

Ruling on the application by Kyle Lawler to be designated as a Core Participant

1. By letter dated 30th June 2020, Kyle Lawler applied to be designated as a Core Participant ('CP') in the Inquiry.
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.
3. Before I deal with the law, I will set out the background to this application.

Background

4. On the night of the bombing Kyle Lawler was employed by Showsec International Limited (Showsec) as part of their team providing security and stewarding at the Arena. Kyle Lawler was working in the City Room area. He was 18 years old at the time. The written evidence suggests that he saw Salman Abedi on the night of the attack, before he detonated the bomb, after suspicions about him had been expressed by a member of the public. In an experts' report commissioned by me on security arrangements at the Arena on the night of the bombing, concerns have been raised as to whether Kyle Lawler should have taken more action to draw attention to Salman Abedi's presence and the fact that it was suspicious. Kyle Lawler has made statements relating to what happened on the night and is due to give evidence to the Inquiry.
5. Showsec have CP status and their legal representatives have been looking after the interests of their employees who are to be called as witnesses. That changed so far as Kyle Lawler was concerned on 21st February 2020 when Showsec notified Mr. Lawler's current solicitors that they were no longer able to act for him.
6. On 28th February 2020, Mr. Lawler's solicitors were invited to accept instructions to represent his interests during the Inquiry. The reason for the change of representation was that there was a potential conflict of interest between Mr. Lawler and Showsec. There is one other employee of Showsec who is due to give evidence to the Inquiry who may be in a similar position.

Relevant law

7. 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.

8. 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).’*
9. I have set out in previous CP rulings¹ the role of CPs and the ability of individuals to engage with, contribute to and participate in the Inquiry without CP status. For completeness I repeat that here:

“4. ... Designation as a CP entitles that person or organisation to certain procedural rights during the inquiry. The most important of these, some of which are set out in the Inquiry Rules 2006 (‘the Rules’) and others which are established practice, are: (i) disclosure of materials relevant to the Terms of Reference; (ii) the opportunity to make an opening and closing statement to the Chair of the inquiry (Rule 11); (iii) the right to apply to the Chair of the inquiry for permission to question witnesses during the oral hearings (Rule 10); (iv) the ability to suggest lines of questioning to be pursued by Counsel to the Inquiry (‘CTI’); (v) the opportunity to make legal and other submissions; and (vi) receipt of a copy of the report published by the inquiry (Rule 17). In summary these are procedural rights to ensure that those who played a significant role, those with a significant interest and/or those who may be subject to significant or explicit criticism may participate in the Inquiry. Whether or not I choose to designate any individual or organisation as a CP is a matter for my discretion.

5. It is also important to note that while CP designation confers a number of procedural rights, designation as a CP is not the only way for a person or organisation to engage with, contribute to and participate in an inquiry under the Act. For example, a person or organisation: (i) can provide evidence or documents to the inquiry; (ii) can attend the inquiry’s hearings or view them through a livestream available on the inquiry’s website; (iii) can access evidence and documents on the inquiry’s website; (iv) they may be permitted to suggest lines of enquiry to the Inquiry or lines of questioning to CTI; (v) transcripts of the inquiry’s hearings may be made available on the inquiry’s website; and (vi) the inquiry may choose to receive written closing submissions from non-CPs.

¹ Ruling on application for Core Participant status on behalf of 56 survivors of the Manchester Arena attack, §§4-5; see also Ruling on the application by the FBU to be designated as a Core Participant, §§36-37. Both rulings are available on the Inquiry’s website (<https://manchesterarenainquiry.org.uk/key-documents>).

10. My power to designate a person as a CP in the Inquiry is to be found in Rule 5 of the Inquiry Rules 2006.
11. 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.
12. 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.*
13. 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.
14. As well as the Rule 5(2) factors, I may also take into account other relevant matters when determining whether to exercise my discretion.

Delay

15. 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.'*
16. On 20th November 2019, when the time limit for applications expired, Kyle Lawler was still represented by Showsec's solicitors and there was no need for him to have separate representation. It follows that I should and will ignore any delay up until the end of February 2020 as that is the first time that Kyle Lawler could have realised that he might need CP status. There was a delay between the end of February and the application being made on the 30th June, the reason for which is said to have been the need for there to be a medical investigation into Kyle Lawler's health before the application could be made. I am aware that such an investigation did take place.

17. I must take into account all relevant matters when determining whether to exercise my discretion to extend the time limit for an application. I have done so. Those matters include the reasons for the delay (if any are provided), the impact (if any) on the progress of the Inquiry were the application to be granted, and the merits of the underlying application for CP status.
18. I accept that there is good reason why the application could not be made in time. I also accept the undertaking made on Mr. Lawler's behalf that there will be no application for an adjournment of any part of the Inquiry if I grant his application. The merits of the underlying application are strong, for the reasons set out below. In those circumstances I consider that it is both '*necessary and appropriate*' to extend the time for the making of the application.

The merits of Mr Lawler's application

19. It was accepted by all who made submissions that, on the basis of the statements and reports which have already been obtained by the Inquiry, Kyle Lawler '*may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*' Accordingly, he satisfies the criteria set out in Rule 5(2)(c).
20. It is asserted on Kyle Lawler's behalf that he also meets the test in Rule 5(2)(a). While it is suggested by CTI that it is unnecessary for me to make any finding on this, I intend to do so as it does feed into my decision. I am satisfied that the test in Rule 5(2)(a) is met as Kyle Lawler '*may have played a significant role in relation to the matters to which the inquiry relates*', depending on the findings of fact that I make.
21. I emphasise that my conclusion is only that Mr. Lawler *may* have played a significant role or *may* be subject to explicit or significant criticism. I am not saying that that will be my ultimate finding which will depend on the evidence that I hear.
22. All who made submissions agree that the decision I make has to be fair to Mr. Lawler and enable him to have a fair opportunity to defend himself against potential criticisms of his conduct. I agree with CTI that that means that he must have advance disclosure of all the material that relates to security on the night of the explosion; a lawyer to assist him with his preparation; the opportunity to ask questions of witnesses relating to the events that bear on him; the opportunity to make legal submissions; and, almost certainly, an opportunity to address me on the relevant evidence at the end of the Inquiry. All the matters which concern Mr. Lawler are contained in Chapter 7 of the Inquiry timetable.
23. The question that I have had to decide is whether it is necessary for Kyle Lawler to have CP status in order to be treated fairly within the Inquiry and at the oral evidence hearings. While I have the power to make anyone a CP at any stage of the Inquiry, the closer to the start of the Inquiry the application is made the more reluctant I am to allow

applications. While any application made in the future will be considered on its own merits, I do not wish to encourage a large number of new applications.

24. In the end there was no objection from any of the CPs to Kyle Lawler being given CP status provided it was limited to Chapter 7 and there was no application for an adjournment. CTI supported the application on that basis. The difference in practical terms of giving him CP status and providing him with the ability to answer the criticisms that will be made against him without CP status is marginal.

25. I have considered a number of other matters, including the effect on the management and progress of the Inquiry were I to grant the application. On the facts here, any impact will be minimal.

Conclusion

26. In the end I am persuaded that fairness requires that Kyle Lawler should have CP status restricted to matters contained in Chapter 7 of the Inquiry. Accordingly, the application is allowed on that basis.

Sir John Saunders

16 July 2020