manchester
arena
inquiry

Ruling on the application to prevent disclosure to Core Participants of redacted medical reports on Abdalraouf Abdallah

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Background

1. Abdalraouf Abdallah is a witness who may have information which is relevant to the Terms of Reference (ToR) of this Inquiry, in particular, paragraphs 1 and 2 of the ToR concerning Salman Abedi's radicalisation, his relationships with relevant associates, and the build up to the attack.

2. As Counsel to the Inquiry (CTI) indicated in his opening statement, Mr Abdallah, who is currently serving a prison sentence for terrorism offences, is a long-standing associate of Salman Abedi. Mr Abdallah was visited in prison by Abedi on 26th February 2015, evidence indicates that he attempted and made contact with Abedi on a number of occasions between February and June 2015, Mr Abdallah was in regular contact with Abedi after being bailed on 29th July 2015, and he was again visited by Abedi in prison on 18th January 2017. Salman Abedi was due to visit Mr Abdallah in prison on 6th March 2017 but did not attend. In addition, it appears from analysis of an illicit mobile phone held by Mr Abdallah in prison that Mr Abdallah was in regular telephone contact with Abedi. Analysis from the police investigation into Mr Abdallah's activities also indicates that in the period between 24th July and 28th November 2014, Abedi and Mr Abdallah conversed about martyrdom, including the martyrdom of a senior Al-Qaeda figure.

3. Mr Abdallah's evidence is therefore potentially relevant to the planning and preparation for the attack (Chapter 8 of the Inquiry's hearings) and the radicalisation of Salman Abedi (Chapter 13). I wish him to give evidence and, subject to any legal barrier preventing that, including a medical reason which means he cannot be compelled to give evidence, I will require him to do so. I agree with the submissions made to me that he may be an important witness.

4. As is the Inquiry's normal procedure, before calling him to give evidence a witness statement was sought from Mr Abdallah. A request for an interview was sent to his solicitor on 14th May 2020. After a great deal of difficulty, on 26th June 2020 an

interview took place with members of the Inquiry Team in the prison where Mr Abdallah was serving his sentence. Mr Abdallah was provided with a detailed list of questions by the Inquiry in advance of the interview. Mr Abdallah was interviewed with his solicitor present. The Inquiry provided funding for that attendance. At interview Mr Abdallah produced a prepared statement saying that he would not answer any questions as he relied on the privilege against self-incrimination. He refused to answer any of the Inquiry's questions.

5. I was not prepared to accept this blanket claim for privilege. I requested that Mr Abdallah indicate the basis for his assertion of privilege in response to each of the Inquiry's questions and subject to his response, Mr Abdallah would be required to attend a hearing of the Inquiry and indicate those questions that he claimed attracted the privilege and why. The Inquiry funded him to provide submissions on this issue.

6. Submissions in writing were received by me from leading and junior counsel on behalf of Mr Abdallah dated 24th July 2020. Those submissions made two key points which were summarised to me at the oral hearing by Mr Menon QC. They were that, first, while Mr Abdallah had no *"direct or indirect involvement in the terrorist attack at the Manchester Arena or any prior knowledge or suspicion that such an atrocity was being planned or contemplated"*, he would not answer the Inquiry's questions as he had no faith that he would be treated fairly and properly were he to co-operate and tell the truth. Mr Menon went on to say that Mr Abdallah had been legally advised *"in the strongest possible terms that he should exercise his right to silence".* Second, it was argued that compelling Mr Abdallah to answer the Inquiry's questions would be incompatible with his Convention rights under Articles 2, 3 and 8 because of the impact that calling him would have on his mental state.

7. On 5th October 2020, Mr Abdallah was informed that it was my intention to call him to give evidence at the Inquiry on 19th November 2020 and that a s.21 notice to that effect would be served in due course.

8. On 12th October 2020 I served a notice under s.21(1)(a) of the Inquiries Act 2005 requiring Mr Abdallah to attend a hearing of the Inquiry on 19th November 2020 to give evidence. This s.21 notice indicated that Mr Abdallah was entitled to invite me to revoke the notice under s.21(4). Such an application was required by 4pm on 27th October 2020.

