
**Ruling on application by Ben Romdhan for an application to be made to the Attorney
General to give an undertaking**

1. The applicant is the brother of Salman Abedi ('SA') and Hashem Abedi (HA). I have determined, and no-one has disputed, that evidence from him would be relevant to the terms of reference of the Inquiry.
2. He is likely to have relevant evidence relating to the issue of the radicalisation of SA and any part that the family and their history in Libya played in that. In 2015, the applicant was found to have images on his phone discovered on a port stop that can properly be described as mind-set images. Their presence may indicate that he shared some of his brothers' extremist views. The radicalisation of SA is a matter that I am required to investigate by paragraph 1(ii) of the terms of reference.
3. The applicant can also give evidence as to the build up to the attack and the circumstances in which his parents took SA and HA back to Libya in April 2017. The build up to the attack is a matter that I am required to investigate by paragraph 2 of the terms of reference.
4. The Solicitor to the Inquiry has made extensive efforts to ensure the applicant's attendance at the Inquiry to give evidence. The attempts that are made and his responses are set out in paras 7 to 27 of the submissions of Counsel to the Inquiry on the issue of this application. I attach those paragraphs to this ruling. Their accuracy has not been disputed by the applicant.
5. The applicant requests that I seek an undertaking from the Attorney General "preventing the use of any evidence given by Mr Ben Romdhan to the Inquiry against

him in any future criminal proceedings". The question of whether to request an undertaking from the Attorney General falls within the broad discretion conferred on a Chairman by s.17(1) of the Inquiries Act 2005.

6. The test that I have to carry out in deciding whether to make an application to the Attorney General for an undertaking was described by the Chairman in the Undercover Policing Inquiry in the following terms: *'any positive effect on establishing the truth falls to be balanced against any negative effect on the administration of justice.'* No-one disputed that this was an accurate summary of the test.
7. As can be seen from this description of the test, there is a significant subjective element to the decision. That is reflected in the different views of the family Core Participants to the application. It is pointed out in the written submissions made on behalf of families represented by John Cooper QC that, "All want answers... All agree answers are preferable to silence or assertions as to self-incrimination which may prove impossible to go behind... Many are strongly against any accommodation in the face of an apparent unwillingness to be candid, others are not".
8. Some of the families consider that the positive effect outweighs the negative effect. Those families invite me to seriously consider the application. Others take the contrary view and feel that the negative effect on the administration of justice outweighs the positive.
9. Most family groups are split amongst themselves and are expressing conflicting views. The one team which is not split is that represented by Pete Wetherby QC who strongly oppose the application. It was described as 'unconscionable' that the applicant may give evidence accepting he played a role in the attack but have protection from prosecution.
10. I understand both positions taken by the families.
11. While I have looked at what other statutory public inquiries have done and benefitted from their approaches, by their very nature these applications are fact sensitive and the result of an application in another case provides little, if any, indication how I should decide this application.

12. The undertaking sought is in the same terms as that made by the Attorney General to witnesses giving evidence to the Undercover Policing Inquiry. That undertaking provides that any evidence or information provided to the Inquiry by the witness will not be used in any criminal proceedings, or when deciding whether to bring such proceedings. The undertaking given at that inquiry extended to any evidence obtained which is the product of an investigation commenced as a result of any evidence, document, information or thing provided by the witness.
13. There are a number of matters which I will have to take into account in reaching my conclusion.
14. First, am I going to get useful information from the applicant and if so on what topics? As has been pointed out in argument, at present, the applicant is not saying that he will answer all, or any, questions relevant to my Inquiry if an undertaking is provided. The applicant's evidence is likely to cover a number of discrete topics; it is possible that if there were an undertaking from the Attorney General he would still refuse to answer questions on some topics. It may be that any answers he gives would be designed not to help but to hinder the work of the Inquiry.
15. If he did refuse, he would not be able to rely on the privilege against self-incrimination. The effect of an undertaking would mean that the applicant would not be at risk of criminal proceedings from the evidence he gives to me. That means he could not properly rely on the privilege against self-incrimination under section 14 of the Civil Evidence Act 1968 which is given effect in the context of any inquiry by section 22 of the Inquiries Act 2005. In those circumstances, if the applicant is compelled to give evidence to me and seeks to rely on the privilege afforded by section 22 of the 2005 Act, consideration would need to be given to whether it is reasonable for him to decline to answer questions.
16. There is no doubt that the applicant may be able to provide answers on a wide range of topics which are relevant to the Inquiry's terms of reference. The issue is: will he give constructive answers which are designed to and do assist the Inquiry in its search for truth even if granted protection from criminal proceedings for the evidence he gives. His responses to the Inquiry so far seem to me to have been designed to hinder the work

of the Inquiry and not to assist it. I have no confidence that if granted an undertaking the Applicant will do his best to assist the work of the Inquiry. There would need to be a significant shift in his attitude if he were to do so.

17. Against the possible benefit to the Inquiry, I have to weigh the potential negative effect on the administration of public justice. There is no restriction put in the application on the offences for which an undertaking is sought. The applicant was arrested by the police after the bombing and interviewed as a suspect. He was released without charge. The Crown Prosecution Service have concluded that there is insufficient evidence on which to charge the applicant at present. The investigation remains open and will no doubt be open for a considerable period of time. Whether it remains open or not, it is likely that any evidence given by the applicant to the Inquiry would be considered by the police. It may be that there would be other lines of enquiry which could be pursued as a result of answers that he gave.
18. The police will have investigated the applicant for a number of terrorist offences as a result of the bombing, ranging from being involved in the attack itself to having information which he was required by law to pass on to the authorities. If as a result of an undertaking from the Attorney General the applicant was to disclose material to the Inquiry which provided evidence to justify charges of murder or conspiracy to murder then he could avoid trial for 22 murders and causing serious injury to many more. While less serious, if he were to disclose material as a result of the undertaking which evidenced a failure by him to disclose information to the authorities which could have prevented the bombing happening, a failure to prosecute would be considered by many to be a considerable affront to justice.
19. For all those reasons, I have concluded that the potential effect on the administration of justice considerably outweighs the potential benefits of allowing the applicant to give evidence without the risk of criminal proceedings. In those circumstances, the balance in this case is against any request being made to the Attorney General for an undertaking and I am not persuaded to make one.
20. I will call the applicant to give evidence in the normal way. He has already been notified in a Rule 9 request issued last year of the areas about which I will seek

information. If in relation to any question he asserts the privilege against self-incrimination then he will be required to justify it. If I do not consider that he is entitled to rely on the privilege and is not entitled to refuse to answer then I shall consider what the next steps should be.

21. I am under an obligation to act fairly and I will. I will ensure that advocates are fair and I will not allow the witness to be intimidated. I value the reputation for fairness of our legal system in all circumstances. I recognise how witnesses can be intimidated by any judicial process. That would not be acting fairly in my view.

22. I look forward to the co-operation of the applicant to assist my Inquiry. He does not need the protection of an undertaking to do so.

Sir John Saunders

10th June 2021