

Ruling on applications by Chief Inspector Sexton and Superintendent Dexter to be designated as Core Participants

1. On 26th January 2021, Chief Inspector Sexton and Superintendent Dexter ('the Applicants') applied to become Core Participants ('CPs') in this Inquiry in accordance with the terms of Rule 5 of the Inquiry Rules 2006. Up until now, their interests were being looked after by Greater Manchester Police ('GMP') but they had been provided with separate legal representation.
2. In addition to the application, I have received submissions from GMP, from John Cooper QC on behalf of those families that he represents, and from Pete Weatherby QC for the remaining families. GMP and Mr. Cooper are neutral as to the application. In the case of Mr. Cooper's families, that neutrality is conditional on an undertaking that granting this application will not delay the process. That undertaking was, in substance, given in the application. Mr. Weatherby resists the application on the basis that it relies on disclosure issues which should properly be resolved between the Applicants, GMP and the Inquiry Legal Team ('ILT'). Mr. Weatherby argues that the disclosure that the Applicants are entitled to is limited and would be similar to the disclosure that would be given to any witness. He further argues that the disputes between the Applicants and GMP are not significant and are within the usual bounds which occur between employers and employees during inquiries, in circumstances where the employer continues to look after the employees' interests.

Background

3. Ch. Insp. Sexton was the Force Duty Officer ('FDO') on the night of the attack. In that capacity, he had a central role in organising and co-ordinating the response of the emergency services. It is possible that there may be a number of criticisms of his actions and decisions on that night. This is apparent from the expert report that I have obtained on the police response to the attack. One central criticism which has already been flagged is the suggestion that Ch. Insp. Sexton was wrong to take the decision not to inform the other emergency services of his declaration of Operation Plato. GMP do not consider that they can support that decision.

4. On the night of the attack, Supt. Dexter was the ground assigned tactical firearms controller. In that position, he was responsible for directing the firearms officers present at the Arena. GMP argue that he was also responsible for directing the unarmed police officers on site. Supt. Dexter disputes this. There is a potentially significant issue as to whether the response of the police to the emergency would have been improved if there had been a senior officer assigned to the Arena to direct the unarmed police if Supt. Dexter did not have that responsibility. There may also be questions as to whether Supt. Dexter dealt with issues surrounding Operation Plato correctly.
5. In the light of these actual and potential disputes, a decision was made that these two GMP officers should have separate representation at the Inquiry. On 27th July 2020, I received an application for the solicitors for the Applicants to be their Recognised Legal Representatives ('RLR'), pursuant to Rule 6 of the Inquiry Rules 2006. This is a status that permits some procedural rights to allow the effective representation of those individuals in the Inquiry. The Inquiry Rules require that on receipt of such an application, I must designate a qualified lawyer as a Recognised Legal Representative on that person's behalf.
6. Once the applicants' solicitors had been recognised as their RLRs, an arrangement was put in place whereby it was the responsibility of GMP to supply the Applicants' legal team with documentation relevant to their roles as witnesses in the Inquiry, subject to the Applicants' ability to apply directly to the ILT in the event that they felt this was not happening.
7. Unhappily, disclosure issues have arisen which have not been resolved. This has resulted in applications for large amounts of disclosure being made directly to the ILT for documents that it is said GMP have not supplied. Resolving these issues threatens to lead to delay in the conduct of the Inquiry. We have already started our consideration of the emergency response under Chapter 10 and it will not help progress if I and the ILT have to deal with applications for disclosure on behalf of the Applicants where there are disputes with GMP.
8. In addition to the application under Rule 5, I will have to consider whether to extend time for the applications to be made. The Inquiry published a protocol containing a time framework for applications and these applications are very substantially out of time.

Discussion and determination

9. I have set out the legal principles that I consider cover applications for CP status in previous rulings.¹ No-one has suggested that those legal principles were wrong and I adopt them in this ruling.

¹ For example, see the rulings on the applications for CP status made by 56 survivors of the Arena attack, by the Fire Brigades Union and by Kyle Lawler. These rulings are all available on the Inquiry's website.

