

**Ruling on GMP restriction order application concerning information  
said to give rise to a risk of prejudice to future criminal investigations**

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1. Application has been made by Greater Manchester Police (GMP) for a restriction order (RO) under s.19 of the Inquiries Act 2005.
2. The purpose of the order that is sought is to prevent publication of some details of evidence collected by GMP in the course of their enquiries into the bombing which may be included in the evidence given to the Inquiry. The effect of GMP's application, if granted, would be that such evidence would be heard by the Inquiry but not made available to the public.
3. GMP wish to withhold those details because there remain individuals who they wish to interview about the details of the evidence they seek to withhold from publication. GMP submit that if they are able to ask questions of these outstanding individuals without giving them a lengthy opportunity to prepare their answers, they are more likely to acquire the necessary evidence to charge them and, potentially, secure prosecutions. The details covered by the application are contained in Annex A, a schedule prepared by GMP for the purposes of their application.
4. The contents of Annex A have been disclosed to all Core Participants (CPs) and to the media. The families, who have a very keen interest in ensuring that anyone who assisted the two brothers in their murderous venture, are aware of the contents. The media have also been made aware of the contents so that they can make whatever submissions they

consider appropriate about GMP's application for a RO.<sup>1</sup> There will be some applications for ROs where CPs and the media will not know the details of the material to be covered. There are others where CPs will know the details, while the media will not.<sup>2</sup> There are others still where both CPs and the media will know the details of the material to be covered. This application falls into this latter category. I have set out in some detail below the process that I have followed in reaching my conclusion on this application as it is important that everyone understands the process that has led to my decision. When considering the access that is made available to CPs and the media in any RO application, while matters of principle are important, an analysis of the particular facts relevant to each application is also important.

### **Legal framework**

5. I do not intend to set out in detail the legal principles applicable to my powers to make ROs. They are set out comprehensively in submissions prepared by CTI (dated 22<sup>nd</sup> January 2020), they have been summarised by CTI in submissions on this application (dated 9<sup>th</sup> October 2020), no one has argued with their analysis, and the principles are summarised in my earlier Ruling on restriction orders following the hearing on 23<sup>rd</sup> July 2020 (ruling dated 31<sup>st</sup> July 2020). That ruling has not been challenged.
6. The power to make a RO is set out in s.19(1) and (2)(b) of the Inquiries Act 2005. That section limits the requirement for public access and dissemination of information received by the Inquiry set out in s.18(1) of the Act.
7. By s.19(1) restrictions may be imposed on *'disclosure or publication of any evidence or documents given, produced or provided to an inquiry.'*
8. Section 19(3) provides that *'a restriction order must specify only such restrictions ... as the chairman considers to be ... necessary in the public interest having regard in particular to the matters mentioned in subsection (4).'*

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<sup>1</sup> See Ruling on application by six media organisations for disclosure of GMP Annex A, 7<sup>th</sup> October 2020.

<sup>2</sup> For example, see Rulings on restriction orders following the hearing on 23<sup>rd</sup> July 2020, 31<sup>st</sup> July 2020, §§5-31.

9. One of the matters mentioned in subsection (4) is *'any risk of harm or damage that could be avoided or reduced by any such restriction'*. While not included as a specific example of harm or damage in subsection (5), it is accepted by all those who made submissions to me, that interfering with or frustrating a criminal investigation into the murder of 22 people would be a matter capable of being covered by subsection (4).
10. Another matter in subsection (4) to which I must have particular regard when assessing whether a RO is necessary in the public interest is *'the extent to which any restriction on ... publication might inhibit the allaying of public concern'*.
11. I accept that any derogation from open justice should be the exception. The general rule is that all the evidence adduced before the Inquiry should be made public, to ensure, amongst other things, public confidence in the Inquiry's procedure and to allay the public concern which has given rise to the Inquiry (see s.1 of the Act). What is required of me in reaching my decision is to make an analysis of what is likely to be lost in terms of the investigation, if the order is not made, as against the weight to be attached to the public interest in making available the evidence adduced before the Inquiry (including to allay public concern) and the weight to be attached to the principle of open justice on the particular facts of the case. Clearly, depriving the public of some information may be less significant than depriving them of other information. Analysis of the particular facts of the case is required as well as the application of principle.

