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**Ruling on the application by the FBU to be designated as a Core Participant**

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1. This is an application for Core Participant ('CP') status by the Fire Brigades Union ('FBU').
2. I am grateful for the submissions that I have received both in writing and orally. There is substantial agreement as to the law which applies to this application but there are some differences in emphasis between the submissions made by the FBU and those of Counsel to the Inquiry ('CTI').
3. Before I deal with the law, I will set out in some detail the history of this application.

**History of the application**

4. The FBU's application states that the FBU represent more than 85% of uniformed fire service staff nationally and over 88% in Manchester. The membership includes members up to the rank of Area Manager.
5. The FBU's application was made on 23<sup>rd</sup> March 2020. The Inquiry's CP protocol required that applications for CP status had to be submitted by 20<sup>th</sup> November 2019. Accordingly, the application was in excess of four months late. In a previous ruling on CP status (in respect of 56 survivors of the attack) I indicated, in that context, that a delay of three months meant that the application was substantially out of time (see paragraph 20 of that ruling). The Inquiry's protocol provided that further time would be granted if I decided it was 'necessary and appropriate' to do so.
6. The bases for the FBU's application were that the FBU had an important role to play and could assist the Inquiry: (a) in investigating what happened; (b) in making submissions as to recommendations for the future; and (c) in representing some of its members who played a significant part in the events and/or may be subject to criticism. In relation to those who played a significant part in the events of the evening, it was said that a number of them had made it clear that they wished to be represented by the FBU. In relation to those who it was said may be subject to criticism, the FBU's application stated it represented such individuals.

7. Having considered the responses to this application provided by CPs and CTI, on 30<sup>th</sup> April 2020 I requested the FBU to identify any individual member who was said to meet the criteria in Rule 5(2) and in what respects; to specify whether he or she had asked the FBU to represent their interests; and to state if there was any reason why the Greater Manchester Combined Authority ('GMCA') should not represent the member's interests, i.e. was there said to be a conflict of interest.
8. In response the FBU identified one member (named in the letter) who it was said came within Rule 5(2) and wished to be represented by the FBU. It was further said that GMCA could not represent that member because of actual or potential conflicts of interest.
9. Following further submissions from CTI (dated 6<sup>th</sup> May 2020), further written submissions were made by the FBU dated 12<sup>th</sup> May 2020. Those submissions suggested that it would be unfair for the member named in the previous letter to '*rely on their employer for representation in such a sensitive context*'.
10. Final written submissions were made by CTI on 28<sup>th</sup> May 2020.
11. An oral hearing to consider the application was timetabled for 2<sup>nd</sup> June 2020.
12. On the evening of 1<sup>st</sup> June 2020, the Inquiry team were notified by solicitors acting for GMCA that the member identified by the FBU intended to stay with GMCA's solicitors and did not wish the FBU to seek CP status on his behalf. Included in the notification was an email trail which appeared to indicate that the member was unaware of the steps taken by the FBU to progress an application in his name.
13. As a result of that correspondence, at the hearing on 2<sup>nd</sup> June the FBU withdrew the application that they had made for CP status on the member's behalf and limited their application for CP status to assisting the Inquiry on the issue of recommendations which might be made. That part of the application is therefore withdrawn and I will not deal with it further.

### **Relevant law**

14. The relevant part of s.1 of the Inquiries Act 2005 provides that '*A Minister may cause an inquiry to be held under this Act in relation to a case where it appears to him that ...there is public concern that particular events may have occurred.*' The aim of the Inquiry is therefore to satisfy that public concern by establishing, so far as is possible, what happened and why and by making recommendations to seek to avoid something similar happening in the future.
15. Section 17(3) of the Inquiries Act 2005 provides that '*in making any decision as to the procedure or conduct of an inquiry, the Chairman must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to*

*witnesses or others).*’ As the FBU point out, in order to maintain public confidence it is important that I should exercise my discretion in a way which best allows the Inquiry to achieve its aims.