10. I well understand that under s.17(3) of the Inquiries Act 2005 I have an overriding duty to act fairly and with regard to avoiding unnecessary cost to any party.
11. I will summarise some of the observations that I have made previously about the application of Rule 5 of the Inquiry Rules 2006, which confers the wide discretion that I have to designate a CP at any time during the course of the Inquiry, provided the person consents to being so designated.
12. Rule 5(2) sets out three matters which I must consider in particular in deciding whether to exercise my discretion. Consideration of those matters is not determinative of my decision but they are factors to which I must pay particular attention. They can be outweighed in the exercise of my discretion by other factors.
13. In my judgment both of the Applicants come within criteria (a) and (c) of Rule 5(2). Both Applicants played a direct and significant role in the emergency response and may be subject to explicit or significant criticism as a result of some of the decisions they took.
14. Against those factors which weigh in favour of the application, I have considered the matters raised by Mr. Weatherby. I agree with him that, as the Applicants are separately represented, this application has been made principally because of difficulties in disclosure which should be capable of resolution. That point has weight but it has become apparent that there are fundamental differences in view between the legal teams for GMP and the Applicants as to what should be disclosed and that those differences have arisen on multiple occasions, over numerous instances of potential disclosure. This has led to STI having to spend some considerable time trying to resolve these disputes to the satisfaction of both parties. If this has to carry on during the oral hearings for Chapter 10, it may delay the Inquiry. That is something which no-one wants to happen.
15. I do not agree with Mr. Weatherby's submission that the Applicants should only have disclosure of what is necessary for any witness to have, namely documents which may assist the witness in recalling events. In my judgment, where I am satisfied that a person may be subject to explicit or significant criticism such that, alongside consideration of other relevant factors, they should be designated as a Core Participant, then they must have the ability to look through all the available material for that section of the Inquiry's investigation. This will allow them to see everything relevant to that potential criticism, apply to ask questions under Rule 10(4) and make a closing statement (under Rule 11(1)(b)). Whether a person falls on the witness side of that line (requiring only limited access to documents) or on the CP side (requiring greater access), is a judgment for me based on the particular facts of the case.
16. Mr. Weatherby further suggests that the disputes between the Applicants and GMP are not of any great significance as GMP are broadly supportive of the Applicants. It is

impossible to say before the evidence is heard whether I will decide that any criticism is justified and, if so, the extent of that criticism. However, there are potential criticisms which may be made against the Applicants and where GMP disagree with the positions taken by the Applicants. GMP acknowledge that in their submissions to me.

17. The applications are very substantially out of time on the timetable set down by the Inquiry's Protocol. As I have made clear in other applications, I regard compliance with the timetable as important as a failure to comply could lead to delays. However, I have also previously indicated that I may grant further time for the making of a CP application where I consider that necessary and appropriate. 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, 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. In this case, I am aware that making a formal application for CP status was considered at an earlier stage of the proceedings but it was hoped that satisfactory arrangements could be made for disclosure which would make it unnecessary for the Applicants to have CP status.
19. While that is some excuse, I do think that an earlier application could have been made, when it became clear that the present arrangements for disclosure were not working satisfactorily. I am concerned that refusing this application could delay the Inquiry. However, an undertaking has, in effect, been provided by the Applicants in their application; it is confirmed that granting this application will not delay the process. I proceed on that basis.
20. Refusing the application, on its specific facts, is likely to be unfair to the Applicants who might not have all the relevant information to contest any potential criticism. I make it clear that I am not suggesting that GMP would deliberately withhold relevant information from the Applicants but it is apparent that the two legal teams here have significantly different understandings of what documents may be relevant to different issues and this has led, over a period of time, to a number of practical difficulties. As a result of that background in this case, there is a real risk of unfairness to the Applicants if the application is not granted, in circumstances where the Applicants meet both the direct and significant role and explicit or significant criticism criteria in Rule 5(2).
21. For those reasons I will grant further time for this application to be made – I consider that necessary and appropriate here – and I grant the application for CP status. I make it clear that this application is granted on the basis that it will not delay the Inquiry and that CP status is limited to Chapter 10.

Sir John Saunders
2nd February 2021