given a more detailed explanation,
 13 I would be grateful.

14 MR SOUTHEY: I understand the concern, yes, certainly. All
 15 I suppose I was really seeking to do at this stage was
 16 to flag up the possibility that there may be a dispute
 17 of evidence as to what happened, which may not be
 18 terribly productive to resolve, I think.

19 SIR JOHN SAUNDERS: Well, I understand that and I actually
 20 agree with that, but that doesn't mean I don't want it
 21 to go away; I'd like an explanation, please.

22 MR SOUTHEY: Understood. Thank you, sir.

23 Can I say that the five topics are: timing of the
 24 application; the interests of the Fire Brigades Union in
 25 this matter; the conflict of interest and what we say

1 about it; the difficulties with particularising the
 2 conflict further at this stage and how that is relevant;
 3 and then what we say can be drawn from the position of
 4 the various family groups.

5 Can I start with the timing issue. Obviously, we
 6 accept the application was out of time. We also accept
 7 that there are difficulties with our position
 8 in relation to that, but we do not accept all of the
 9 criticisms. The reality is that posting on a website
 10 can be missed and it isn't necessarily surprising that
 11 every change on the website was not picked up.

12 We also do not accept that this is something that
 13 the FBU is only seeking to get involved with at a late
 14 stage. As already indicated, it has arranged
 15 representation for members, so it has to that extent
 16 been engaging with the process.

17 Perhaps most importantly, one needs to remember that
 18 this is not a decision that could be taken lightly by
 19 a responsible trade union; it is a substantial financial
 20 commitment. The reality is that Grenfell, I think, has
 21 been a learning experience for the FBU, and also there
 22 was concern that as the process continued it was
 23 possible that more information would come to light that
 24 would assist the FBU to make a more informed judgment
 25 about whether it wished to participate.

1 But in any event, in our submission, it is important
 2 not to lose sight of the statutory framework in which
 3 this application is being made. In our submission, the
 4 starting point has to be the statutory objectives of the
 5 inquiry. Its powers have to be exercised in a manner
 6 that facilitates that. Section 1 is important because
 7 section 1 makes it clear that the purpose of the inquiry
 8 is to address public concern.

9 We submit, correctly in their submissions, counsel
 10 to the inquiry address two factors among a number that
 11 are said to be relevant to designation of CP status out
 12 of time. One of those is whether or not the designation
 13 will assist the inquiry to fulfil its terms of
 14 reference, and a second is the impact on public
 15 confidence. We would submit that actually, given the
 16 statutory objective, those are the most important
 17 factors.

18 They are the most important factors because they
 19 reflect the statutory duties. They are the fact that if
 20 a CP will assist the inquiry to fulfil its terms of
 21 reference, that is going to assist it in particular to
 22 meet public concern. In our submission those two
 23 factors do support designation at this stage.

24 I'm going to come on perhaps to more of the detail,
 25 but one needs to remember this is a situation where

1 there is criticism already being made of the front line
 2 response from firefighters .
 3 The terms of reference make it clear that that
 4 criticism will need to be considered. Indeed, there's
 5 every reason to believe it will be an important issue .
 6 In our submission, both public confidence and fulfilling
 7 the terms of reference means it's important to hear from
 8 those front line responders, and that involves not just
 9 hearing evidence from individuals but involves hearing
 10 from the representative body and what it says not merely
 11 about what happened on the night but what should happen
 12 for the future .
 13 If one thinks about, for example, current events .
 14 If there were to be a public inquiry into COVID, one
 15 would want to hear from the representative of doctors
 16 and nurses because they are the people who have to
 17 implement the policies that are in place to safeguard
 18 life , and that's exactly the situation here. The FBU
 19 seeks to intervene because it is representative
 20 essentially of those who deliver the front line
 21 services .
 22 That is also the context in which fairness needs to
 23 be considered. Obviously fairness is expressly a factor
 24 that is said to need to be applied by reason of
 25 section 17(3). In our submission, the reason why there

1 is an express requirement for fairness is because
 2 obviously a fair procedure will ensure better quality
 3 decisions that will meet public confidence. Fairness is
 4 important in this context because, in our submission,
 5 the FBU have an important perspective to bring to this .
 6 It is a perspective that is not represented by others,
 7 and that suggests they should be heard.
 8 That is in our submission the context of rule 5.
 9 Rule 5 itself does not set a time limit , instead it
 10 identifies three factors that are required to be
 11 considered . Those three factors in our submission are
 12 factors which essentially direct the inquiry to look at
 13 the extent of a body's interests in an inquiry, and they
 14 link back to the statutory objectives I've already
 15 indicated because they're focused on ensuring the
 16 inquiry has necessary material, essentially, necessary
 17 involvement from those who have something important to
 18 say .
 19 I should say in passing that counsel to the inquiry
 20 suggests that rule 5(2) sets, to use the language of
 21 their written submissions, a high or emphatic threshold .
 22 We submit one should be cautious about paraphrasing .
 23 The word "significant" isn't defined in the statute ,
 24 unsurprisingly , it's a normal word. In our submission,
 25 it merely distinguishes something from being

1 insignificant .
 2 SIR JOHN SAUNDERS: Mr Southey, sorry, in this particular
 3 case I don't think it actually matters. I think more
 4 important pages have been taken up with saying what is
 5 meant by significant than probably any other word. So
 6 it doesn't really matter. For myself, my initial
 7 thought would be, as I think with the Oxford English
 8 Dictionary, significant is obviously the opposite of
 9 insignificant, but that doesn't mean there isn't some
 10 middle ground where something can be both neither
 11 insignificant or significant . So I'm not sure I'd
 12 necessarily go along completely with the case that you
 13 quoted in your argument. But as I say, I don't think
 14 it's going to be material to this particular issue
 15 because I think it is accepted that the FBU do have
 16 a significant interest in the recommendations.
 17 MR SOUTHEY: Yes, fine. I'm obviously not going to argue
 18 with that .
 19 The other thing I would say about it is that
 20 obviously the most striking thing about that rule is it
 21 doesn't again -- it generally provides, rather, a broad
 22 discretion . It's identifying factors that need to be
 23 considered, it's not saying those factors need to be
 24 present, not suggesting they're not present here, as
 25 obviously we've just heard, but in our submission that