16. My power to designate a person as a CP in the Inquiry is to be found in Rule 5 of the Inquiry Rules 2006.
17. By virtue of Rule 5(1) I *may* designate a person as a CP at any time during the course of the Inquiry provided that the person consents to being so designated. I have a discretion whether to designate CPs and the way that Rule 5 is structured indicates that this is a wide discretion.
18. Rule 5(2) sets out the matters which I must consider, in particular, in deciding whether to exercise my discretion. They are whether:
  - a. *the person played, or may have played a significant role in relation to the matters to which the inquiry relates;*
  - b. *the person has a significant interest in an important aspect of the matters to which the inquiry relates; or*
  - c. *the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*
19. While I must have particular regard to these matters in the exercise of my discretion, that does not mean that they cannot be outweighed by other factors, nor would it be necessary to demonstrate that one of the considerations set out in Rule 5(2) is met in order to be granted CP status. They are factors in the exercise of my discretion to which I must give particular consideration but they are neither a condition precedent to a grant of CP status, nor decisive of the application if any one of them is met.
20. The meaning of the word ‘significant’ in each of the sub paragraphs in Rule 5(2) has led to contrasting submissions from counsel. CTI have emphasised that the use of the word significant as a qualifying adjective in each of matters indicates that not any ‘role’, ‘interest’ or ‘criticism’ will meet the test. They rely on what Sir Brian Langstaff said in the Infected Blood Inquiry when he described the use of the word ‘significant’ as emphatic. CTI also rely on quotes in similar terms from other Chairmen of inquiries under the 2005 Act.
21. The FBU say that ‘significant’ means the opposite of ‘insignificant’ and accordingly it simply means anything which is not insignificant. They rely for that submissions on a decision of the European Court in **Revenue and Customs Commissioners -v- Isle of Wight Council [2009] 1 CMLR 4**. That is by no means the only case in which the meaning of the word ‘significant’ has been an issue. Discussion of what is meant by the word ‘significant’ has taken up many column inches of law reports. In the leading case of **R -v- Lang [2006] 2 All ER 410**, the Court of Appeal adopted the meaning from the Oxford English Dictionary which is *‘noteworthy, of considerable amount of*

*importance*'. In my judgment, 'significant' is an ordinary English word which should be given its ordinary meaning, i.e. '*noteworthy, of considerable amount of importance*'. I do not accept that in ordinary English usage 'significant' means anything which is not insignificant. There may be an area between the two where a fact is neither significant nor insignificant.

22. In the event, for the purposes of my decision on this application, it makes no difference to the result, but it seemed appropriate to address the issue as counsel had done so in their submissions.
23. As well as the Rule 5(2) factors, I may also take into account other relevant matters when determining whether to exercise my discretion.
24. As has been emphasised to me in submissions, I must reach a fair decision which is in the best interests of ensuring that the Inquiry achieves its objectives while not allowing unnecessary expenditure.

### **Delay**

25. This application is substantially out of time, so the first matter that I need to consider is whether to grant additional time for making it. The Protocol for considering applications for CP status provides in paragraph 10: '*Applications for core participant status should be submitted to the Inquiry in writing by 20 November 2019. Further time will be granted by the Chairman for such applications if it is necessary and appropriate to do so.*'
26. The FBU application was made on 23<sup>rd</sup> March 2020. That is four months late and close to the time that the Inquiry was first scheduled to start. By the time of the application the start date had been put back to 15<sup>th</sup> June 2020. The Inquiry is now scheduled to start at the beginning of September 2020.
27. No adequate reason for the delay has been given. All the matters which are put forward as grounds for designation as a CP were known to the FBU long before 20<sup>th</sup> November 2019. The FBU rely on the Kerslake report in their application. That report was published in March 2018. The FBU have experience of being a CP at the Grenfell Tower Inquiry and would have been aware of the relevant criteria. It now transpires that they have been assisting members who have made witness statements for this Inquiry in the preparation of those statements. They instructed a solicitor to attend with one of their members when they prepared a statement for the Inquiry on 25<sup>th</sup> November 2019. In a letter of the FBU's solicitor dated 8<sup>th</sup> June 2020, sent in response to my request at the hearing for an explanation of how the matters set out in paragraphs 12 and 13 above had occurred, I was informed that through the course of 2019, there was debate within the FBU's Executive Council on the issue of participation in the inquests and, subsequently, Inquiry. I am told, and of course accept, that notwithstanding that debate the FBU and their solicitor were not aware of the deadline until it had passed. I

