Neutral Citation Number: [2021] EWHC 3274 (Admin)

Case No: CO/3631/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Manchester Civil Justice Centre

Date: 07/12/2021

Before:

THE HONOURABLE MR JUSTICE SWEENEY

- -

Between:

SIR JOHN SAUNDERS
CHAIRMAN OF THE MANCHESTER ARENA INQUIRY

And

BEN ROMDHAN
(Previously known as ISMALE ABEDI)

- -

Mr Paul Greaney QC and **Mr Nicholas de la Poer QC** for the **Applicant**
Miss Rebecca Filletti (Instructed by Levins Solicitors) for the **Respondent**

Hearing date: Friday 26 November 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII, (if appropriate), and/or publication on the Courts and Tribunals Judiciary website.
The date and time of hand-down was deemed to be
14:00 on **Tuesday 7 December 2021**.

The Hon. Mr Justice Sweeney:

Introduction

1. The Manchester Arena Inquiry was established by the Home Secretary on 29 October 2019. It is an investigation into the circumstances in which Salman Abedi detonated an improvised explosive device in the City Room within the Victoria Exchange Complex in Manchester on 22 May 2017, murdering 22 people and injuring hundreds more.

2. The Inquiry's Terms of Reference require the investigation, among other things, of the radicalisation of Salman Abedi and the circumstances in which the bomb was prepared and assembled.

3. Salman Abedi did not act alone. In March 2020 his brother, Hashem Abedi, was convicted of the murders and of numerous attempted murders. He was later sentenced to life imprisonment with a minimum term of 55 years.

4. On 22 July 2021, acting under the provisions of section 21(1)(a) of the Inquiries Act 2005 ("the Act"), and against the background of numerous communications between the Inquiry and the Respondent over the preceding 14 months, the Chairman of the Inquiry, Sir John Saunders, issued a Notice to the Respondent, who is the older brother of Salman and Hashem Abedi, requiring him to attend the Inquiry on 21 October 2021, in order to give evidence.

5. On 29 August 2021 the Respondent left the jurisdiction, did not return, and thus failed to attend the Inquiry as required.

6. In the result, on 26 October 2021, the Chairman, acting under the provisions of section 36(1)(a) of the Act, certified that the Respondent had failed to comply with the Section 21 Notice issued on 22 July 2021, and applied to this Court for a bench warrant directing the arrest of the Respondent. The warrant ultimately sought had two particular features:

    (1) It was returnable to the Inquiry Hearing Room.

    (2) It would expire on the date that, in accordance with section 14 of the Act, the Inquiry ended.

7. The application for a bench warrant was supported by a witness statement, dated 26 October 2021, made by Mr Timothy Suter, the Solicitor to the Inquiry. I append a copy of his statement to this judgment.

8. I heard the application on 26 November 2021. The Respondent who, it is believed, remains abroad, was represented. He did not dispute the legality of the issue of the Section 21 Notice, nor the fact that he was in breach of it. Equally, he accepted that enforcement of a Section 21 Notice is by means of certification of the matter by a Chairman under section 36 of the Act, and that the powers of the High Court include, potentially at least, the power to issue a bench warrant.

9. Nevertheless, the Respondent opposed the application on three grounds, namely that:

    (1) It was unnecessary and disproportionate.

    (2) It defeated the purpose of the Act, because it was contrary to the purpose of section 36.

    (3) Any order would be unenforceable because the Respondent was out of the jurisdiction.

10. Having heard submissions on behalf of both parties, I granted the application and issued a warrant in the terms sought. These are my reasons (which I reserved) for doing so.

Outline Legal Framework

11. Section 17 (3) of the Act provides that, when making any decision as to the procedure or conduct of an Inquiry, the Chairman must act with fairness and also with regard to the need to avoid unnecessary costs.

12. In relation to certification and warrants my attention was drawn to a number of authorities, in particular the following (all at first instance):
    Paisley, Re Section 36 of the Inquiries Act 2005 [2008] NIQB 158; *Re Ian Paisley Junior* [2009] NIQB 40; *Hanson v Carlino* [2019] EWHC 136; *Moore-Bick v Mills* [2020] EWHC 618 (Admin); *Saunders v Taghdi* [2021] EWHC 2785 (Admin); *Saunders v Taghdi* [2021] EWHC 2878.

13. It was common ground that those cases variously decided that:

    (1) Whilst the decision of the Chairman must carry weight, or considerable weight, this Court must give due and proper consideration as to whether or not it is appropriate to make an enforcement order.

    (2) Section 36 is remedial in nature and calculated to secure compliance - with the focus being on obtaining the relevant information rather than punishment.

    (3) Issuing a bench warrant is an extreme remedy, and must only be done when it is "necessary" – with the test being one of necessity and proportionality, which involves the weighing up of the competing interests.

Factual Background

14. The factual background is set out in detail in Mr Suter's witness statement. It suffices to highlight the following:

(1) On 28 May 2020 Mr Suter wrote to the Respondent requiring that, by 22 June 2020, he provide a witness statement to the Inquiry, dealing with the 39 topic areas specified by Mr Suter. There was no response.

(2) On 7 July 2020 Mr Suter wrote again asking the Respondent to provide a witness statement by 21 July 2020.

(3) On 20 July 2020 the Respondent replied saying that he was not able to provide a witness statement, and asserting that that was because he was concerned about the risk of self-incrimination - as he had been arrested in the aftermath of the bombing and had been questioned for 14 days.

(4) On 23 July 2020 the Respondent was served with a Notice, under the provisions of section 21(2)(a) of the Act, which required him to attend the Inquiry for interview in the week of 24 August 2020.

(5) On 12 August 2020 the Respondent's solicitor provided an unsigned statement from the Respondent, dated that day, in which the Respondent acknowledged service of the Section 21 Notice, but said that he did not wish to answer the questions asked of him in the letter of 28 May 2020, as he wished to claim the privilege against self-incrimination. He further asserted that his participation in the Inquiry might put members of his family at risk.

(6) On 21 August 2020, which was the day after Hashem Abedi had been sentenced, Sky News published the content of a telephone interview with the Respondent.

(7) Also on 21 August 2020, Mr Suter wrote to the Respondent's solicitor in relation to the Respondent's claim of privilege against self-incrimination, referring to section 14 of the Civil Evidence Act 1968 and to a small number of authorities, and indicating that the Chairman considered that the reasons given by the Respondent were not sufficient to discharge the Section 21 Notice.

