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**Ruling on application to revoke s.21 notice by Abdalraouf Abdallah**

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1. By a notice dated 22<sup>nd</sup> July 2021 Mr Abdalraouf Abdallah (“AA”) has been required to give evidence to this Inquiry on 20<sup>th</sup> October 2021, pursuant to section 21 of the Inquiries Act 2005.
2. Mr Abdallah is an important witness. He was a friend of Salman Abedi. He was convicted in May 2016 for facilitating the provision of men, weapons and money for terrorist purposes in Syria. Whilst he was on remand, Salman Abedi visited Mr Abdallah at HMP Belmarsh in February 2015. Salman Abedi visited him again in prison, following Mr Abdallah's conviction in January 2017. An expert on Islamist extremism I have instructed, Dr Matthew Wilkinson, has suggested that Mr Abdallah exposed Salman Abedi to Islamist extremist views and played a role in radicalising him. This is a view I intend to test in evidence with the expert. I would also wish for there to be the opportunity to explore relevant issues with Mr Abdallah himself.
3. It is important to stress that my investigation must be within the parameters of the Inquiry's Terms of Reference ('ToR') and the statutory framework set out in the Inquiries Act 2005. The relevant part of these require that I examine –
  - a. The background of Salman Abedi (paragraph 1(i) of the ToR);
  - b. His radicalisation, including his relationship with relevant associates (including family members and others), and any relevant external sources (e.g. online) and whether Prevent referrals should have been made in respect of Salman Abedi and/or any of his family members (paragraph 1(ii) of the ToR); and

- c. The knowledge of the Security Service, the police and others about Salman Abedi, his radicalisation, and his relationship with relevant associates, including family members and others (paragraph 1(iii) of the ToR).
4. Mr Abdallah's evidence, as well as the evidence of others, is likely to be relevant to these issues. I have made clear that I wish for there to be the opportunity to explore it with him. However, it is important to note that section 2(1) of the Inquiries Act 2005 does not permit me to determine anyone's civil or criminal liability, although I am not to be inhibited in the discharge of my functions by any likelihood of liability being inferred from facts that I determine or recommendations that I make.
5. I must, at all times, act fairly (section 17 of the Act) in the conduct of my investigation. I have granted Mr Abdallah funding for legal representation at public expense under section 40 of the Act. This was made available before my legal team interviewed Mr Abdallah in 2020 to ensure that he has the opportunity to provide legal submissions on any matters that are relevant to his interests as a witness.
6. By letter dated 18<sup>th</sup> August 2021 solicitors instructed by AA applied to revoke the notice under section 21(4) on the grounds that *'it is not reasonable in all the circumstances to require him to comply with such a notice'*.
7. The grounds to support the application are that as a result of AA's mental condition, the requirement to give evidence will increase his risk of self-harm and/or suicide. Accordingly, it is argued that to require him to give evidence would breach AA's rights under Articles 2, 3 and/or 8 of the ECHR. Further, in considering whether the requirement to give evidence is or is not reasonable, I am told that AA intends to give no answer to any question which is put to him by asserting his privilege not to answer questions which might incriminate him. I am further told by his leading counsel that he has been given legal advice not to answer any questions. That, it is argued, renders it even more unreasonable to require him to come to give evidence when it could affect his health.
8. In considering this application to revoke the notice I have been provided with a comprehensive set of medical records for AA and obtained expert reports from two consultant psychiatrists, Dr Kent and Dr Latham. At a hearing on 14<sup>th</sup> October 2021, I heard oral evidence from Dr Kent and Dr Latham. I have also been assisted by both

written and oral submissions from Mr Rajiv Menon QC, on behalf of AA, as well as CTI and counsel for several Core Participants in the Inquiry.

9. In view of the need to produce this judgment as soon as possible I do not refer to every point made in these submissions or every relevant aspect of the medical and other evidence. However, I have considered everything I have heard and read carefully and taken it into account in reaching my conclusions. The fact that I do not expressly mention any particular matter does not mean I have failed to have regard to it.
10. Dr Kent and Dr Latham are in agreement. They inform me that AA suffers from PTSD and over the years he has self-harmed on a number of occasions. [REDACTED]  
[REDACTED] It is right to note that since he was served with the s.21 notice by the Inquiry to give evidence the frequency of his self-harm has increased, although the reasons he has given for this self-harm relate to a number of different factors, most of which are entirely unconnected with the Inquiry. They agree that it is likely that requiring AA to give evidence will increase the risk of self-harming and, [REDACTED] The level of that increase in risk is not possible to evaluate.
11. There is a possibility that these incidents of self-harm are designed and intended to manipulate the Inquiry, as Dr Kent acknowledged. That possibility cannot be eliminated but it could not be said with any degree of certainty that this is the case here.
12. I accept that there is an obligation on the State, which obligation I am under, to do everything it reasonably can to prevent self-harm or suicide attempts by prisoners.
13. The Inquiry has a duty to investigate the matters surrounding the deaths resulting from the bombing by Salman Abedi. There is no doubt that AA can give potentially relevant evidence. This was not disputed by anyone. It is, therefore, my duty to investigate that, so far as I lawfully can, in order to hold an Article 2 compliant inquiry.
14. The focus of the investigation at the 14<sup>th</sup> October hearing was to identify the nature and level of the existing risk, the extent to which it will be increased by the requirement to give evidence and the extent to which the risk can be controlled.