am not told when they became aware of the deadline but they were clearly under an obligation to act swiftly once they did know. I accept as well that unions have to act responsibly in deploying their resources; this was a matter raised by the FBU in their submissions. I do not necessarily accept that that means it will take longer to make a decision. In any event I am not aware of when the FBU found out about the deadline for applications or how long it took them to decide to apply. I was told by Mr. Southey QC that it was hearing of the application of the Fire Officers Association ('FOA') for CP status which prompted their application. The FOA application for CP status was submitted in December 2019 and discussed at the Inquiry's preliminary hearing on 28<sup>th</sup> January 2020. The FBU's application was not made for another two months. Whatever the reasons there has been a long delay and there is no adequate explanation for it.

28. It should not be thought that because the start of the Inquiry has been put back to September that it makes compliance with the time limit less important. Preparations for an Inquiry such as this take a long time and a great deal of hard work. That is hard work not just for the Inquiry team but also CPs. This affects the family CPs the most as they are concerned with all aspects of the Inquiry. Covid-19 has not only caused a delay to the Inquiry but also a considerable amount of extra work trying to plan how the Inquiry can proceed in September while providing sufficient public access and compliance with extensive health and safety requirements to ensure that people can attend safely. All of these matters require consultation as those who wish to attend the Inquiry are the ones who will be most affected.
29. The FBU point out that Rule 5, which regulates my power to grant CP status, imposes no time limit for making an application. That is correct but I am entitled to set one in pursuance of my powers as Chairman under s.17. It was necessary in my judgment for the efficient running of the Inquiry to do so. I would be surprised if any Inquiry did not impose a time limit of this kind. Having said that, a late application is not an absolute bar to granting CP status. In the previous application by 56 survivor applicants, I did not enforce the time limit as I considered that there was good reason for the lateness of the application. It does not assist the FBU that they have no good reason for failing to apply in time.
30. The FBU are also not assisted by the fact that one of the groups of family CPs, represented by Hogan Lovells, felt that the original application was not sufficiently particularised for them to make comprehensive observations on the application. That was supported by CTI and resulted in a request for further information being made by me because I agreed that more detail was necessary.
31. Those representing a number of the families have emphasised that I should not take any step which might endanger the current start date of 7<sup>th</sup> September 2020. I recognise the overriding importance of keeping that date and I will do everything I can to ensure that it is kept. A number of the families are concerned also that I should have the benefit of

input from any organisation which can bring a different and valuable perspective to the work of the Inquiry.

32. I must take into account all relevant matters when determining whether to exercise my discretion to extend the time limit for applications. As I have said, an important relevant consideration in reaching my decision is the contribution that the applicant will provide to enable the Inquiry to fulfil its terms of reference. So in deciding whether to extend time it is necessary to look at the merits of the application and what the granting of CP status would contribute to the Inquiry.