1 reflects -- that's an indication that the rule is meant
 2 to reflect the objective that I've already identified ,
 3 which is ensuring that there is a conclusion ,
 4 essentially , that meets public concerns .
 5 In terms of time, in our submission, we are not
 6 saying time is entirely irrelevant , but rather one needs
 7 to primarily focus on what it is that the core
 8 participants bring to the inquiry and what it is that
 9 will be lost without the core participants contributing
 10 as a core participant -- what would be lost, rather, if
 11 the FBU doesn't contribute .
 12 One way, obviously, that time might be relevant , and
 13 we accept this, is if designation of the FBU were to
 14 cause significant delay . In relation to that, I repeat,
 15 obviously, the assurances that have been given in
 16 writing . We cannot see a sensible way in which the
 17 start of this inquiry could be delayed. We cannot see
 18 a sensible basis on which we could apply for an
 19 adjournment .
 20 Our reluctance to give an undertaking is simply
 21 because, if current events have taught us anything,
 22 it is the danger of predicting the future . But the
 23 greatest protection , we would submit, for the families
 24 is that the inquiry is highly unlikely to adjourn unless
 25 there is something that causes an adjournment in the

1 public interest . If an undertaking is still required ,
 2 we are willing to give that . It's just that we are
 3 cautious about giving that for good reasons .
 4 The second point I would make about time is that we
 5 do seek to intervene on a relatively discrete matter .
 6 The discrete matter, obviously, is the response of the
 7 Fire Service and what lessons can be learned in relation
 8 to that . We're happy if there were to be orders
 9 limiting , for example, or preventing our participation
 10 in other issues such as the role of the security
 11 services . That's something we have no interest in .
 12 This is not, I would emphasise, an attempt to sort of
 13 enter into the wider politics of what happened at the
 14 arena . It is about the specific issue of the risk of --
 15 the response that should be required from firefighters .
 16 Thirdly, what I would hope the inquiry would accept
 17 is that one safeguard against delay is representation by
 18 experienced lawyers . Hopefully the inquiry will accept
 19 that any application that is made, for example for
 20 further disclosure or for witnesses to be called ,
 21 et cetera , will be made for good reason, that it will
 22 not be made in a manner that is intended to frustrate or
 23 will frustrate the workings of the inquiry .
 24 The reason, finally , that I've highlighted
 25 essentially the statutory objectives of the inquiry

1 is that in our submission those objectives mean that the
 2 power, effectively , to designate a party as a core
 3 participant or a body such as the FBU as a core
 4 participant should not be used in our submission to
 5 penalise essentially any failure to comply with the time
 6 limit . Rather, as I say, that power should be used in
 7 a manner that facilitates the objectives of the inquiry .
 8 Turning then to the basis of the application , in our
 9 submission it is important to consider the terms of
 10 reference as a starting point because we would accept
 11 what counsel to the inquiry say at paragraph 24 onwards
 12 of their initial submissions, which is essentially , in
 13 our submission, paraphrasing, but I hope not unfairly ,
 14 that core participant status is intended for those who
 15 have sufficient significant interest to enjoy the
 16 procedural advantages that undoubtedly flow from core
 17 participant status .
 18 The terms of reference clearly cover the emergency
 19 response, and in our submission, one of the things that
 20 one can draw from Kerslake -- and we would not
 21 necessarily accept everything that is said in
 22 Kerslake -- we are not suggesting the findings of fact
 23 made by the inquiry should be the same as those in
 24 Kerslake . But the obvious conclusion that could be
 25 drawn from Kerslake is that the most significant concern

1 about the emergency response is likely to be the delay
 2 in the Fire Service attending .
 3 Counsel to the inquiry suggests that's the most
 4 significant criticism in Kerslake; we would agree with
 5 that . So that suggests that two things are likely to
 6 occur .
 7 Firstly , there are likely to be findings of fact
 8 regarding the cause for that delay, including potential
 9 criticisms of those who were responsible for that delay .
 10 But secondly, and probably more importantly from the
 11 FBU's point of view, on the assumption, which is
 12 a reasonable assumption given Kerslake, that it is
 13 concluded that in some way that delay was something that
 14 should be avoided in future, there is clearly going to
 15 be important learning about the causes of that delay .
 16 Counsel to the inquiry in their written submissions
 17 have suggested that that will be primarily a concern --
 18 that learning will primarily be concerned with systems
 19 and management issues . In our submission, even assuming
 20 that can be assumed at this stage, which in our
 21 submission it can't necessarily be because clearly , as
 22 I've already indicated, Kerslake is not in any way
 23 binding and it will be open to this inquiry to reach its
 24 own findings, the fact of the matter is that it is
 25 firefighters who implement those systems and management

1 issues . That is relevant for two reasons .
 2 Firstly , it means that it is firefighters who are
 3 expected to put their lives at risk on the basis of
 4 policies which will potentially be changed as a result
 5 of this inquiry . That is a very significant interest in
 6 our submission .
 7 Secondly, it also means that the FBU's members have
 8 expertise as to what will work . We all know that in
 9 many work environments there are criticisms of
 10 management for trying to come up with unrealistic ways
 11 of working, and the Fire Service is no different to
 12 that . I'll come on to evidence in a moment which
 13 demonstrates there has been a history of disagreement
 14 between management and union as to how to respond to
 15 this sort of incident .
 16 If one looks at the position of the unnamed member
 17 for a moment -- and I'm not trying to -- I should make
 18 it absolutely clear I'm not here suggesting that we are
 19 any longer suggesting that the FBU is seeking to
 20 represent him, but it is still relevant for this one
 21 reason . He is an example of the FBU membership, he is
 22 someone who, although having a relatively senior role ,
 23 was represented and is a member of the FBU . One sees
 24 from his situation that he is the sort of person who has
 25 to implement the sorts of policies that are going to be

1 an issue in this case.
 2 Remember, those recommendations that are likely to
 3 come out of this, they're not going to in reality just
 4 affect Manchester. This incident was obviously
 5 a particularly serious incident and it is likely to have
 6 implications for fire services across the country, so it
 7 has implications for every firefighter .

8 That, in our submission, means applying rule 5(2)(b)
 9 to this. Rule 5(2)(b), in our submission, is met. The
 10 FBU does have a significant interest in important
 11 aspects of matters to which the inquiry relates , but it
 12 doesn't merely just cross that threshold , it crosses
 13 that threshold very clearly because the right to life of
 14 FBU members is in issue as it is them who will be
 15 putting their life at risk .