9. On 27th October 2020, an application to revoke the s.21 notice was made by Mr Abdallah. In summary, it was argued on his behalf that there were two reasons why he should not give evidence. First, because he is unfit to do so and calling him to give evidence would give rise to a risk of self-harm or suicide. Second, because he has indicated that he will not answer questions, as he relies on his right to privilege against self-incrimination and therefore he should not be required to attend the Inquiry simply to refuse to answer questions.

10. I decided that in order to determine whether that first submission was justified there should be a psychiatric examination of Mr Abdallah. The Inquiry therefore notified the solicitor acting for Mr Abdallah that I proposed to instruct a forensic psychiatrist, Dr Kent, to conduct that examination. The letter of instruction was provided. Mr Abdallah's solicitor indicated that Mr Abdallah would not agree to be examined by Dr Kent. In an email dated 29th October 2020 from Mr Abdallah's solicitor she said that Mr Abdallah would not consent to being assessed by Dr Kent as *"he cannot trust a psychiatrist who has been solely chosen and instructed by yourselves"*.

11. Instead, the solicitor suggested that the Inquiry should instruct Dr Latham. I agreed to do so in order to facilitate a prompt examination given Mr Abdallah's impending call date. For the avoidance of doubt, there is no suggestion other than that Dr Latham is a well-qualified psychiatrist and I have no reason to suppose he would not carry out his duty to me as an independent expert. The same is true of Dr Kent.

12. Dr Latham assessed Mr Abdallah by video-link on 6th November 2020. He produced a report dated 8th November 2020. His conclusions supported the submissions of Mr Abdallah but were qualified in that he said that another expert might disagree with him. In those circumstances I wished to have Dr Kent carry out his own examination. That has not proved possible. Dr Kent reviewed the findings of Dr Latham on paper and provided a report dated 9th December 2020. Dr Kent's report was provided to Dr Latham, along with Mr Abdallah's ACCT[1] records. Dr Latham confirmed by letter dated 22nd December 2020 that his original opinions remained unchanged.

13. The time taken to investigate this issue, and the inability to put in place a necessary risk assessment and security plan following its resolution, meant that it was necessary to vacate Mr Abdallah's call date of 19th November 2020. CPs were informed on 10th November 2020. They have not been provided with the medical reports and the letter which indicate the reasons why this situation arose. As is clear from Mr Menon's submissions, Mr Abdallah continues to rely on the reports in arguing that Mr Abdallah cannot be called to give evidence.

14. I provisionally proposed to make disclosure of the reports and the letter to CPs and invite observations. I also proposed to call Dr Latham and Dr Kent to give evidence so they could be questioned prior to my determination of the issue. This was consistent with the approach I have taken to applications from other witnesses seeking special measures or seeking to be excused from giving evidence on medical grounds. In such cases, redacted medical reports have been provided to CPs and I have heard oral evidence where I considered that necessary and appropriate. Mr Abdallah has been treated no differently.

[1] Assessment, Care in Custody and Teamwork, the tool used to manage prisoners identified as at risk of self-harm and/or suicide.

15. The Inquiry Team produced redacted versions of the reports and Dr Latham's letter for disclosure to CPs, removing what are considered to be irrelevant and sensitive details. From 28th December 2020 onwards, Mr Abdallah was invited to propose any additional redactions. He did not do so. Instead, he applied to prevent the disclosure of the redacted reports to CPs. His position is that only a one or two paragraph gist of the conclusion from one of the reports, that of Dr Latham, can lawfully be provided to CPs.

16. Against this background I held a hearing on 16th February 2021 to decide whether Core Participants (CPs) should have sight of the medical reports on which the submission that Mr Abdallah is medically unfit to give evidence is currently based. It is now proposed that Mr Abdallah should give evidence in Chapter 13, later in 2021. It may well be necessary to seek updated medical evidence on Mr Abdallah's condition before he is required to attend the Inquiry. As I understood it, Mr Menon accepted that that was the case during the hearing. Should that prove necessary I will expect Mr Abdallah's cooperation.