15. It is a regular part of the work of our prisons sadly to deal with the risk of suicides and self-harming. There are many mentally ill prisoners. Despite efforts made by the prison authorities, people do commit suicide in prison and do self-harm. Prisons have a duty to do everything reasonable to prevent it. AA has self-harmed [REDACTED]

16. Having considered all the evidence, I accept that there would be an increase in the risk of suicide and self-harm if I do not revoke the s.21 notice, but that increase is not possible to quantify with any certainty and does not, in my judgment having heard the evidence, reach a level that engages Article 2 or 3. It is in my view a risk that is capable of being properly managed in the prison estate. The Governor at the prison where AA is has been alerted to these risks and has been supplied with copies of the psychiatric reports. I would expect the prison to take such additional precautions as are necessary to prevent suicide or self-harm as a result of this notification.

17. The threshold to engage the operational duty under Article 2 has been described as “very high” (*Van Colle v. Chief Constable of Hertfordshire* [2009] 1 AC 225) and is that there is a real and immediate risk to life which is objectively verified. The same threshold applies to Article 3. In light of all that I have heard, I do not consider that there would be any violation of AA’s Article 2 or 3 rights by requiring him to attend the Inquiry to give evidence.

18. I am also not persuaded that the risk of harm reaches the necessary level of seriousness to engage Article 8. However, if I am wrong about that, I have gone on to consider whether any interference would be justified. I have weighed any interference with AA’s Article 8 rights against the important countervailing public interest in the Inquiry carrying out a comprehensive investigation, including my duty to ensure that it is Article 2 compliant. I have asked myself whether there is any less intrusive step that could be taken. On balancing the competing interests in light of the evidence before me, I find that any interference with AA’s Article 8 rights would be necessary and proportionate.

19. In reaching my conclusion I have had regard to the fact that AA gave evidence with clarity and robustness over three days at his criminal trial. While this was five and a half years ago, it post-dated his diagnosis of PTSD.
20. I have also had regard to the fact that AA informed Dr Kent that he intended to give evidence at his parole hearing. I accept that he has yet to receive legal advice in relation to this. Further, there is at least one material difference between those proceedings and the Inquiry in terms of their respective publicity.
21. However, both sets of proceedings involve AA giving evidence which involves talking about matters which may engage the cause of his PTSD or other stressors. As such, in my judgment AA's attitude towards both sets of proceedings is of relevance to my decision-making. It was not, though, determinative of the conclusion I have reached.
22. The other part of the submission by Mr Menon QC, namely whether AA can properly claim the privilege against self-incrimination, can only be dealt with at the hearing. It is not open to a witness at an Inquiry simply to invoke the privilege against self-incrimination without justifying it. It also has to be dealt with on a question-by-question basis; there can be no blanket application of the privilege. At the moment I have been told by Mr Menon QC that AA asserts that he had nothing to do with the bombing and did nothing to encourage it, and that he would like the families to know that. However, it is said AA says he does not trust the legal system in this country. Included in that are the police, CPS, courts and the Inquiry who he feels are out to convict him. That provides no objective justification for a claim to privilege.
23. Mr Menon QC has told me that AA has been given legal advice not to answer questions. The basis of that advice seems to be that if he was under arrest and being interviewed in a police station as part of an investigation into the 22 deaths caused in the Arena attack any sensible lawyer would advise him to say nothing. In the circumstances of AA's consequent intention to refuse to answer any question, it is claimed that requiring AA to attend will cause him to be dehumanised and humiliated, to the frustration of those who want him to answer.
24. Setting aside whether or not the advice tendered was proper, I am satisfied that exercising the right to silence in a police interview is entirely different from claiming

the privilege against self-incrimination when being questioned in a statutory public inquiry.

25. Of course, I will listen to the basis for any claim to privilege and consider it, but it will have to be on a proper legal basis and it will be at the hearing when AA attends to give evidence.
26. Accordingly, I refuse to set aside the notice on any of the grounds advanced.
27. In relation to special measures to be put in place, I am happy to agree to those set out in paragraph 58 of CTI's submissions. In so far as holding the hearing by video link, in principle I do not think that it is justified, but I will re-consider that when I am fully appraised of the logistical problems there may be. In the meantime, I direct that AA comes to court to give evidence.
28. Finally, I was concerned to hear from Mr Menon QC at the end of his submissions that he is not available on 20<sup>th</sup> October, as he has another professional commitment. He also said that his junior was outside the jurisdiction so was unable to appear, and that his solicitor also had another professional commitment. This is the first that the Inquiry had heard of any such difficulty despite AA and his legal team being on notice of the 20<sup>th</sup> October date for almost three months. I am very reluctant to delay this hearing as that might affect AA's mental health more than is necessary. I expect that the matter is resolved speedily, as it is not an acceptable situation.

**Chairman**

**Sir John Saunders**

**15<sup>th</sup> October 2021**