16 In our submission, there is reason to believe , good
 17 reason to believe , that there is a conflict of interest .
 18 I should make it clear again in relation to this ,
 19 although we relied on potential conflicts in relation to
 20 the unnamed member, the point about conflict of interest
 21 was always intended to be far more fundamental than
 22 that. The reality is that what we are talking about in
 23 terms of the response is essentially an aspect of the
 24 terms of employment of firefighters . They will be
 25 expected to attend fires or attend incidents , rather ,

1 not fires , and comply with whatever policies have been
 2 put in place .

3 In that context, where one is talking about terms
 4 and conditions, there is an inherent conflict , in our
 5 submission, between employer and employee. We referred
 6 to section 1 of the Trade Union and Labour Relations
 7 (Consolidation) Act 1992 because it demonstrates that
 8 the whole concept of a trade union, in our submission,
 9 is that it -- the whole concept of a trade union is
 10 based on the idea that there is a tension between
 11 employers and employees over labour relations and that
 12 workers generally should be -- or employees should be or
 13 can be represented by their trade union. It's also why
 14 trade unions are given rights under various human rights
 15 instruments .

16 I should make it clear , because it's something
 17 that's picked up on by counsel to the inquiry , we are
 18 not saying in relation to that that there are no
 19 circumstances in which an employer can represent an
 20 employee at an inquiry . One always needs to consider
 21 what the terms of reference are, and that's why
 22 I started with the terms of reference . But one sees
 23 here that a key issue will be essentially how
 24 firefighters should be deployed and that is about terms
 25 of reference . That's the context in which you should

1 consider what has been said by counsel to the inquiry
 2 about there being an overlap between the interests of
 3 the union and others who are parties . Yes, in
 4 principle , everyone wants to see a system that ensures
 5 firefighters respond in an effective and safe way to an
 6 incident such as that in question . But what is
 7 effective and safe, what is workable, will be influenced
 8 by different considerations . Those who are on the front
 9 line will have different experiences to those who are
 10 senior management. An organisation is likely to have
 11 concerns about things like costs of protective
 12 equipment, I'm not necessarily saying undue concern, but
 13 employees don't have those same organisational concerns.
 14 Organisations also may have inherent unconscious bias
 15 towards defending policies that they've adopted in the
 16 past. No organisation wants to be criticised .

17 That's the context in which, in my submission, the
 18 submissions about overlap of interest should be viewed.
 19 Yes, of course both GMCA and the FBU are concerned about
 20 emergency response, but they bring different
 21 perspectives . Counsel to the inquiry themselves accept
 22 whether one brings a different perspective is relevant .

23 It is obviously said that this is speculative . One
 24 of the difficulties , obviously, we have faced -- I'll
 25 come on to this -- is the lack of information or lack of

1 access to disclosure . I'm not saying that's unlawful ,
 2 but it is a fact that needs to be taken into account
 3 when looking at these submissions. But I would refer to
 4 the submissions of the family of Chloe Rutherford and
 5 others. They at paragraph 12 helpfully refer to the
 6 Opus database and evidence of a dispute between the FBU
 7 and GMFRS about contractual responsibilities in this
 8 context. We haven't seen the material . We certainly
 9 don't accept, as was being suggested in the submissions,
 10 that the FBU can be criticised because this is material
 11 that post-dates the attacks. It's not, in our
 12 submission, a dispute that is within the terms of
 13 reference .

14 But what it demonstrates in our submission is that
 15 there has been an ongoing disagreement essentially
 16 between employer and employee about what one should do
 17 in these circumstances .

18 I should say more generally in terms of that, the
 19 submissions of the family of John Atkinson also appear
 20 to recognise that documents that have been disclosed to
 21 them, but not to the FBU, suggest that there is a reason
 22 why the FBU might wish to criticise the Fire and Rescue
 23 Service . One sees that at paragraph 7.

24 We do submit that here there is a conflict of
 25 interest , there is an unfairness if one party who has an

1 interest in these important recommendations has greater
 2 rights, and it does have the potential to have an impact
 3 on public confidence because, generally, there is
 4 a recognition, in our submission, that employers and
 5 employees do have separate interests, and it would, in
 6 our submission, be unfortunate if employers are seen to
 7 be represented and employees are not.

8 If I can move on from there into why we submit
 9 essentially the inquiry should be cautious about setting
 10 the threshold for a conflict too high. In our
 11 submission, it is obviously, as I've already indicated,
 12 difficult for us to be more specific with the limited
 13 disclosure we've had. It's also the case that none of
 14 the other parties have had to clearly identify their
 15 position. We accept that and we're not complaining
 16 about that, but we do submit it is relevant when looking
 17 at the detail that can be provided by the FBU.

18 All of those things, in our submission, explain why
 19 the general approach to conflict of interest, see for
 20 example the Bar Handbook, is not to require there to be
 21 evidence of actual conflict of interest but to set a low
 22 threshold, and the low threshold is real risk, to use
 23 the Bar Handbook language.

24 The reason in our submission for that is, firstly,
 25 it is inherently difficult to assess whether there's

1 a conflict of interest and, secondly, there is a danger,
 2 essentially to the inquiry, if identification of
 3 a conflict occurs too late. Counsel to the inquiry has
 4 quite properly, in our submission, raised concerns
 5 obviously about delay to the inquiry, and yet if
 6 a conflict is identified late in the day, essentially
 7 that itself can cause delay because fairness would
 8 require, if a conflict were to arise, the new party
 9 essentially to be given an opportunity to properly
 10 prepare. That's why, in our submission, one should be
 11 cautious about setting the bar too high.

12 As I say, the difficulty in particular that the FBU
 13 faces at this stage in terms of identifying a conflict
 14 is it doesn't have the full procedural rights.
 15 The procedural rights, in our submission, are important
 16 and the difficulties of the FBU demonstrate in
 17 particular why access to documents is so important. One
 18 of the concerns of the FBU in terms of participating in
 19 an informal manner, other than as a CP, is that, as
 20 I have already indicated, what is perhaps central from
 21 their point of view is the policies governing terrorist
 22 incidents such as this in question. They may be
 23 sensitive. I'm not suggesting they're so sensitive they
 24 can't be provided to the core participants, but they may
 25 be sensitive in the sense of not going wider.

1 Clearly, the order you made, sir, on 19 February
 2 recognises that there will be material that is shared by
 3 core participants but not further. Statute recognises
 4 that that will be the case. We submit that the sort of
 5 material we're talking about here, because of the fact
 6 it relates to terrorist incidents, may well be caught by
 7 that. Certainly at the moment we don't have access to
 8 material that is potentially relevant. I've already
 9 drawn attention to the fact how two out of three of the
 10 family groups make reference essentially to material
 11 that they have seen that has been disclosed as part of
 12 this process that the FBU does not have access to. That
 13 demonstrates the first reason why core participant
 14 status is important.