(8) On 4 September 2020 the Respondent's solicitor replied, maintaining the Respondent's position in relation to the privilege against self-incrimination and inviting the Inquiry to reconsider its position and to withdraw the Notice.

(9) On 9 September 2020 Mr Suter replied, underlining the fact of the Respondent's Sky interview, and pointing out that it was not for the Chairman to establish that privilege did not apply – rather, and in relation to each question asked of him, it was for the Respondent to establish that privilege did apply. Mr Suter thus asked the Respondent to provide a written statement to the Inquiry by 18 September 2020.

(10) On 13 September 2020 the Respondent's solicitor replied, stating that the Respondent would not be making a further statement, but that a signed version of the statement supplied on 12 August 2020 would be provided.

(11) Mr Suter replied on 16 September 2020 - indicating that, in view of the Respondent's non-compliance, it was anticipated that he would be summoned to appear before the Chairman to give evidence in person.

(12) On 16 October 2020, following the broadcast of an attempt to interview the Respondent by the BBC, Mr Suter wrote again to the Respondent's solicitor asking for the Respondent's help. There was no substantive reply.

(13) On 9 April 2021 Mr Suter emailed the Respondent's solicitor pointing out that the Inquiry had recently interviewed Hashem Abedi (who had confirmed his participation in the planning and preparation of the bombing), and that the Inquiry was in possession of an expert report (in relation to radicalisation) which explained the relevance to the Inquiry of the background and family ties of Salman and Hashem Abedi - in relation to which the Chairman would be assisted by comments from the Respondent. Mr Suter emphasised that the Inquiry was a search for the truth, that the Respondent was in a unique position to assist with the investigation, and that the Chairman could require the Respondent's attendance.

(14) On 20 April 2021, the Respondent's solicitor replied, saying that the Respondent continued to invoke the privilege against self-incrimination, and asserted that the Sky interview had been made up by the relevant journalist. Finally, the Respondent's solicitor raised the possibility of the Chairman applying to the Attorney General for an undertaking that any evidence given to the Inquiry by the Respondent would not be used in any prosecution. Nevertheless, the solicitor continued: "*I cannot promise that such an undertaking would address all Mr Ben Romdhan's concerns, but it would radically alter the picture*".

(15) Mr Suter responded on 22 April 2021, setting out in considerable detail the law, and the principal authorities, in relation to claims of privilege against self-incrimination. He also made clear that, if it was the Respondent's position that he would answer questions if a formal undertaking from the Attorney General was in place, the Respondent should provide a formal written indication of that fact.

(16) On 10 May 2021 the Respondent's solicitor lodged an application for an undertaking to be sought by the Chairman from the Attorney General.

(17) Having heard oral submissions on 19 May 2021, the Chairman refused the application in a written ruling dated 10 June 2021. In the course of the ruling the Chairman variously opined, in relation to the now the Respondent, that;

(a) There was no doubt that he may be able to provide answers on a wide range of topics that were relevant to the Inquiry's Terms of Reference.

(b) It was possible that if there was an undertaking from the Attorney General the Respondent would still refuse to answer questions on some topics, and that it might be that any answers that he gave would be designed not to help, but rather to hinder, the work of the Inquiry.

(c) The Respondent's responses to the Inquiry thus far appeared to have been designed to hinder the work of the Inquiry and not to assist it, and he had no confidence that, if granted an undertaking, the Respondent would do his best to assist the work of the Inquiry. There would need to be a significant shift in his attitude were he to do so.

(d) The potential adverse effects on the administration of justice in granting immunity considerably outweighed the potential benefits of allowing the Respondent to give evidence with immunity.

(e) He (the Chairman) was under a duty to act fairly and would do so and looked forward to the cooperation of the Respondent to assist the Inquiry, which he did not need the protection of an undertaking to do.

(18) As touched on above, on 22 July 2021 a Notice under section 21(1)(a) of the Act was issued. It required the Respondent to give evidence to the Inquiry in person on 21 October 2021. The Notice was served on the Respondent's solicitor on 23 July 2021. No application was made to set the Notice aside.

(19) On 28 August 2021, the Respondent was stopped prior to boarding a flight from Manchester to Istanbul. In the result, the Respondent missed the flight. However, as already indicated, he flew out the next day and it appears that he remains out of the jurisdiction.

(20) On 20 October 2021, in response to an enquiry from Mr Suter, the Respondent's solicitor indicated that the Respondent was unwilling to give evidence and would not be attending the Inquiry the following day. The solicitor re-iterated the Respondent's concerns as to his own safety and the safety of his family.

(21) As indicated above, the Respondent failed to attend the Inquiry, as required, on 21 October 2021. Mr Suter wrote to him later that day asking him to reschedule his evidence and pointing out that it was anticipated that enforcement proceedings would be commenced. No reply was received.

Submissions

15. Against the background of the Statement of Matter Certified (dated 26 October 2021), and of the Applicant's Skeleton Argument (dated 18 November 2021), Mr Paul Greaney QC, for the Chairman, in the combination of his written and oral submissions, explained that the Chairman's approach was as follows:

    (1) To maintain, in the instant proceedings, the application for a bench warrant with the warrant having, as indicated above, two particular features – i.e. that it would be returnable to the Inquiry Hearing Room, and that it would expire on the day that, in accordance with section 14 of the Act, the Inquiry ends.

    (2) Shortly before the Inquiry comes to an end (and potentially subject to the bench warrant not having been executed) to institute proceedings against the Respondent, under section 35(1) & (5) of the Act, for breach of the Section 21 Notice issued on 22 July 2021.

    (3) As a result to secure the Respondent's evidence separately from any appropriate punishment for his misconduct to date - with (if necessary) the DPP taking over any prosecution in that regard (with arrangements in principle having been made in relation to that eventuality).

    (4) To invite the inclusion in this Court's Order of a requirement for a Directions Hearing in the High Court on 22 April 2022, to enable the Court then to take stock of the situation.

16. Mr Greaney further submitted, among other things, that the Chairman had rightly concluded that the Respondent had relevant evidence to give, in particular in relation to Term of Reference para 1(ii) [which requires the Chairman to investigate Salman Abedi's radicalisation in the context of his relevant associates, including family members], and Term of Reference para 2(ii) [which requires the Chairman to investigate the storage of the bomb].