The issue

17. However, currently I am solely concerned in determining whether or not I should direct release of the redacted medical reports and letter of Drs Latham and Kent to CPs. If released that would be on terms of confidentiality. The contents would not be revealed to the public at large. Were any reference made to Mr Abdallah's personal information contained within the reports during an Inquiry hearing, I would be able to make a restriction order under s.19(2)(b) preventing publication of that information, if I considered the relevant criteria under s.19 were met.

18. The family CPs and CTI argue that CPs should have the redacted reports so they can understand how the present position has been reached, make informed submissions and because the reports are central to my determination as to whether or not I call Mr Abdallah to give evidence. They also assert that there is an evidential basis for believing that Mr Abdallah may be able to contribute substantially to my understanding of the radicalisation of Salman Abedi and the preparations for the attack. They are therefore very keen that Mr Abdallah should give evidence so that they can understand as much as is possible of the circumstances of this attack.

Determination

19. Unless the family CPs see the redacted reports, they have no way of assessing the merits of Mr Abdallah's assertion that he cannot lawfully be called to give evidence, they cannot make informed submissions and proposals, nor, if I were to rule in Mr Abdallah's favour, would they have any way of assessing the reasons for that. It may be that, if the family CPs saw the reports, they would accept what Mr Menon says, that there can be no realistic argument that Mr Abdallah should be called to give evidence in view of his medical condition. Not seeing the reports deprives them of any

opportunity of putting forward an argument that he is fit to attend or of proposing further information that should be sought, special measures that may assist, or questions that should be asked of the experts to inform my determination.

20. It is not in dispute that Mr Abdallah's Article 8 rights are engaged. It is an interference with his right to privacy for medical reports dealing with his health to be disclosed to anyone without his consent. Article 8 however is not an absolute right. The applicable legal framework is set out in detail in the written submissions of CTI. It was not disputed by Mr Abdallah or any CP.

21. In this case, there are other rights and considerations in play, as well as Mr Abdallah's Article 8 rights. As Mr Menon accepted, the family CPs have the right to participate effectively in the Inquiry by reason of the Article 2 procedural duty. CPs are entitled to participate under Rule 10 of the Inquiry Rules 2006. CPs, including, most importantly in the present application, the family CPs, are also entitled to be treated with fairness. Preventing them from seeing the reports will limit their ability to participate as they will be unable to put forward any arguments or further proposals based on the medical reports.

22. In his written submissions Mr Menon referred to other inquiries and inquests which, he contends, have dealt with applications to excuse a witness on health grounds without giving any opportunity to CPs (and in the case of inquests, "interested persons") to see the underlying reports or make representations. He refers to the Hillsborough Inquests, the Grenfell Tower Inquiry and the Undercover Policing Inquiry. The experiences of other advocates and the Solicitor to the Inquiry (STI), who was also Solicitor to the Hillsborough Inquests, were different from Mr Menon's. I indicated at an early stage that I consider that each of these types of applications are fact specific. In the absence of any ruling from a Chairman dealing with the issue as a matter of principle, I am unlikely to derive any assistance from what another Chairman or Coroner has done in specific and fact-sensitive applications that they had to consider. In accordance with my indication, no argument was pursued on that basis either by Mr Menon or on behalf of any other CP.

23. Mr Menon relied on the case of *D and F v Persons Unknown* [2021] EWHC 157 (QB). This is a very recent case. It has a completely different subject matter to this hearing but Mr Menon relied on the fact that in that case Tipples J found that the Article 8 rights of the two children concerned outweighed the Article 10 rights of the press, some of whom opposed the application. I note that Tipples J had already determined the application on Article 2 and 3 grounds. The Article 8 issue was therefore strictly obiter, but I do not consider that anything turns on this point.