15 One sees also a second example of how important this
 16 material potentially is. Counsel to the inquiry has
 17 suggested that the FBU haven't suggested further lines
 18 of enquiry. But one of the concerns it expresses
 19 essentially about the FBU being granted core participant
 20 status is that that may prompt further lines of enquiry.
 21 If one looks at page 87 of the bundle -- I won't take
 22 you to it -- counsel to the inquiry suggests that if the
 23 FBU were to be a party, the disclosure they would then
 24 receive might prompt them to make suggestions as to
 25 further lines of enquiry.

1 In our submission, that demonstrates essentially the
 2 problem that currently exists which is that the FBU
 3 wants to participate, wants to assist the inquiry to
 4 reach the right conclusions as to how to avoid the sorts
 5 of problems that occurred with the fire response in the
 6 future, but without the sort of material that is
 7 apparently being referred to by counsel to the inquiry
 8 there, it becomes very difficult. We simply lack the
 9 sorts of material that would enable meaningful
 10 submissions to be made about further areas of
 11 investigation in relation to the response of the Fire
 12 Service.

13 In our submission there is a solution. Our primary
 14 solution, obviously, is that we are granted core
 15 participant status. But the alternative solution
 16 essentially is what was suggested by the family of
 17 Saffie Rose Roussos and others. That is essentially
 18 that further submissions could be invited after the
 19 parties had been given an opportunity to set out their
 20 position. We would, though, add one other sort of
 21 direction to facilitate that, and that is consistent
 22 with the fact that you can be designated as a core
 23 participant for part of the inquiry and that we are
 24 designated as a core participant, or the FBU is
 25 designated as a core participant, for the period up

1 until the parties put in position statements. That will
 2 allow access to the documents, it will allow a more
 3 meaningful submission to be made. At that stage
 4 a position statement can be invited from the FBU and the
 5 inquiry will be in a much better position to assess
 6 whether actually the recommendations that parties are
 7 seeking -- the position the parties are seeking require
 8 separate designation of CP status for the remainder of
 9 the inquiry for the FBU.

10 But it will allow a more informed debate about that,
 11 and in our submission that is a partial solution ,
 12 essentially , because if in fact the FBU on the basis of
 13 what's disclosed cannot demonstrate a sufficiently
 14 separate interest then at that stage CP status can
 15 lapse .

16 The alternative suggestion that is now being raised
 17 by counsel to the inquiry is essentially that at some
 18 stage it may be appropriate -- I obviously acknowledge
 19 the fact they're saying it certainly will be
 20 appropriate -- it may be appropriate for the FBU to have
 21 CP status in relation to recommendations.

22 In our submission that raises several problems.
 23 Firstly , going back to the point I've already made about
 24 documents, it's a bit difficult to see how the FBU is
 25 going to make very much more focused submissions

1 regarding CP status at a later stage because it will
 2 still presumably have limited access to the sensitive
 3 documents, the documents regarding policy .

4 Secondly, in any event, late designation , if I can
 5 put it that way, limits the opportunities to develop
 6 evidence by asking questions in support of
 7 recommendations.

8 Thirdly, it also essentially requires the FBU to
 9 deploy limited resources to monitor the inquiry without
 10 knowing whether it will actually be heard. One of the
 11 advantages from the FBU's point of view is that at least
 12 if it is granted CP status, it knows that it is
 13 deploying resources in an environment where it will be
 14 heard, has the right to be heard.

15 So for all those reasons, we submit that late
 16 designation, if I can put it that way, is not an
 17 adequate answer to the submissions made. If the reality
 18 is, as we submit it is, there is every reason to believe
 19 that recommendations will be made that will have an
 20 impact on the working or the work conditions ,
 21 essentially , of firefighters , then in our submission the
 22 FBU should be given core participant status so that it
 23 can play a full role in the development of those
 24 recommendations.

25 One final matter that I should address, because we

1 do recognise the importance of the views of the families
 2 and we do accept they are a very significant factor to
 3 be given weight in this context, not least obviously
 4 because of Article 2: in our submission, when properly
 5 analysed, the submissions of the families actually are,
 6 we would submit, supportive of the FBU. I say that
 7 because we submit one needs to look at the underlying
 8 concerns raised in those submissions and what the
 9 reasoning is .

10 The submissions of the family of John Atkinson
 11 initially didn't oppose the application but sought an
 12 undertaking. I've already hopefully addressed that. If
 13 that is a condition on which we participate , the FBU is
 14 willing to give that undertaking, but I hope I've made
 15 clear why there is a reluctance to do that.

16 The family of Saffie Rose Roussos and others noted
 17 the potential valuable insight that the FBU would bring
 18 but suggested essentially further submissions after the
 19 parties had put their position . That's not our primary
 20 position , but it's a position we would be willing to
 21 accept, providing , as I've indicated , that we have the
 22 opportunity to access the database, essentially , so the
 23 submissions that can be made regarding CP status are
 24 more effective and focused on the actual material .

25 Then the submissions of the family of

1 Chloe Rutherford and others sought greater clarity but
 2 recognised that the FBU may have a valuable role to play
 3 in light of the systemic failures identified .

4 So they recognised the point we're making, which is
 5 that, given systemic failures are an issue , the FBU has
 6 a potentially important role to play . We hope we've
 7 given as much clarity as we can at this stage, but if
 8 greater clarity is required, the solution to that, in
 9 our submission, is to designate the FBU as a CP for
 10 a limited period.

11 The key point, in our submission, about all of those
 12 family submissions is that they recognise the value of
 13 the FBU perspective and, in our submission, that has to
 14 be correct . Ultimately , this inquiry is likely to make
 15 key recommendations regarding the conditions of work of
 16 firefighters and in those circumstances, and in our
 17 submission, if the employer is going to be heard through
 18 CP status, and we don't suggest they shouldn't be and
 19 they clearly are going to be heard, then employees
 20 should also be heard and the FBU is the trade union that
 21 represents the majority of the employees, and at the
 22 moment there is no other trade union being heard as
 23 a CP. For those reasons, in our submission, the FBU
 24 should be heard.