17. As to the Chairman's conclusion in relation to para 1(ii), Mr Greaney underlined that the Respondent was the older brother of Salman Abedi and is the older brother of Hashem Abedi and that, in the Chairman's judgment, the Respondent was thus very well placed to provide relevant evidence in relation to Salman Abedi's radicalisation – particularly in light of the following:

    (1) The Inquiry's expert on radicalisation had identified the family structure around Salman Abedi as a potentially crucial part of his path to radicalisation.

    (2) The Intelligence and Security Committee of Parliament, in its report into the terrorist attacks of 2017, identified that it was likely that the Respondent's

father, Ramadan Abedi, had played a significant role in radicalising Salman Abedi.

(3) Ramadan Abedi is outside the jurisdiction and has refused to engage with the Inquiry.

(4) Very recent evidence to the Inquiry from a convicted terrorist, Abdal Raouf Abdallah, to the effect that he had fought in Libya for an Islamist Militia called the 17th February Martyrs Brigade, and that in 2011 / 2012 Ramadan Abedi was part of that group. The 17th February Martyrs Brigade subsequently went to Syria to fight. He had also seen Salman Abedi in Libya. Other evidence recently given to the Inquiry was to the effect that Ramadan Abedi was also associated with the Libyan Islamic Fighting Group (which was known to have, or to have had, links with Al-Qaeda).

(5) Abdallah had also said in his evidence to the Inquiry that in 2015 / 2016, whilst living in Manchester and associating with Salman Abedi, he had noticed a change of attitude in Salman Abedi – who had become more religious, had taken to wearing Libyan dress, had stopped taking drugs and had stopped partying.

(6) The fact that the Respondent had been stopped under Schedule 7 of the Terrorism Act 2000 in September 2015 (i.e. at around the time that Salman Abedi changed), and that a device in his possession had been found to contain a substantial quantity of Islamic extremist material

18. As to the Chairman's conclusion in relation to para 2(ii) of the Terms of Reference, Mr Greaney underlined that the Respondent's DNA had been found on a hammer inside the Nissan Micra in which his brothers had stored the component parts of the improvised explosive device.

19. Therefore, Mr Greaney submitted, there were compelling reasons [albeit stronger in relation to para 1(ii) then para 2(ii)] to conclude that the Respondent had relevant evidence to give to the Inquiry, and that such a conclusion provided a compelling basis for requiring him to attend to give that evidence. As did the fact that other witnesses, including Abdal Raouf Abdallah, who had initially failed to comply with Section 21 Notices, had (when ultimately brought before the Inquiry) given evidence in full.

20. Mr Greaney continued that the Respondent's approach to the Inquiry to date, including his wilful refusal to reply to the lawful requirement on him to attend a statutory public Inquiry which was investigating the deaths of 22 innocent people at the hands of his terrorist brothers, meant that it was necessary and proportionate for the warrant to be granted in order to ensure that, so far as possible, the Respondent gives evidence in what is a full and fearless investigation, as mandated by the Home Secretary.

21. Against the background that there remained a good deal more evidence to be heard, should the Respondent return to the UK prior to the Chairman discharging his function, it was imperative, Mr Greaney submitted, that a mechanism be put in place to bring the Respondent before the Inquiry in order to give his relevant evidence. Equally, given that the Respondent had shown himself to be determined not to comply with the lawful requirements on him to attend, a bench warrant was necessary and proportionate, with the warrant being returnable to the Inquiry Room - in similar terms to those granted in Saunders v Taghdi [2021] EWHC 2878 (Admin).

22. As to the first ground of objection, Miss Filletti, on behalf of the Respondent, conceded that, in principle, it was self- evident that the Respondent was in a position to speak to Salman Abedi's background and radicalisation, but submitted that it was less self-evident that he could speak to para 2 of the Terms of Reference – given that the object connected to him that was found in the Nissan Micra was a hammer – i.e. a movable object which could have been used in unrelated endeavours. Equally, she underlined, DNA is transferrable.

23. However, Miss Filletti submitted that whilst, again in principle, it might be that the Respondent could speak to at least some matters covered by para 2 of the Terms of Reference, the reality was somewhat different given the observation of the Chairman, when giving his judgement in relation to the proposed seeking of an undertaking from the Attorney General, namely,

> "*I have no confidence that if granted an undertaking the Applicant will do his best to assist the work of the Inquiry*."

24. Miss Filletti argued that that comment severely undermined the contention that the Respondent's attendance before the Inquiry would provide relevant evidence, and also undermined the assertion that in all the circumstances it was necessary and proportionate for a bench warrant to be issued – the more so since very little of evidential value had resulted from either the Respondent's arrest and interview in 2017, or from his detention at the airport on 28 August this year.

25. Nor, Miss Filletti submitted, was it a negligible feature that the Respondent was lawfully justified in not answering questions, the answers to which would tend to incriminate him.

26. As to the second ground of objection, Miss Filletti relied upon passages in the judgments of Gillen J (as he then was) in the *Paisley* cases (above) - each underlining that section 36 of the Act is remedial in nature and a step toward securing compliance with a Section 21 Notice - with the focus being on obtaining information rather than punishment. Against that background, Miss Filletti submitted that the issue of a warrant would serve only to discourage the Respondent from returning to the jurisdiction during the period of the Inquiry, which defeated the purpose of section 36 and undermined the very intention of Parliament.

27. As to the third ground, which she accepted overlapped with the other grounds, Miss Filletti underlined that the Respondent was outside the jurisdiction and that his whereabouts were unknown, and submitted that the grant of a warrant would dissuade the Respondent from returning to the UK, that it could not be enforced outside the UK, and that therefore, despite a warrant having the veneer of enforceability, it would not have any actual capacity for enforcement and so should be refused.

Reasons

28. I gave due and proper consideration as to whether or not it was appropriate to make an enforcement order. No article 2 arguments were advanced.

29. In my view Miss Filletti's reliance on the Chairman's observation (quoted in para 23 above) was misconceived, given that the observation was clearly made in the course of balancing worst case scenarios when deciding whether or not to apply to the Attorney General for an undertaking, In my view the reality is demonstrated by what the Chairman said at the end of the judgment, namely:

> "*I am under an obligation to act fairly, and I will…….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."*

30. Like the Inquiry, it is the experience of this Court that intransigent witnesses will often give evidence once they have been compelled to attend and, in my view, the Chairman was fully entitled to proceed upon the basis that that is what will happen in the Respondent's case. The more so as the proceedings will be conducted fairly and there is a well-established and fair process (as summarised in Mr Suter's letter of 22 April 20) for dealing with claims of privilege against self-incrimination.