24. While Mr Menon set out other propositions taken from that case in his written submissions, they relate to Articles 2 and 3 which he accepts are not engaged by the present application. I accept that there are occasions in which an infringement of an

Article 8 right can outweigh the infringement of another right. That of course turns on the fact-specific balancing exercise that is conducted in each case.

25. The *D and F* case concerned applications for lifetime anonymity for two prisoners who had committed an awful crime when they were under the age of 18. They relied in support of their application on medical reports which outlined what the consequences to their health would be if their names were disclosed. The applications were opposed by the Press Association.

26. It is clear from the judgment that the press were provided with full copies of the medical reports, and other evidence, on terms of confidentiality, in order to argue their case.

27. There are differences in that case to this, of course. The names of the prisoners in that case were not in the public domain. It does not appear to have been argued that the reports should be withheld from the press so there is no judgment of principle from Tipples J. Nevertheless, it follows what I would consider to be the normal procedure. If a person is a party to proceedings, he or she would expect to see the material on which the Judge will make his or her decision relevant to those proceedings unless the information attracts Public Interest Immunity (PII) or there is some other legal bar preventing disclosure.

28. Mr Menon argues that on the facts of this case, the weight to be given to Mr Abdallah's Article 8 rights outweighs the rights of the CPs and the other considerations that are engaged. The reason for this, it is argued, is that the conclusions of Dr Latham's report, and to a more limited extent Dr Kent's, mean that any argument that the CPs may put forward to say that Mr Abdallah is fit to attend, is bound to fail, the CPs could add nothing of relevance if provided with the reports, and therefore all they should be supplied with is a one or two paragraph gist setting out the conclusion that Mr Abdallah is unfit to attend without any of the facts and reasoning that led to that conclusion.

29. In support of that argument Mr Menon, in oral submissions, prayed in aid Rule 12 of the Inquiry Rules 2006 as applying to the issue that I have to decide. Having considered the terms of Rule 12 and s.19 of the Inquiries Act 2005 to which it relates, I am satisfied that it does not apply to this application by Mr Abdallah. That is because Rule 12 in terms relates to applications for or concerning restriction orders or PII applications which entail the withholding of evidence from the public. This is not such an application; it is an application to prevent the disclosure of redacted medical reports to CPs.

30. In any event, were Rule 12 to apply to Mr Abdallah's application to prevent the disclosure of reports to CPs, it would add nothing to Mr Abdallah's argument. Mr Menon argued that under Rule 12(4)(a), disclosure to CPs would not be necessary for the determination of the application and therefore should not be made. But that is the

position here: Mr Abdallah's application has been argued and determined without disclosure of the reports to CPs. Rule 12 therefore adds nothing.

31. Alternatively, Mr Menon appeared to suggest that Rule 12 applies to the reports because of Mr Abdallah's application to be excused from giving evidence. That submission misunderstands Rule 12. Put shortly, in that scenario the reports would not be potentially restricted evidence. That is clear from the terms of Rule 12(1)(a). Rule 12 therefore would not apply.

32. Even if I am wrong about that and Rule 12 does apply to the reports, then under Rule 12(3) I have the power to disclose the material *'to a person who would otherwise not be permitted to see it'* provided the conditions set out in Rule 12(4) are met.

33. Rule 12(4) reads as follows:

> The conditions are that—
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> (a) the chairman considers that disclosure to an individual is necessary for the determination of the application; and
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> (b) the chairman has afforded the opportunity to—
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> (i) the person providing or producing the evidence to the inquiry panel; or
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> (ii) any other person making the relevant application, to make representations regarding whether disclosure to that individual should be permitted.

34. If, contrary to my view, Rule 12 does apply I would have made disclosure to the CPs as I consider that disclosure to them is necessary for the determination of the application. In reaching that conclusion I have had regard to the decision in *R (Metropolitan Police Service) v Chairman of the Inquiry into the Death of Azelle Rodney* [2012] EWHC 2783 (Admin), and in particular paragraph 42.