25 Can I do the electronic equivalent of turning behind

1 me to make sure that I've covered everything?
 2 SIR JOHN SAUNDERS: Of course. Thank you.
 3 (Pause)
 4 MR SOUTHEY: Thank you. I've just had instructions we've
 5 covered everything, so thank you.
 6 SIR JOHN SAUNDERS: I'm very grateful. Thank you.
 7 Mr Seddon, I will allow a quarter of an hour break,
 8 so people can get themselves a cup of coffee and then
 9 we'll hear from Mr Warnock. Anyone who wants to say
 10 anything who hasn't yet said they want to say something,
 11 perhaps they could contact Mr Suter to indicate that.
 12 MR GREANEY: They've done so already. Mr Weatherby and
 13 Mr Cooper would both welcome the opportunity to make
 14 very short submissions.
 15 SIR JOHN SAUNDERS: Fine. After Mr Warnock, would that be
 16 satisfactory to you both?
 17 MR GREANEY: After Mr Warnock, I think, yes.
 18 MR SOUTHEY: Can I raise a practical matter? I'm on the top
 19 floor of a house that gets very hot and I'm getting
 20 extremely hot. Can we dispense with jackets?
 21 SIR JOHN SAUNDERS: Of course you can, yes.
 22 Can I just walk away from my screen to make myself
 23 a cup of coffee or do I need to do something to it? Do
 24 I need to leave the room?
 25 MR SUTER: I think if you switch off your video and mute it.

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1 SIR JOHN SAUNDERS: Thank you very much. So if we're back,
 2 please -- a quarter of an hour is about 12 minutes to.
 3 (11.35 am)
 4 (A short break)
 5 (11.50 am)
 6 SIR JOHN SAUNDERS: Mr Warnock, thank you very much.
 7 Submissions by MR WARNOCK
 8 MR WARNOCK: Sir, might I start by making a few observations
 9 in relation to the conflict of interest point. It may
 10 be that some care may be required here as to what
 11 exactly is meant by the term "conflict of interest". As
 12 I understand Mr Southey's submissions, it is not
 13 suggested any more that the FBU is seeking to represent
 14 any individual firefighter or witness who believes that
 15 he or she was in a position of a conflict with the
 16 Greater Manchester Combined Authority, and hence for
 17 that reason requires core participant status.
 18 I do have to say that the GMCA had certainly
 19 understood in the light of their response of 30 April of
 20 this year that was indeed what the FBU was suggesting,
 21 at least in relation to one member. Indeed, I don't
 22 invite you to turn to it now, but at page 120 of the
 23 bundle, paragraph 7, they explicitly said that they were
 24 representing the member who confirmed last night that he
 25 did not want core participant status.

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1 For the avoidance of doubt, if it is still being
 2 suggested that there is some conflict of interest
 3 between firefighters and the GMCA in relation to this
 4 inquiry, the GMCA does not agree with that.
 5 SIR JOHN SAUNDERS: Mr Warnock, can I just cut across you?
 6 I don't think it is being suggested any more. The
 7 conflict of interest suggested, I think, is in relation
 8 to recommendations where, I think one could call it more
 9 simply perhaps rather than a conflict, that rank and
 10 file fire officers who are out there doing the job may
 11 have a different perspective to what's being said rather
 12 than --
 13 MR WARNOCK: That was exactly how I was going to say it. It
 14 seems to me it's not so much a conflict of interest
 15 that's being advanced here but the possibility that
 16 there might be a different perspective between
 17 firefighters generally and indeed fire services
 18 generally, not limited to the Greater Manchester area,
 19 but across the whole of the United Kingdom.
 20 That, of course, is an issue upon which we take
 21 a neutral stance. You will no doubt form your own view
 22 as to whether you would be assisted by hearing evidence
 23 from that perspective if it is different. One point
 24 that we would not accept is that there was automatically
 25 a difference in interest between firefighters and their

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1 employers.
 2 In relation to -- can I just make clear in relation
 3 to individuals that the GMCA, like the other public
 4 authorities involved in this inquiry, is looking after
 5 the interests of its employees. Of course, different
 6 employees may have different evidence to give on
 7 particular issues; they may have different perspectives
 8 and even opinions on different issues. But differences
 9 of evidence, differences of perspective, differences of
 10 opinion do not constitute conflicts of interest. And
 11 since it has been raised and since reference has been
 12 made in the FBU written submissions, and indeed orally
 13 today, to the SRA Code of Conduct and the BSB Code of
 14 Conduct, it needs to be clearly stated that neither the
 15 GMCA, nor BLM representing them, nor indeed myself or
 16 junior counsel, are aware of any conflict between the
 17 interests of the GMCA and the interests of these
 18 witnesses in these proceedings.
 19 Could I then leave the conflict point and make a few
 20 submissions to address some of the points that have been
 21 made more generally about GMCA's stance, particularly in
 22 my learned friend Mr Southey's written submissions.
 23 The first is that the GMCA does not come to this
 24 inquiry seeking to defend the system. On the contrary,
 25 we come accepting that the system was found wanting on

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1 the night in question. We have already identified
2 lessons learned in that respect and the GMCA approaches
3 the inquiry with a willingness to consider further
4 improvements.

5 Secondly, the GMCA is not coming to the inquiry with
6 the intention of blaming individuals to defend the
7 system, and on the contrary, it is facilitating its
8 employees in giving evidence in a free and open manner,
9 appropriate to the inquisitorial nature of this inquiry
10 and to its terms of reference, and no employee has been
11 or will be prevented from criticising the system or from
12 giving evidence from their perspective of what happened
13 or what should have happened.

14 The third point I would like to address is one not
15 made orally this morning but certainly in the papers you
16 were asked to consider and that is this: the GMCA is
17 a separate legal person from the North West Fire
18 Control. Each are, as you are aware, separately
19 represented in this inquiry, and there is simply no
20 question of the GMCA putting the interests of the
21 North West Fire Control before the interests of its
22 employees or indeed the interests of this inquiry in
23 getting to the truth.

24 In summary, sir, as we say in our written
25 submissions, the GMCA approaches this inquiry openly and

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1 with the willingness to learn further lessons. Its only
2 objective is to provide the people of Greater Manchester
3 with the most effective fire service possible.

4 Nor will the GMCA stand in the way of any witness
5 making an application for core participant status if
6 that's what they feel they need. But as far as we are
7 aware, no such need has been identified or exists.

8 Sir, those are our submissions.

9 SIR JOHN SAUNDERS: Mr Warnock, I'm very grateful.

10 As you heard, I asked Mr Southey for me to be
11 provided with a more detailed explanation of the rather
12 sudden change overnight. Clearly, that will be served
13 on you and your solicitors, and if it's appropriate to
14 respond, I would be grateful if you would respond to me.