31. The remainder of Miss Filletti's submissions came close to the proposition that the harder a person has tried to avoid providing evidence the less appropriate it is for a warrant to be granted in relation to them. I saw no merit in that approach.

32. Against that background, taking the view that there are indeed compelling reasons to conclude that the Respondent has relevant evidence to give to the Inquiry, and having borne in mind that section 36 is remedial in nature and calculated to secure compliance, and that the issue of a warrant is an extreme remedy, I weighed up the competing interests of necessity and proportionality, and concluded that the issue of a warrant was plainly necessary.

On behalf of the Applicant
Witness: T J Suter
No. of witness statement: 1
Exhibit: TJS/1 – TJS/9
Date: 26 October 2021

IN THE HIGH COURT OF JUSTICE **CLAIM NO:**
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
BETWEEN:

SIR JOHN SAUNDERS
CHAIRMAN OF THE MANCHESTER ARENA INQUIRY

Applicant

-and-

BEN ROMDHAN
(PREVIOUSLY KNOWN AS ISHMALE ABEDI)

Respondent

FIRST WITNESS STATEMENT OF TIMOTHY JOHN SUTER

I, **Timothy John Suter**, Partner at Fieldfisher LLP of Riverbank House, 2 Swan Lane, London, EC4R 3TT will say as follows:

1. I am instructed on behalf of the Chairman, Sir John Saunders, as the Solicitor to the Inquiry into the 22 deaths arising from the bombing at the Manchester Arena on 22nd May 2017.

2. Sir John Saunders was appointed as the Chairman to oversee the conduct of the Inquiry on its establishment on 22nd October 2019. Prior to his appointment as the Chairman, Sir John Saunders had been appointed in the autumn of 2018 by the Lord Chief Justice, pursuant to section 41 and

schedule 10 of the Coroners and Justice Act 2009 as the nominated judge to sit as the Coroner on the inquests into the 22 people who were killed in the Arena attack.

3. I make this statement on behalf of the Chairman to assist the Court with its consideration of the application for enforcement proceedings against the Respondent, Ben Romdhan (previously known as Ishmale Abedi), pursuant to section 36(1)(b) of the Inquiries Act 2005. The enforcement proceedings arise from the Respondent's failure to comply with a notice served on his solicitor on 23rd July and on him on 26th July 2021 pursuant to section 21(1)(a) of the 2005 Act requiring him to attend the Manchester Arena Inquiry on 21st October 2021 to give oral evidence. The Respondent left the United Kingdom on a flight to Istanbul on 29th August 2021. It is understood that he remains outside the jurisdiction. He has failed, without reasonable excuse, to comply with the section 21 notice.

The Manchester Arena Inquiry

4. The Manchester Arena venue is part of what is referred to as the Victoria Exchange Complex which is situated adjacent to and, in part, runs above Manchester Victoria Railway Station. The Victoria Exchange Complex consists of the Manchester Arena, Martin House (a call centre), an NCP Car Park, an area known as the City Room and a Go Karting Track.

5. On the evening of 22nd May 2017 a concert by the US singer Ariana Grande was being held at the Arena. The doors for the general public to access the Arena opened at approximately 18:30. The anticipated attendance at the concert was approximately 14,300 people. The likely audience profile was said to be aged 14 plus years with a 20:80 male to female ratio.

6. At approximately 22:31, a 22-year-old male called Salman Abedi detonated an improvised explosive device in the City Room that he was carrying in a rucksack on his back. The device was detonated as he walked across the floor of the City Room towards exit doors leading from the central concourse of the Arena. The Respondent is the elder brother of the suicide bomber.

7. The improvised explosive device detonated by Salman Abedi was made from a substance referred to as TATP. The device also contained nuts and bolts which were thrown out from the blast as shrapnel. This shrapnel caused many of the injuries to those present in the City Room. Police subsequently recovered 1,984 nuts and more continued to be found during the refurbishment of the area after the bombing.

8. Twenty two people in the City Room were killed in the explosion, as well as the bomber. Those who were killed included concert goers who were exiting the Arena into the City Room and people who were waiting in the City Room to collect friends and family. Ten of those who were killed were teenagers, or younger. The names and ages of the 22 people killed in the attack are listed below, in alphabetical order. The age of each person is noted in brackets next to their name:

    a. John Atkinson (28)

    b. Courtney Boyle (19)

    c. Kelly Brewster (32)

    d. Georgina Callander (18)

    e. Olivia Paige Campbell-Hardy (15)

    f. Liam Thomas Curry (19)

    g. Wendy Fawell (50)

    h. Martyn Hett (29)

    i. Megan Hurley (15)

    j. Alison Howe (45)

    k. Nell Jones (14)

    l. Michelle Kiss (45)

    m. Angelika Klis (39)

n. Marcin Klis (42)

o. Sorrell Leczkowski (14)

p. Lisa Lees (43)

q. Eilidh MacLeod (14)

r. Elaine McIver (43)

s. Saffie-Rose Roussos (8)

t. Chloe Rutherford (17)

u. Philip Tron (32)

v. Jane Carolyn Tweddle (51)

The Respondent

9. The Respondent is the elder brother of Salman Abedi, who carried out the suicide attack at the Manchester Arena on 22nd May 2017. The Respondent was arrested the day after the Arena attack but was not charged with any criminal offences relating to it. The Respondent's younger brother, Hashem Abedi, was convicted of 22 counts of murder on 17th March 2020 and was subsequently sentenced to life imprisonment with a minimum term of 55 years.

10. The Inquiry's Terms of Reference, as identified in the 'Statement of Matters Certified', includes the investigation of whether the attack by Salman Abedi could have been prevented by the authorities. This includes:

> "1. *Whether the attack by Salman Abedi could have been prevented by the authorities, including investigation of:*
>
> *i. The background of Salman Abedi.*
>
> *ii. 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.

….. ".