### **Submissions**

12. I have heard oral submissions from three sets of family CPs. I have paid considerable attention, as I always will, to the views expressed on behalf of the families. I have heard submissions from GMP, the media and CTI. I am grateful for them all and I have been assisted by them.
13. It is accepted that the motivation of GMP in making this application is to further the criminal investigation into the Arena attack and not to shroud their activities in unwarranted secrecy or cover up mistakes. There is opposition to the application from the media, a number of the families, and from CTI.

14. The media oppose the application on a number of grounds. It is said that at least some of the matters which GMP seek to protect by a RO are already in the public domain and that GMP's case that withholding this information may lead to further prosecutions is so speculative that the public interest in publication outweighs it. The media submit that the chances of the individuals being apprehended and interviewed are remote and even if an interview were ever to take place, the chances of them actually answering any question, it was argued, is vanishingly small.
  
15. As I have said, I have paid considerable attention to the submissions made on behalf of the families. I have no doubt that if they thought there was the slightest chance that making this order would or could result in advancing the police investigation, they would support the application and not oppose it. In the event, those families represented by Duncan Atkinson QC and those represented by Pete Weatherby QC have instructed them to oppose the police application. They have submitted that the interests of open justice as applied to this Inquiry outweigh the chance that making the order will bring about any advance in the criminal investigation. John Cooper QC modified his submissions later in the hearing to a more neutral position during discussion of some of the details of the application. His final position was that if I thought there was a prospect that making the RO would result in bringing others to justice then I should make it but expressed doubt on the facts that there was any chance of that happening.
  
16. The submissions of CTI were consistent with those of the families and the media. In summary, CTI submitted that a range of relevant factors, taken together, weighed firmly against the application. Those factors included: the public interest in the Inquiry being able to address, publicly, the public concern that has led to its establishment (through public evidence, public questioning and a public report); the strong public interest in the openness and transparency of the Inquiry's process; the public interest in the Inquiry seeking to allay public concern and the extent to which the RO that GMP seek will inhibit the allaying of public concern; the fact that the harm that GMP seek to prevent through their application, while of course serious, is not at the gravest end of the scale; the speculative nature of the risk that GMP rely on; the limited prospects of the risk ever materialising; and the fact that adducing at the Inquiry the information which GMP seek to restrict will not prevent its use in possible future criminal or extradition proceedings.

17. I approach the application giving appropriate weight to the expertise of GMP in carrying out police investigations. That does not mean that I simply regard what they say on that subject as being correct but it is accepted that they are arguing in good faith for an order which they say will assist their investigation. The assessment of what will or may assist their investigation is within their area of expertise both generally and because of their knowledge of this case. Richard Horwell QC, on their behalf, has been careful not to overstate the case. He does not suggest that making this order will result in further prosecutions but he does say that the view of GMP is that it will give them the best chance of bringing any others who were criminally involved to justice. Despite the assistance which has been given to me by a number of distinguished criminal advocates, it is the police who have the greatest knowledge of how they can successfully carry out their investigations. Mr Horwell QC accepts that where it is shown that the information that he seeks to exclude is already in the public domain then his argument falls away.

### **Decision**

18. The application concerns six individuals. Four of them are wanted as suspects and two are what are described as TIE subjects (trace/interview/eliminate). That means that the police wish to trace them, interview them and, if appropriate, eliminate them from their investigations. Five of the six individuals are out of the jurisdiction, there is no immediate prospect of extraditing them and GMP have indicated to me that the threshold for extradition is not met. The sixth is a TIE subject. He is believed to be in the UK but his present whereabouts are unknown and GMP, I infer, have been looking for him for some time.