15 MR WARNOCK: Yes, of course.

16 SIR JOHN SAUNDERS: Mr Weatherby or Mr Cooper, have you any
17 views on who's going first? Mr Weatherby has his mic on
18 first, so you get the nod.

19 MR WEATHERBY: I'm easy, whoever you wish to hear.

20 SIR JOHN SAUNDERS: You go first, Mr Weatherby; I hope
21 Mr Cooper won't mind.

22 Submissions by MR WEATHERBY

23 MR WEATHERBY: Thank you.

24 I can be very, very short indeed. The families have
25 no direct interest in this argument, but they have

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1 a clear indirect interest in encouraging the
2 involvement, including through core participant status
3 as appropriate, of any organisation or any individual
4 who may bring an important perspective which will
5 enhance the tasks undertaken by this inquiry.

6 With respect to rule 5, a discretion created in
7 secondary legislation, we doubt very much that anyone
8 anticipated it might lead to an argument with a 250-page
9 hearing bundle. With very great respect to the careful
10 submissions made, we wonder whether the wood is being
11 missed for the trees in this circumstance. It seems to
12 us that the fundamentals are twofold and straightforward
13 in principle.

14 Firstly, rule 5 creates a wide discretion and,
15 secondly, the real question, once obvious issues of
16 fairness have been considered, is whether exercising
17 that discretion positively may enhance the investigation
18 and the inquiry.

19 As the FBU states, they represent 88% of
20 firefighters and control room staff in this geographical
21 area. They have widespread experience through their
22 firefighters and control room members in the response to
23 all manner of major incidents. They may, therefore,
24 have an important perspective firstly on what happened
25 and on what should change. That perspective may be

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1 distinct to that of the institutional position of GMCA
2 and the NWFC.

3 We don't yet know what the institutional position is
4 of GMCA on various issues, particularly with respect to
5 the conclusions of the expert report that's recently
6 been disclosed. We may get some idea of this on Friday,
7 of course, with the anticipated lessons learned
8 statement and certainly we should get it with the
9 opening statement due at the end of July.

10 That's why we said in written submissions that it
11 was important in determining an application such as this
12 to know what the perspective of the GMCA and NWFC is to
13 important matters and quite simply that remains our
14 position. That's all I wish to say.

15 SIR JOHN SAUNDERS: Thank you very much, Mr Weatherby. I'm
16 grateful.

17 Mr Cooper.

18 Submissions by MR COOPER

19 MR COOPER: Thank you very much, sir. I hope you can hear
20 me.

21 Can we begin our very, very short submissions by
22 obviously recognising the value of contributions that
23 can be made by the FBU. But we do not necessarily agree
24 that those contributions cannot be achieved in other
25 ways other than CP status.

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1 Of course our very brief submissions are predicated
2 upon a clear acknowledgement that the FBU can make some
3 important or may make some important contributions to
4 your forthcoming inquiry, but that may not necessarily
5 be as a result of CP status, nor should it need to be as
6 a result of CP status being granted.

7 We've listened very carefully indeed to the
8 submissions of CTI and indeed Mr Southey in terms of his
9 application. We address firstly two issues raised by
10 CTI in his submissions, which cause us some concern. As
11 far as the FBU application is concerned, and certainly
12 as far as those we represent are concerned, we would
13 respectfully seek some reassurance if the FBU are to be
14 granted -- a matter for you, of course -- the status
15 they seek, that these concerns will not come to pass.

16 The first concern expressed by CTI was in his words
17 effectively: other organisations may be concerned to
18 make late applications should the FBU application
19 succeed. The primary concern, in fact as far as this
20 application is concerned, the only concern that those
21 we are representing have is that, so far as can be
22 achieved, the start date of 7 September remains intact
23 and firmly ready to go. Obviously, there are vagaries
24 and uncertainties that we labour under, irrespective of
25 this application of course, and those are matters that

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1 will have to be dealt with in due course.

2 But as far as the FBU application is concerned, we,
3 so far as our position is concerned, would respectfully
4 seek reassurance that there be no delay at all as
5 a result of that or any, as it were, kick-on effects of
6 that so far as the start date of this inquiry is
7 concerned because, as far as those we represent are
8 concerned, that is one of their primary expectations.

9 If for instance the concern expressed by CTI that
10 other organisations may, as he put it, be encouraged to
11 make late applications and if that may well risk the
12 start date, we would be opposing the application of the
13 FBU if that is a concern that impresses you, sir, as far
14 as CTI's submissions are concerned.

15 We hear again, secondly, in the second submission
16 that my learned friend Mr Greaney made on the point, his
17 words:

18 "There is some or limited risk as far as the start
19 date is concerned [his words] should the FBU application
20 be granted."

21 We would oppose the FBU application if there is even
22 limited risk that the start date be put in threat.

23 Sir, you can obviously hear the submissions we make
24 are very much in step with those we've made during the
25 last oral hearing, but if there is any risk at all, any

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1 risk at all, either by other organisations becoming
2 involved or seeking to become involved, or by the FBU's
3 accession, so far as this inquiry is concerned, to delay
4 the start date, we oppose this application.

5 As far as Mr Southey's submissions are concerned, he
6 again, and we're grateful, as he did in writing, seeks
7 to assuage our concerns about the matter and our request
8 for an undertaking. Obviously that is entirely a matter
9 for you, sir, as far as that is concerned.

10 If we were to have any influence upon the decision,
11 we would submit that if you were even minded to consider
12 the FBU's application, that they should give that
13 positive undertaking, that positive undertaking that
14 nothing would occur as a result of their involvement as
15 CPs in this inquiry to jeopardise the 7 September start
16 date, in much the same way as survivors' counsel did
17 when they were making their application.

18 Should that undertaking, that wholesome and full
19 undertaking, be forthcoming, should you require it,
20 sir -- we recognise it's a matter for you -- then our
21 position would be neutral. But unless that can occur,
22 we are against this application.

23 That is not to say that we do not see the importance
24 of the contribution that can be made by the FBU, and
25 that contribution can be made in a number of different

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1 ways, which does not require CP status. We recognise
2 that contribution, but we do not recognise that
3 contribution necessarily has to occur through CP status.