11. How Salman Abedi came to be radicalised with Islamist extremist views is a matter of considerable importance to the Inquiry. This will be examined in the section of the Inquiry's hearings known as Chapter 13. The knowledge of the Respondent and other family members about the radicalisation of Salman Abedi is central to this aspect of the Inquiry's investigation. The Inquiry's expert on radicalisation, Dr Wilkinson, has prepared a report that identifies the family structures around Salman Abedi as a potentially crucial part of his path to being radicalised.

12. The Inquiry has heard evidence from the Senior Investigating Officer into the Arena attack that the Respondent purchased one-way tickets for his brothers to go to Libya in April 2017. During the criminal investigation, police identified the Respondent's DNA or fingerprints on a hammer found in a Nissan Micra used to store the materials for the bomb that was used in the attack. The Inquiry has also heard evidence that in 2015, the Respondent was stopped by police at Heathrow airport and a phone in his possession was found to have material alleged to have been associated with the so-called Islamic State group.

13. The Chairman wishes to call the Respondent to give evidence to the Inquiry on the matters within the Terms of Reference. These relate to the planning and preparation for the Arena attack and the radicalisation of Salman Abedi. The Respondent is an important factual witness from whom the Chairman wishes to hear oral evidence.

Chronology - Engagement by the Inquiry with the Respondent in 2020

14. On 28th May 2020, I wrote to the Respondent pursuant to Rule 9 of the Inquiry Rules 2006 to request that, by no later than 22 June 2020, he provided a witness statement to the Inquiry. The Respondent was asked to provide a statement to answer 39 topic areas. These topic areas included:

a. background information about the Respondent and his family, including the suicide attacker, Salman Abedi;

b. the Respondent's religious and political views and those of his family;

c. his knowledge of a convicted terrorist called Abdalraouf Abdallah who the Respondent's brother visited in prison in 2015 and early 2017;

d. information about the events leading up to the Arena attack on 22 May 2017 including financial transactions, family travel to and from Libya and telephone and other contact with the family and associates of Salman Abedi; and

e. the Respondent's views on the Arena attack and any knowledge he had of his brother's radicalisation to an Islamist extremist mind-set.

A copy of the Rule 9 Request letter is exhibited to this statement as exhibit **TJS/1**.

15. No statement was received by the deadline of 22nd June 2020. On 7th July 2020, I wrote again to the Respondent to ask for his assistance with the provision of a witness statement to the Inquiry. In that letter I explained as follows:

> *"I write further to my letter to you dated 28 May requesting that you provide a witness statement to the Manchester Arena Inquiry by 22 June 2020. I have enclosed a further copy of that letter which sets out the questions you are asked to answer in the witness statement.*
>
> *I have not received a reply to that request and I would urge you to provide a response to the questions set out in my letter as soon as possible. The Chairman has legal powers to require you to provide him with a witness statement and he may use those if you do not reply to his request for a witness statement promptly and no later than* ***21 July 2020****.*

You may wish to seek legal advice to help you provide your witness statement to the Inquiry and to help explain the legal issues involved. If you require further assistance or guidance on how to write your statement then you can contact me by email (tim.suter@fieldfisher.com) or by phone (0207 861 4656)."

16. On 20th July 2020 I received an email from the Respondent in the following terms:

"Thank you for your letter and hope my email reaches you in the best of health. After giving consideration am not able to provide you with a witness statement because am concerned about the risk of self incrimination. I was arrested as a suspect in the immediate aftermath of the bombing and questioned for 14 days and asked questions of a similar nature."

17. On 23rd July 2020 the Respondent was served with a notice pursuant to section 21(2)(a) of the Inquiries Act 2005 to attend an interview with the Inquiry. The notice required:

"Further to the letter dated 28 May 2020 requesting a witness statement sent pursuant to Rule 9 of the Inquiry Rules 2006 you, Mr Romdhan (also known as Ishmale Abedi), are required to attend an interview to answer questions in relation to matters raised in the Rule 9 letter.

You will be provided with a list of the topics which will be covered in the interview in the week of 24th August 2020 The interview is to be held at a location and on a date and time to be fixed for the provision of the witness statement in the week of 1st September 2020."

18. On 12th August 2020, the Respondent's solicitor, Jeremy Hawthorn, provided a statement from the Respondent of the same date. This statement did not contain a signature or a statement of truth. It said as follows:

"I make this statement in response to correspondence from the inquiry and specifically in response to the section 21 notice recently served on me.

I do not wish to answer the questions sent to me in the letter dated 28 May 2020 for these reasons:

I have already been questioned at length about these matters. In May 2017 I was arrested by the police and detained for an extended period. During my detention I was interviewed as a suspect. The interviews were conducted under caution. My replies are a matter of record and I assume the inquiry has access to them.

I was eventually told that I was being released under investigation. At no time since then have I been told that I am no longer suspected of involvement.

The questions now put to me by the inquiry appear similar in scope to the questions put to me by the police in their interviews. The inquiry can give no guarantee that I will not be prosecuted on the basis of any replies that I may give now.

In these circumstances I wish to claim the privilege against self-incrimination.

A further factor in my decision is that I have family members in Libya. My father in particular has in the past been subjected to violence for political reasons. I fear that any participation on my part in the inquiry may put family members at further risk."

A copy of the statement is produced as **exhibit TJS/2**.

19. On 20th August 2020 Hashem Abedi, the younger brother of the suicide bomber was sentenced to life imprisonment, with a minimum sentence of 55 years, for the murder of the 22 people killed in the Arena attack.

20. On 21st August 2020, Sky News published an interview with the Respondent. The headline to the article said, *"Manchester Arena bombing: Brother of Hashem and Salman Abedi apologises to victims' families"*. The article said that the Respondent was *"speaking out for the first time since the tragedy three years ago, which killed 22 people and injured dozens more and had told Sky News he had no idea his brothers had taken this path"*. The article contained further quotes from an interview with the Respondent that:

    a. *"Salman had changed over time, he'd become more religious, would spend more time in the mosque… but that was just normal,";*

    b. *"I spoke to him the night before the attack, he seemed calm, quite normal, there was no indication he'd do anything like this.";*

c. *"The past three years have been hell. I've lost two brothers and my family is ripped apart because of it,"*; and

d. *"What's happened has happened. I can't stop it now, I can't go back. It's done and dusted. He died, they died."*

21. A copy of the article is produced as **exhibit TJS/3**. The version exhibited is dated 6th September 2020 but I believe the article was first published on 21st August 2020 as I wrote to Sky News on 24th August 2020 to request a copy of the broadcast interview with the Respondent, together with any un-broadcast interview rushes. Sky News subsequently confirmed that the interview with the Respondent was conducted by telephone and was not recorded.