19. Of the four suspects, three have not been interviewed but information about their possible involvement was made public during the trial of Hashem Abedi. The fourth, Elyas Elmehdi, has been interviewed but has left the country. He has been convicted in his absence of serious drugs offences for which he would be likely to serve a prison sentence if he were to return. GMP frankly accept that, *'He is no doubt aware of these proceedings and their consequences for him.'*

20. Two of the four suspects are the parents of Salman and Hashem Abedi. While there might be said to be some prospect of them returning voluntarily to this country, as they have close relatives here and have always in the past travelled backwards and forwards between the UK and Libya, I consider it to be very unlikely they will return in the present situation. Nothing in GMP's assessment contradicts that.
21. In the case of Ramadan Abedi, the information that the police seek to include in a RO relates to his fingerprints being found in the Nissan Micra motor car which was used to store explosives while Salman Abedi was in Libya. It is known publicly that his fingerprints were found in relation to the car but not where. GMP have publicly stated that they wish to question Ramadan Abedi over '*forensic links*' between him and other evidence. The police consider that if Ramadan returns to this country and if he answers questions, it would assist them in getting to the truth if Ramadan was not aware of the location of the fingerprints a long time in advance of the interview.
22. I enquired of Mr Bunting, representing the media, whether it was important for the media to be able to report the location of the fingerprints or whether it would be sufficient to simply report that Ramadan's fingerprints were found on the car. I asked whether those were details that would be important to the public? He informed me that he had taken instructions and it was considered by his clients that it was important editorially that they should be able to report the location of the fingerprints. As with the police in their area of activity, the media are the experts in what will be of interest to the public and I give due weight to their expertise. While I understand why it may be of assistance to GMP in this particular case not to give advance notice of where the fingerprints were found before Ramadan has had an opportunity to answer, I have had to bear in mind the likelihood of Ramadan being available for interview and, if he is, the likelihood of him answering questions, and, even if he does, the likelihood of him providing evidence of substantial evidential value.
23. In the case of Samia Tabbal, the mother of Salman and Hashem Abedi, the information which the police wish to be subject to the RO are comments made by two other people. While it is said by GMP to be vital evidence, I am by no means convinced that it is or that there is any real basis for the suggestion that having advance notice of the information would affect any responses in interview if they were to be made. I also

have to consider the likelihood of her being available for interview and answering questions.

24. The third suspect, Mohammed Soliman, is currently out of the country and the likelihood of his return is low. The subject of the application relates to telephone evidence. The media assert that the information was contained in a telephone evidence schedule which was given to the press during Hashem Abedi's trial but was taken back and was also in general terms included in the prosecution opening. In the circumstances, I am not satisfied that these matters are not already substantially in the public domain.
25. Mr Elmehdi is the suspect who has been interviewed but has since left the country. He has been convicted in his absence of what is described by the police as a serious drugs offence. He is connected with the Nissan Micra because it is alleged that he allowed Salman Abedi to park it at Devell House prior to Abedi going to Libya. He has been interviewed about that but there was insufficient evidence at the end of the interview to charge him. The material the police wish to make subject of a RO is said to provide further evidence to connect him to the Micra and is said to contradict what he has previously said. While, if the police were in a position to interview him, this might assist them in assessing his involvement, I think his return in all the circumstances is extremely unlikely. I also consider that having already been interviewed about the Micra, it would be even more unlikely that he would answer further questions about it, at the least without detailed advance disclosure.
26. The two remaining subjects are on the police TIE list. The first, Majdi Alamari, is in Libya and there is no reason to suppose he will come to the UK, although it is not impossible. In Mr Horwell QC's submissions it appeared that the main matter that GMP were concerned to protect by an order was Mr Alamari's involvement in purchasing welding equipment from China. Notably, this was not included in '*the scope of the redaction required*' under Annex A. It comes under the '*any other information*' column in Annex A and the reason for that, I am told by the media, is that that matter was disclosed during Hashem Abedi's trial. I do not consider, on what I know, that withholding those matters will assist the police even if they do get the opportunity to interview Mr Alamari.

27. The final TIE subject is Anas Abuhdaima. He is said to be in this country but has not been located. I have read the information and the statement referred to in Annex A and I do not find the argument for a RO to cover that information convincing.
28. Having considered individually the matters in Annex A, the ones that I have found most difficult to resolve were those relating to Ramadan Abedi and Elyas Elmehdi. In the end, while I considered that there might be some assistance to the police in not giving advance notice of those matters, in both cases I have concluded it is very unlikely that the police would be in a position to interview them or, if they were, that either of them would answer questions.
29. Therefore, on this occasion and for the reasons above, the balance comes down in favour of not making the RO sought. The application is therefore refused.

**Sir John Saunders**

**22<sup>nd</sup> October 2020**