### **The merits of the FBU's application**

33. There is no doubt that the performance of Greater Manchester Fire and Rescue Service ('GMFRS') will be an important part of the investigation into the emergency response to the Arena attack. That is clear from the terms of reference of the Inquiry. Firefighters arrived at the scene two hours after the explosion. The Inquiry will need to look in detail at the reasons for that. Was the planning sufficient? Was the response in accordance with that planning? If something went wrong, why did it go wrong? These matters have already been looked at by Lord Kerslake and his report does give some indication of some of the likely lines of enquiry which I will pursue. Certainly I will aim to build on the contents of his report while not being bound by it.
34. It is accepted by CTI, and I accept, that the FBU on behalf of all of its members are likely to come within Rule 5(2)(b) at the stage when I am considering what if any recommendations I should make. It may be that at the end of the Inquiry I will make recommendations as to how the emergency response, including that of GMFRS, could be improved in the future if, unhappily, something similar were to happen again. I say 'may be' because whether recommendations are required will depend on a number of factors, including the evidence I hear, the conclusions I reach, and whether any changes to the way an emergency response is organised as a result of lessons learnt from what happened in 2017 will make it unnecessary for me to make recommendations. The FBU on behalf of its members is likely to have a significant interest in whether I make recommendations and, if so, what they are. They represent people who may have to give effect to such recommendations (depending on what they are), who may have relevant information as to how an emergency response works in practice, and who may be able to identify any practical difficulties with plans. I consider that the FBU is likely to bring a different perspective to the issue of recommendations to other CPs and in particular those concerned with the management of GMFRS. The FBU in their submissions suggest there will be a conflict of interest with employers. On further consideration of this submission, particularly following the withdrawal of the individual FBU member's application, it appeared to me that, while no conflict of interest exists in the proper sense of that term, the FBU will bring a different perspective.
35. The issue raised by CTI is whether the FBU requires CP status in order to assist me with recommendations. CTI suggest that the FBU can assist the Inquiry, at the appropriate stage, by providing evidence, including through witness evidence, and there

is no requirement to designate as CPs all witnesses with relevant evidence to give. Such an approach would, CTI say, have far-reaching and detrimental consequences for the management, efficient progress and costs of inquiries. The FBU suggest that their interest, in particular in recommendations, and their perspective on that issue, requires CP status. There is a difference in emphasis between the submissions of CTI and the FBU as to what can be achieved without CP status.

36. Designation as a CP entitles that person or organisation to certain procedural rights during the inquiry. The most important of these, some of which are set out in the Inquiry Rules 2006 and others which are established practice, are: (i) disclosure of materials relevant to the Terms of Reference; (ii) the opportunity to make an opening and closing statement to the Chair of the inquiry (Rule 11); (iii) the right to apply to the Chair of the inquiry for permission to question witnesses during the oral hearings (Rule 10); (iv) the ability to suggest lines of questioning to be pursued by CTI; (v) the opportunity to make legal and other submissions; and (vi) receipt of a copy of the report published by the inquiry (Rule 17).
37. As is pointed out by CTI, it is possible for a person or organisation to engage with and participate in an inquiry without having CP status. Among other means of engagement and participation, a person or organisation: (i) can provide evidence or documents to the inquiry; (ii) can attend the inquiry's hearings or view them through a livestream available on the inquiry's website; (iii) can access evidence and documents on the inquiry's website; (iv) they may be permitted to suggest lines of enquiry to the Inquiry or lines of questioning to CTI; (v) transcripts of the inquiry's hearings may be made available on the inquiry's website; and (vi) the Inquiry may choose to receive written closing submissions from non-CPs.
38. The FBU consider that CTI's submissions over-estimate the contribution that can be made without CP status. They submit that CP status allows a person or organisation to 'participate effectively' in an inquiry, as was held by Sir Christopher Pitchford in the Undercover Policing Inquiry or to take an 'active part' as Lord Penrose described the role of a CP in the Scottish Inquiry into infected blood. It follows, argues the FBU, that in order to participate effectively it is necessary to have CP status. CTI for their part have referred me to what was said by Sir Brian Leveson in his inquiry as to the part played by CPs as contrasted with participants who were not CPs. CTI submit that in the particular circumstances of the FBU's application, including what they may be able to add to the Inquiry on recommendations, effective participation can take place without CP designation.
39. In my judgement, as so often is the case, this issue is fact sensitive. I have to consider the contribution that this particular applicant for CP status is able to make. Then I have to decide whether that role requires CP status. Adding another CP, particularly at this late stage, is not something that should be done if it is possible for the applicant to make

the same or similar contribution without CP status. The more CPs there are, the longer the Inquiry will last and the greater the cost will be.