22. On 21st August 2020 I wrote to the Respondent's solicitor and said as follows:

> *"I write further to service on your client of a notice pursuant to section 21 of the Inquiries Act 2005 and the unsigned statement from Mr Romdhan that you supplied on his behalf on 21 [sic] August. As you will be aware, the notice required that Mr Romdhan attend an interview to answer the questions set out in the Rule 9 letter, dated 28 May 2020.*
>
> *I understand from the unsigned statement provided that Mr Romdhan declines to be interviewed on the basis that he claims he has a right to privilege against self-incrimination in relation to the subject matter of the s.21 Notice and the questions that the Inquiry wishes him to answer are similar to those asked of him by the police when he was interviewed under caution following the Arena attack. Mr Romdhan also indicates that he has an unspecified concern for the safety of family members living in Libya if he was to answer the Inquiry's questions.*
>
> *As you will be aware, section 14 of the Civil Evidence Act 1968 provides that a person can refuse to answer any question or produce any document, if to do so would 'tend to expose' that person to proceedings for a criminal offence or criminal penalty. The risk of exposing the individual to criminal proceedings must be 'a real and appreciable risk as distinct from a remote or insubstantial risk' (Rio Tinto Zinc Corporation v Westinghouse Electric Corporation [1978] AC 547). Section 14 of the Civil*

Evidence Act 1968 applies in the context of a statutory public inquiry in light of section 22 of the 2005 Act which says that a person may not be required to give, produce or provide any evidence or document if he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court in the relevant part of the United Kingdom.

The right to privilege against self-incrimination is not an absolute right. It is established case law, see for example Akcine Bendrove Bankas Snoras v Antonov and another [2013] EWHC 131 (Comm) that the privilege against self-incrimination is one which 'has to be exercised with great care and only where there is a real risk of serious prejudice which may lead to injustice'. The privilege can only be claimed where there is a real, and not merely notional, risk of injustice by answering a question.

It is in that context that the Chairman considers that the reasons given by Mr Romhdan are not sufficient to justify discharge of the section 21 notice. A signed witness statement is still required to answer each of the questions set out in the rule 9 letter dated 28 May and. If Mr Romdhan wishes to assert privilege against self-incrimination he will need to explain the basis of that claim in response to each question asked. A blanket assertion of privilege is not accepted. In the circumstances, I would be grateful if you can confirm a date and location for the interview with your client so that he can be asked the questions set out in the rule 9 letter and a statement obtained from him.

Failure to comply or provide adequate reasons result in a referral to the Director of Public Prosecutions as an offence pursuant to section 35 of the 2005 Act or enforcement proceedings pursuant to section 36 of the 2005 Act."

23. On 4th September 2020 at 17:53 the Respondent's solicitor replied by email in the following terms:

"Thank you for the email and its enclosed letter. We accept this means of communication is adequate.

It is disappointing that the chairman does not accept Mr Ben Romdhan's assertion of privilege against self-incrimination. We can but invite him to reconsider.

We are grateful for the cases to which you have referred us, but they do not undermine the argument for privilege. In the RTZ case a British company, summoned to a

British court to give evidence in response to complicated American proceedings, claimed the privilege to avoid the risk of prosecution under European law. That claim was respected by Lord Denning and then by all five members of the House of Lords. As for the Akcine case, your selected quote does not actually relate to self-incrimination at all; in that case the court again respected the principle but was able to propose a number of safeguards to enable a civil claim to proceed.

In the present case perhaps you can indicate specifically which of these propositions the chairman does not accept:

1. Mr Ben Romdhan was arrested in the course of the police investigation of this matter

2. He was detained at a police station for upwards of a week

3. He was interviewed at length under caution (we do not have a record of those interviews but the inquiry no doubt has access to the contents)

4. At the conclusion of his detention he was 'released under investigation'

5. He has never been told that that investigation is at an end and that no further police action will be taken against him

6. It is an offence under the Terrorism Act to withhold information in some circumstances

7. The questions now asked by the inquiry are the same as he was asked by the police

8. Any evidence he gives to the inquiry will be in public and open to cross-examination by other parties

9. The Attorney-General has not given any undertaking that evidence given to the inquiry will not be used in furtherance of any prosecution (as has happened in the Grenfell inquiry).

Unless any of these are disputed we invite the inquiry to reconsider its position and to withdraw the notice issued to Mr Ben Romdhan,

We have earlier raised the issue of funding from the inquiry. If Mr Ben Romdhan is going to be summoned, he will require representation and we would invite the inquiry to make funds available for this purpose."

24. On 7th September 2020, during the opening remarks by Counsel to the Inquiry at the beginning of the Inquiry's oral hearings, Paul Greaney QC explained to the Chairman that, *"Ismail Abedi…has been required by the Inquiry legal team to answer a series of questions relating to what, in general terms, be described as the issue of radicalisation. To date, he has declined to answer these questions on the basis that he maintains that his answers may tend to incriminate him."*

25. On 9th September 2020 at 07:22 I replied to the Respondent's solicitor to confirm that the section 21 notice requiring the Respondent to attend an interview remained in place. I explained:

" Thank you for the email. It is not accepted that the reasons given are a sufficient basis for the s.21 notice to be revoked. There are legitimate and important questions for Ishmale Abedi to answer about the involvement of his brothers in the murder of 22 people and he is being given an opportunity to do so, in writing, now. It is noted that Mr Abedi was willing to be interviewed by Sky News after his brother's sentencing hearing and the general assertion of privilege against self-incrimination is undermined by and runs contrary to that willingness to give media interviews.

As you will be well aware, it is not for the Chairman to establish why the privilege does not apply but rather any claim for privilege against self-incrimination is for the person making the claim to assert against each question on which a statement is requested. We ask you again to provide a signed statement from Mr Abedi answering the questions posed on behalf of the Chairman to assist him with his search for the truth and to answers the matters under investigation by the Inquiry. The statement is to be served by ***4pm on Friday 18 September.*** *Failure to do so may result in enforcement action without further notice for failure to comply, without reasonable excuse, to the terms of the s.21 notice.*

In addition to any enforcement action which may follow non-compliance it is also that important that Mr Abedi understands that a failure to provide a statement in

response to the existing s.21 notice is likely to result in the Chairman issuing a further s.21 to compel Mr Abedi to attend the Inquiry to give evidence in person before him. As such it is very much in Mr Abedi's interests that he provides a written statement. If this eventuates he will be required to explain in person the basis of any claim for privilege against self-incrimination for each question asked.