4 I hope that assists, sir, in putting clearly the
5 position of those we represent.

6 SIR JOHN SAUNDERS: Thank you, Mr Cooper, I'm grateful.

7 Submissions in reply by MR GREANEY

8 MR GREANEY: Sir, I believe the next stage was to be further
9 submissions, short submissions, I assure you, on behalf
10 of CTI.

11 There are four short points that we would make in
12 response to what we've heard today. First of all,
13 we would seek to deal with the concerns understandably
14 expressed by Mr Cooper a few moments ago. CTI are able
15 to assure him and the families that he represents that
16 CTI remain committed to commencing the oral evidence
17 hearings on 7 September; sir, we know that you too are
18 committed to that result.

19 But if further applications for CP status are made,
20 they will have to be dealt with and that would obviously
21 give rise to a risk, to put it no higher than that, of
22 delay. That is one of the reasons why we are keen, sir,
23 if I can put it this way, that the outcome of today
24 should not be that there is a green light given to other
25 organisations and potentially individuals who are

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1 considering making a very late application for CP
 2 status.
 3 So far as the impact of this particular application,
 4 namely that by the FBU, is concerned and the risk that
 5 it creates, the way in which we would express it, sir,
 6 is that this application, if granted and granted at this
 7 stage, does not give rise to a significant risk of delay
 8 to the start date but does not give rise to no risk, for
 9 the reasons we've given in writing.
 10 Point 2, sir, is to address the issue of conflict of
 11 interest, albeit that in broad terms we agree with the
 12 submissions that Mr Warnock has made. The height of the
 13 argument of the FBU on conflict of interest was before
 14 today, or at any rate last evening, the unnamed FBU
 15 member. Without going into the detail of his role,
 16 there's no doubt that he played a critical role on the
 17 night of the bombing in the FBU's response. But even he
 18 does not consider that he is in conflict with GMCA.
 19 Furthermore, the FBU solicitors, we have learnt,
 20 have been supporting its members in providing statements
 21 and yet they have not identified a single FBU member who
 22 is in conflict with GMCA and they have now had a very
 23 considerable period of time to draw any such further
 24 person to your attention.
 25 GMCA have said in the clearest terms today that they

1 have identified no conflict with any FBU member, and in
 2 those circumstances we submit that you should approach
 3 the application on the basis that there is no conflict
 4 between GMCA and the FBU members.
 5 The real argument, it seemed to us, just as it
 6 seemed to Mr Warnock, that was being advanced by
 7 Mr Southey today was not that there is such a conflict
 8 but is instead, as, sir, you put it, that the FBU have
 9 a different perspective. As I hope we've made clear as
 10 CTI, we acknowledge that the FBU may have a different
 11 perspective on one issue, namely recommendations which
 12 are to be considered in chapter 15, the final chapter of
 13 the oral evidence hearing. Otherwise, the perspective
 14 of the FBU overlaps with the other organisations and
 15 individuals to whom we've made reference.
 16 In any event, for the reasons that we've given in
 17 really very considerable detail, a different perspective
 18 does not require CP status.
 19 Point 3 of four points. We are grateful to
 20 Mr Southey for identifying his potential middle course
 21 or perhaps middle courses, but for the reasons we've
 22 given in detail, our middle course, potential middle
 23 course, making a judgment later, keeping the matter
 24 under review, is the better course.
 25 Fourth and finally, disclosure. The suggestion that

1 any potential -- underlining the word "potential" --
 2 core participant should be given disclosure for the
 3 purposes of making applications for that status is one
 4 that we invite you, and invite you strongly, to resist.
 5 If that were the correct approach to making such
 6 applications, it would involve significant time and
 7 expense on the part of the inquiry team in providing
 8 that disclosure and it would be contrary, we suggest, to
 9 standard or established practice.
 10 But the fact of the matter is, pursuant to
 11 section 17(3) of the Act, you, sir, as you well know,
 12 have a duty to act with fairness. You have the
 13 disclosure, and you are, sir, therefore in a position to
 14 determine this application fairly. The FBU do not need
 15 and are not entitled, as they've acknowledged, to full
 16 disclosure to develop their arguments.
 17 Sir, it is, we suggest, worth remembering that this
 18 is, as Mr Weatherby has emphasised, a rule 5(2)
 19 application, and your discretion is therefore a broad
 20 one. For all the reasons that we have given, sir, both
 21 today and in our previous written submissions, we
 22 suggest that you should exercise that discretion against
 23 granting the FBU application.
 24 Sir, as Mr Southey did earlier, I'm just going to
 25 check that I'm not invited to deal with any additional

1 points --
 2 SIR JOHN SAUNDERS: You're going to be invited to by me, so
 3 before you check with anybody else, one matter which has
 4 not been referred to today, you've talked about
 5 potentially other applications being made as a result of
 6 this one.
 7 MR GREANEY: Yes.
 8 SIR JOHN SAUNDERS: There is already outstanding an
 9 application from the Fire Officers' Association, if I've
 10 got the name --
 11 MR GREANEY: Absolutely, yes.
 12 SIR JOHN SAUNDERS: -- which was adjourned to wait for
 13 further information to come and for us to be in a better
 14 position to deal with it. Do we have any further
 15 information at the moment as to whether that's being
 16 proceeded with and on what basis?
 17 MR GREANEY: No, sir, that application remains parked at the
 18 moment, but our expectation is that your ruling on the
 19 application of the FBU will be one of considerable
 20 interest, if not excitement, for the FOA in the sense
 21 that if you were to refuse this application, that would
 22 have obvious and significant implications for the
 23 likelihood that the FOA's application will succeed and
 24 no doubt it would be argued that the converse is also
 25 true.