35. Having carried out the necessary balancing exercise under Article 8, I am satisfied that it is overwhelmingly in favour of disclosure. Mr Abdallah is a central witness in this Inquiry. The importance of his evidence to the family CPs, in particular, is clear. The reports and the letter will be disclosed with confidentiality undertakings so the contents will be known to a relatively small number of people. Irrelevant and sensitive content will be redacted. Mr Abdallah has been offered the opportunity to propose additional redactions. Were any reference made to the personal information contained within the reports during an Inquiry hearing, I would be able to make a restriction order if I considered the relevant criteria were met. The interference with Mr Abdallah's Article 8 rights is limited. I and members of the Inquiry Legal Team have already considered

the contents of the reports. The Inquiry is not proposing to disclose the substantial material provided to the experts, including Mr Abdallah's medical and ACCT records. Part of the medical reports have already been disclosed by Mr Menon in written and oral submissions made available to the families, namely that the risk to Mr Abdallah's health comes from self-harm and suicide. In some ways those facts are the ones which most engage Mr Abdallah's Article 8 rights. What is missing is the facts on which Dr Latham reached that conclusion and his reasoning.

36. Against that, non-disclosure would limit substantially the participation of family CPs in what is an important aspect of the Inquiry's proceedings. They regard the evidence of Mr Abdallah to be potentially important and to prevent them understanding the reason for the postponement of Mr Abdallah's evidence and the basis of an application not to call him at all would be a serious restriction on their participation. It would also deprive me of their informed assistance on a matter which is central to the Inquiry's ToR.

37. Mr Menon argues for such a serious restriction because he says the result of the application is inevitable. I do not accept that. Dr Latham says that another psychiatrist might disagree with his conclusions and Dr Kent has been unable to carry out his own examination. It is essential that the fitness of Mr Abdallah is subject to detailed forensic examination which CPs can understand and in which they can take part. That requires disclosure of the redacted reports. It may also involve a hearing, if necessary, in which CPs can participate to supplement the submissions made by CTI and on Mr Abdallah's behalf.

38. For completeness, I have also considered the application applying principles of fairness. The same outcome is reached.

39. It follows that I direct disclosure to CPs of the reports of Dr Latham (dated 8th November 2020) and Dr Kent (dated 9th December 2020), along with Dr Latham's letter (dated 22nd December 2020), with passages that deal with irrelevant personal information redacted.

40. As stated above, redactions have previously been identified by the Inquiry Team and shared with Mr Abdallah. Up until the oral hearing, Mr Abdallah declined to propose any additional redactions. Immediately following the conclusion of the oral hearing, Mr Abdallah's solicitor contacted STI in the following terms: *"If the Chairman rules that the medical reports should now be disclosed in redacted form, we would like an opportunity to consider the redactions and request further redactions that gives affect to the judgement before the reports are disclosed to the CP's."* I ordered that any observations on the redactions proposed by the Inquiry on 28th December 2020 should be made by 10am on 19th February 2021. Section 40 funding was made available by the Inquiry. I received observations from Mr Abdallah's solicitor shortly after the deadline.

I have taken those observations into account in identifying the redactions I consider appropriate. The reports and the letter will therefore be disclosed in the form I direct.

Postscript

41. That is sufficient to dispose of the application but in the light of what was said by Mr Menon in the course of his application I wish to add a postscript.

42. Mr Abdallah's lawyers have stated more than once that he had nothing to do with Salman Abedi's suicide bombing but, they say, they are strongly advising him not to give any evidence to the Inquiry. The justification they say for not giving evidence is that the Inquiry will not treat him fairly. If the advice of his lawyers is based on that suggestion then it is a matter of great regret. I am bound by statute to conduct this Inquiry fairly. I will do that and would do so without that statutory duty. If Mr Abdallah is concerned that he will be treated as a scapegoat, I can assure all concerned that he will not be dealt with in that way by the Inquiry. He will be treated with fairness in order to discover the truth and to discharge the Inquiry's ToR.

Sir John Saunders

23rd February 2021