There is a protocol on the Inquiry website that provides details for how to apply for funding for legal representation at public expense."

26. On 13th September 2020 at 14:48 the Respondent's solicitor replied to my email as follows:

"We will not prolong the correspondence. Mr Ben Romdhan will not be submitting any further statement to the inquiry. I hope to have his signed version of the earlier statement shortly and will send that on for your records.

If there is to be any further action I would be grateful if you could hold off a week as I am in hospital from tomorrow morning for (what I fear is) a few days."

27. On 16th September 2020 at 12:01 I replied to the email from the Respondent's solicitor and explained that:

"…No detailed reasons have been given for the assertion of privilege against self-incrimination or how that privilege is maintained against each question he is being asked to provide evidence about. In the circumstances, it would appear the s.21 notice will not be complied with and I would urge your client to reconsider and provide a witness statement by the required deadline. Please also ensure your client is aware that due to his apparent current non-compliance with a statutory notice it is anticipated that he will now be summonsed to appear before the Chairman to give evidence in person during the course of the Inquiry. This will include being asked the questions on which he has so far declined to provide a written witness statement."

28. On 8th October 2020 the BBC published an article entitled, *"Abedi's brother Ismail refuses to engage with inquiry"*. The article explained that the Respondent had declined to assist the Inquiry and that the BBC had approached him to ask why. The article said, *"he refused to engage and drove away*".

29. In light of the BBC article, on 16th October 2020, I wrote to the Respondent's solicitor to enquire again whether the Respondent wished to assist the Inquiry. I explained that:

> *"We have seen yesterday's BBC interview approaching Ishmale Abedi. In light of that I wished to make contact again to ask for Mr Abedi's assistance with providing a statement to the Inquiry on the matters he has been asked to address. He has potentially important and significant evidence to give to the Inquiry which will help with its search for the truth. We wish to ensure that Mr Abedi has every opportunity to provide an account to assist the Inquiry. I look forward to your response."*

No substantive response was received.

Engagement by the Inquiry with the Respondent in 2021

30. On 9th April 2021 I sent an email to the Respondent's solicitor repeating the request for the Respondent to assist the Inquiry. That email said as follows:

> *"I am writing to you further to my previous emails to repeat the request on behalf of the Chairman for your client, Ishmale Abedi, to assist the Inquiry with a statement with information about his brothers, how they came to be radicalised and the circumstances of the Arena attack.*
>
> *As you will be aware, since our last correspondence we have interviewed Hashem Abedi and he has confirmed his participation in the planning and preparation for the Arena attack. The Chairman is also now in possession of an expert report from Dr Matthew Wilkinson that considers the factors which led to the radicalisation of Salman Abedi. There are matters within the report, in particular about the background and family life of Salman and Hashem Abedi, where the Chairman will be assisted with comments from your client. The Inquiry is a search for the truth and Ishmale Abedi is in a unique position to assist with the investigation. As a matter of fairness we wish to ensure that Ishmale Abedi has a further opportunity to co-operate and provide the Chairman with an account about his knowledge of how his brothers came to be radicalised and carry out the terrible attack on 22nd May 2017.*

I can arrange to provide you with relevant extracts from the report of Dr Wilkinson to assist with the statement from your client. The extracts of the report will be provided subject to the terms of a confidentiality undertaking which must be signed before the report is released.

I anticipate, even absent the provision of a witness statement, that the Chairman will wish to call Ishmale Abedi to give oral evidence to the Inquiry later this year. It will plainly be of assistance to Mr Abedi and the Inquiry if he has provided a written statement that sets out his knowledge of the matters raised in the letter I sent last year and on anything arising from the report of Dr Wilkinson. A further copy of my letter of 28th May 2020, which set out the matters on which a statement was requested, is attached for ease of reference. You will be aware from our previous correspondence that the Chairman has legal powers available to him pursuant to section 21 of the Inquiries Act 2005 to require a witness to attend the Inquiry to give evidence before him. These powers will be used to ensure that the Inquiry hears all relevant evidence that falls within its Terms of Reference, including for the evidence of Ishmale Abedi."

31. On 14th April 2021, Counsel to the Inquiry gave a public update to the Chairman on the efforts made to obtain evidence from various witnesses, including the Respondent. The update set out details of the engagement with the Respondent and his solicitor as explained in this statement. At the conclusion of the update, which explained the most recent correspondence had been sent on 9th April 2021 the Chairman requested, *"I would be grateful for a response from the solicitor giving some degree of update as to what the present position is and what Mr Abedi's present attitude is."* A copy of the hearing transcript was sent to the Respondent's solicitor the same day and he was directed to provide a written update on the position with the Respondent and the requests for him to give evidence to the Inquiry by no later than 4pm on Wednesday 21st April.

32. In an email received on 20th April 2021 at 16:51 the Respondent's solicitor provided an update to explain that there was no material change in the position and the Respondent continued to invoke privilege against self-

incrimination as the reason for declining to assist the Inquiry. The response explained as follows:

"His invocation of the privilege is not unexplained, as the inquiry seems to think. On 4 September 2020 I sent you a number of factual propositions which taken together explained his reason for believing he would be at risk. For ease of reference I repeat them here:

1. *Mr Ben Romdhan was arrested in the course of the police investigation of this matter*
2. *He was detained at a police station for upwards of a week*
3. *He was interviewed at length under caution (we do not have a record of those interviews but the inquiry no doubt has access to the contents)*
4. *At the conclusion of his detention he was 'released under investigation'*
5. *He has never been told that that investigation is at an end and that no further police action will be taken against him*
6. *It is an offence under the Terrorism Act to withhold information in some circumstances*
7. *The questions now asked by the inquiry are the same as he was asked by the police*
8. *Any evidence he gives to the inquiry will be in public and open to cross-examination by other parties*
9. *The Attorney-General has not given any undertaking that evidence given to the inquiry will not be used in furtherance of any prosecution (as has happened in the Grenfell inquiry)*
10. *I invited you to indicate which of those propositions you did not accept. You never replied.*

You tried in earlier correspondence to qualify the privilege. You referred to the Akcine case as saying that the privilege "has to be exercised with great care and

only where there is a real risk of serious prejudice which may lead to injustice". You were kind enough to provide the case reference and I found the quote word for word in paragraph 18. The quote does not relate to self-incrimination at all. I took the liberty of pointing this out. You have never acknowledged the mistake.