40. It was stated by the FBU in the course of argument that their primary concern is to have an input at the recommendations stage of the Inquiry. They also accept that at this current stage it is not possible for them to say with certainty that they would have a material part to play at the recommendations stage or would wish to play a part. They argue that they should have CP status at this stage so that they can have access to all the material and decide for themselves whether they will be able to make a significant contribution at the recommendations stage of the Inquiry. They also wish to take part in the investigation of what happened in order to help them decide what their submissions would be at the recommendations stage. The FBU pointed out that when that process had finished and they had considered all the material, their CP status could be withdrawn if they were not likely to be of material assistance to me. If I were to accept that argument in its entirety it would open the door for people to be given CP status in order to find out whether they justified it. CTI argued that if I did that it might result in a large number of speculative applications which could seriously affect the timeliness of the Inquiry. While, as with all 'floodgate' arguments, it should not be given too much weight, it is a legitimate consideration. In normal circumstances, I would expect an applicant for CP status to justify the application on material which they already have rather than seeking advance disclosure, which is normally reserved for CPs, in order to establish whether there is merit in their application.
41. In relation to the submission that the FBU needs to be a CP to take a proper part in the investigation of what happened and why, I have been reminded of the various parties who will play a part in that investigation. CTI on my behalf will lead the investigation and will be assisted in that by the family CP teams as well as other relevant CP teams. I have the benefit of expert reports as well as a mass of material supplied to the Inquiry to suggest lines of enquiry. Taking all that into account, I do not consider that there will be added value to the Inquiry if the FBU were added as a CP for the investigation stage. I would welcome their input into suggesting lines of enquiry if they felt there were matters of which they had special knowledge which the Inquiry might overlook and they felt able to assist in that way. I am confident that the FBU have sufficient information to do that. In my view, that would not require them to have CP status.
42. If I am going to make recommendations relating to the emergency response of the fire service, I would wish to have views from the FBU on their merits, if they felt they could make helpful submissions. They may well have a different perspective on particular issues from GMFRS and North-West Fire Control (NWFC). Whether that is done by submissions or by calling a witness from the FBU or both is a matter which should properly be considered at a later stage. Until I have some idea of what, if anything, the FBU can contribute in relation to whether I should make recommendations and the nature of that contribution, it is impossible to say whether it requires CP status. The FBU accept that they cannot know what contribution they can make without further

consideration of relevant material by them. I can understand how the FBU would be helped if they were to see certain documents which would inform their understanding and potential response and did not have to wait for them to be made public during the course of the Inquiry.

### **Conclusion and next steps**

43. I have given considerable thought to how I should deal with this matter while being fair to all parties, achieving the best result for the Inquiry and avoiding unnecessary costs. I consider that the best way to deal with the matter at the moment is that I should invite the FBU to provide me with a statement setting out their views as to the way in which the response of the fire service could have been improved and whether recommendations should be made or whether the existing changes made following the Kerslake report are sufficient. The FBU already have material to assist them with that. They will have had input from their own membership which will be important. They have the report from Lord Kerslake with his recommendations and the report a year later considering the implementation of those recommendations. I do take the view that in order to prepare such a statement the FBU would be assisted by having a number of documents held by the Inquiry relevant to that issue. At present I consider them to be the expert report on the response of the fire service, the lessons learnt documents produced by GMFRS and NWFS, command and control statements from the fire service, and any opening statements from GMFRS and NWFS. Having a statement from the FBU following receipt of this material would assist me in deciding whether the FBU should have CP status at the recommendations stage. The statement could be produced in stages as some of the documents that I consider should be supplied to the FBU will only be supplied relatively close to the start of the Inquiry. As with statements provided to CPs, the Inquiry team would require an undertaking of confidentiality to be given.
44. For all those reasons, I do not think that the FBU should have CP status at present. A final decision can be made on that at a later stage when we have further information. Accordingly: the application for CP status on behalf of the individual FBU member is withdrawn; the application to extend time and the application for CP status at the recommendations stage will be considered at a later date, determined by me, when more information on the merits of the application is available.

**Sir John Saunders**

**10 June 2020**