1 SIR JOHN SAUNDERS: Thank you very much.
 2 MR GREANEY: May I check my emails?
 3 SIR JOHN SAUNDERS: Please do.
 4 (Pause)
 5 MR GREANEY: Sir, I believe I have covered the points that
 6 my team believe I should mention.
 7 SIR JOHN SAUNDERS: Mr Southey, you have the last word.
 8 Submissions in reply by MR SOUTHEY
 9 MR SOUTHEY: Can I deal with the submissions made by various
 10 parties in the order that they were made, very briefly .
 11 In terms of Mr Warnock, we do not dispute that the
 12 GMCA state clearly and have stated repeatedly that the
 13 system was found wanting and that they are willing to
 14 learn lessons . The point here, though, is that
 15 different perspectives will influence what lessons
 16 a body believes should be learnt , and that's where we
 17 draw attention to the fact that inherently in
 18 circumstances where one has an employer and employee,
 19 they are likely to have different views as to what
 20 lessons can be learnt .
 21 So the question isn't whether or not the GMCA is
 22 trying to essentially avoid learning lessons , the
 23 question is what lessons does each body believe needs to
 24 be learnt . That's where, going on to Mr Weatherby's
 25 helpful submissions, we would say, one sees a real

1 issue . Mr Weatherby points to the expert report , points
 2 to the learning statement from GMCA as being potentially
 3 of significance in assessing whether or not the FBU is
 4 seeking to make different points, essentially , and
 5 suggest that different lessons should be learnt .
 6 We can see, and that's one of the reasons why we
 7 suggested the middle ground we suggested, that those
 8 documents may assist the inquiry to assess whether or
 9 not essentially there is significant value in the FBU
 10 participating . The difficulty of course from the FBU's
 11 point of view is that without core participant status in
 12 the first place, we, at least for a significant period
 13 of time, or the FBU for a significant period of time,
 14 will not get access to those documents. So it's
 15 difficult for the FBU to formulate a clear statement
 16 saying whether they agree or disagree with what is being
 17 said in those documents without access to those
 18 documents.
 19 That then leads on to Mr Cooper's submissions
 20 because in part Mr Cooper was suggesting that the FBU
 21 do have a role to play, an important role potentially ,
 22 but it's one that they can play potentially without core
 23 participant status . I've highlighted the documents that
 24 may well be in issue and in our submission it is issues
 25 such as access to documents that make that less than an

1 unrealistic submission .
 2 What, in our submission, obviously we do need to
 3 address and what we recognise we need to address is
 4 Mr Cooper's concerns about delay . I repeat: if an
 5 undertaking is what the inquiry requires , we are willing
 6 to give that . We've explained why we're not immediately
 7 willing to give that, but if it is what is required for
 8 the FBU to be granted core participant status , we are
 9 willing to offer that .
 10 In terms of other organisations then making
 11 applications which delay the inquiry , in our submission
 12 it is speculative . There aren't any, as far as we're
 13 aware, other organisations on the horizon . The concerns
 14 can be partly addressed by the reasoning that the
 15 inquiry give . We accept essentially we have to
 16 demonstrate a significant interest and we have been
 17 able, we submit, to demonstrate that in the submissions
 18 we have made and the reasoning can make that clear .
 19 In terms of the delay that might be caused
 20 essentially by follow-up work, if I can put it that way,
 21 you've heard helpful submissions from Mr Greaney, making
 22 it clear that CTI are committed to the start date and
 23 that they do not regard the risk of additional work as
 24 being a significant one . We would submit that
 25 in relation to that, any application that is made by the

1 FBU -- for example, for further disclosure or further
 2 witnesses to be called -- will inevitably take account
 3 of the impact on the start date . Given the commitment
 4 everybody has given to the start date, it is , in our
 5 submission, unlikely , highly unlikely , that there would
 6 be any delay to the start date, and that can be, as
 7 I say, managed to make the risk non-existent .
 8 Turning then to Mr Greaney, we would submit that
 9 we have never put our case on the basis that, if you
 10 like , the high point of our interest is the unnamed
 11 member . The initial letter , and I'd ask you to go back
 12 to that, sir , makes it clear that it was the
 13 recommendations that we were concerned about .
 14 Whether I've been unhelpful in using the language of
 15 conflict of interest , that's a matter really for you,
 16 but the fact of the matter is the reason we used that
 17 language of conflict of interest is that a different
 18 perspective does potentially , we would say, give rise to
 19 something that could be described as a conflict because
 20 there is a real possibility -- without the documents it
 21 may be impossible to know whether this is in fact the
 22 case, but there is a real possibility that the GMCA will
 23 be seeking different outcomes to that sought by the FBU .
 24 That, we would submit, is a conflict of interest because
 25 it's what the various parties are seeking through this

1 process.
 2 But whether that language is right or wrong doesn't
 3 really matter, but that's always been the primary
 4 concern of the FBU. It's been about what should be
 5 learned from this process in circumstances where it's
 6 FBU members that will need to put themselves at the
 7 heart of any incident such as that that occurred at the
 8 Manchester Arena.

9 In terms of the middle course suggested by
 10 Mr Greaney, we do appreciate his efforts as well to try
 11 and come up with a middle course. I think I've already
 12 addressed what our objection to that is and why we
 13 submit it's not an effective middle course and why
 14 we would submit that the more effective and calm(?)
 15 course is the one we've argued for.

16 In that context, Mr Greaney says there is no general
 17 right to disclosure for CPs. We are not saying that
 18 every CP applicant should get disclosure to enable them
 19 to facilitate the application. Our point is here, our
 20 primary concern has always been the recommendations and
 21 the learning that is likely to, one hopes, be developed
 22 in relation to this incident.

23 We can't know whether or not there is going to be
 24 a disagreement for certain. We suspect there will be
 25 a disagreement, but we can't know whether there's

1 a disagreement without the documents such as those
 2 identified by Mr Weatherby. We suspect there will be
 3 a disagreement not at least because there's been
 4 a dispute ongoing in relation to this, but one can't
 5 know that for certain. That's why on the facts of this
 6 case we suggest that one compromise essentially is to
 7 make arrangements for the FBU to have access to those
 8 documents for a limited period of time.

9 I notice a message has flashed up. That I think is
 10 all I need to do, but can I also take electronic
 11 instructions? I just want to clarify that in
 12 particular.

13 SIR JOHN SAUNDERS: Of course.

14 (Pause)

15 MR SOUTHEY: Thank you.

16 I'll just check that nothing else comes up while I'm
 17 speaking, but I think there's one other thing I should
 18 mention.

19 Sir, you made reference to the Fire Officers'
 20 Association application and I think really I should just
 21 draw your attention to the fact that one of the things
 22 that prompted the application, this application, was the
 23 fact that the Fire Officers' Association were making an
 24 application and I think it focused minds and so we can
 25 see why it was being raised by you, sir.

1 SIR JOHN SAUNDERS: Thank you very much. I'm very grateful
 2 for everybody's submissions. As Mr Weatherby's said,
 3 a great deal of work has gone into this application,
 4 both in writing and orally, thank you very much.
 5 Obviously I will make a decision as soon as I can.
 6 There's quite a lot going on with the inquiry at the
 7 moment. I will try and make it as soon as I can but you
 8 may not be getting it tomorrow.

9 Thank you all very much.

10 (12.25 pm)

11 (The hearing adjourned)

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