My instructions on 'interviews with Sky' are that the alleged comments are made up by a pushy journalist who has pestered Mr Ben Romdhan on a number of occasions. If there is anything actually filmed maybe you have a clip. Contrast Mr Ben Romdhan's response when doorstepped by the BBC in a car park, which was on camera: he declined to make any comment. (I did actually see this by chance on BBC News: the broadcasters proceeded to rehash some incriminating materials although they had the good grace to blank out his car registration).

The earlier set of propositions included reference to the Attorney General. In the Grenfell inquiry the building firm executives declined to give evidence saying that what they said might incriminate them. I do not know whether they were threatened with formal notices and prosecutions, but one way or another the Attorney General issued an undertaking that evidence given to that inquiry could not be used in prosecutions. The executives are now giving evidence. I am aware a similar undertaking was given in the undercover policing inquiry. Has your chairman made a similar request to the Attorney General for an undertaking that would cover this inquiry? I cannot promise that such an undertaking would address all Mr Ben Romdhan's concerns but it would radically alter the picture.

I am not at present asking for sight of the expert evidence, though I am grateful for the offer."

33. On 22nd April 2021 at 09:19 I sent an email in response to the Respondent's solicitor. I provided further copies of previous correspondence and explained the background of where our correspondence had reached. I then replied to the points about the privilege against self-incrimination as follows:

> *"Having set out that relevant context, I will respond to the four numbered points in your email:*

a. *You have suggested that you, as your client's representative, have explained your client's reason for believing he would be at risk in answering the Inquiry's questions. You also appear to suggest that it is for the Inquiry to indicate which of the "propositions" you listed are not accepted. Those comments misunderstand the correct position.*

First, where an assertion of privilege is made against multiple questions, the assertion must be specific and must explain why it would be potentially incriminating to answer each question asked (Hajiyeva v National Crime Agency [2020] 1 WLR 3209, §50). The Inquiry has asked your client a number of questions. He has indicated that he wishes to assert privilege against all of them. But your client has not explained why it would be potentially incriminating to answer each question asked.

Second, while a witness's legal representative may take exception to a particular question, it is the witness himself who must state under oath that he believes the answer will tend to incriminate him (Downie v Coe (CA, 5 November 1997), The Times, 28th November 1997; Webb v East (1880) 5 Ex D 108; Lamb v Muster (1883) 10 QBD 110). In making such a statement, the witness can be required to provide "a full account of the circumstances and the nature of his claim in respect of [the] risk" (McKay v All England Lawn Tennis Club (Championships) Ltd [2020] EWCA Civ 695, §92). That is what the Chairman has required of your client. He has not complied with that requirement.

Third, the evidential burden of establishing a claim to the privilege lies with the party asserting it (McKay, §92; Hajiyeva, §50). It is not for the Chairman to indicate which of your short "propositions" he accepts. As he has made clear, the Chairman does not consider that your client has discharged the evidential burden of establishing a claim to the privilege.

Fourth, a tribunal – here, the Chairman – may require an individual to provide a witness statement setting out, in sufficient detail, the basis for the claim to privilege (McKay, §§90, 92; Gray v News Group Newspapers [2013] 1 AC 1, §80). The Chairman has requested such a statement from your client. Your client has provided statement containing 7

short paragraphs running to less than one page. The Chairman does not consider that your client has set out, in sufficient detail, the basis for his claim to privilege.

Fifth, the privilege does not entitle your client to refuse to engage with the machinery by which the claim to privilege will be assessed (McKay, §§90, 92). The Chairman considers that such engagement requires meaningful engagement. It is for that reason that the Chairman has sought a statement from your client answering the Inquiry's questions or setting out in detail the basis for any claim to privilege. Your client has not done that.

b. *You suggest that the Inquiry has "tried in earlier correspondence to qualify the privilege". That is not the case. The authorities make clear that the privilege is not an absolute right (e.g. see Brown v Stott [2003] 1 AC 681, 704; R v Mushtaq [2005] 1 WLR 1513, §49).*

You go onto refer to Akcine Bendrove Bankas Snoras v Antonov and another [2013] EWHC 131 (Comm). In Akcine Gloster J set out the relevant principles in granting a stay where there are related proceedings where in which the privilege against self-incrimination is relied on. The quote from paragraph 18(i) of the judgment should be read in this context. The assertion that the privilege applies where there is a real risk of serious prejudice is in substance correct. The privilege applies where the risk in question is "a real and appreciable risk as distinct from a remote or insubstantial risk" (Rio Tinto Zinc Corp v Westinghouse Electric Corp [1978] AC 547, 574). Further, as Gloster J indicates in Akcine, a positive account is likely to exculpate, rather than incriminate. It is a well-established principle that the privilege against self-incrimination cannot be invoked where an answer does not materially increase an existing risk of prosecution or strengthen a case against a such a person (see Khan v Regina [2007] EWCA Crim 2331 at §30). It is not clear why your client maintains that answering any of the questions the Inquiry detailed for him last May will place him at risk of prosecution. The reason that is not clear is set out above; essentially, it is because your client has not set out the basis for his claim to privilege in the manner and detail that is required.

In the circumstances, the Chairman does not accept your client's blanket assertion of privilege is a reasonable excuse. A claim must be specific, identifying the class of fact and to explain why it is potentially incriminating (see JSC BTA Bank v Ablyzov [2009] EWCA Civ 1125 at §39 as approved by the Lord Chief Justice in Zamira Hajiyeva v NCA [2020] EWCA Civ 108 at §50). In this regard, notwithstanding your assertion of privilege on behalf of your client, it is for the Chairman to satisfy himself that there is a reasonable ground to apprehend real and appreciable danger of your client incriminating himself (see R (on the application of the CPS) v Bolton Magistrates' Court [2003] EWHC 2697 at §25 which was also expressly approved in Zamira Hajiyeva at §50).

A link to the Sky News article is available here. As your client will be well aware, we are told that the Sky News interview with your client was conducted by phone. The fact that your client has been prepared to give comments to the media is relevant to any claim for privilege against self-incrimination that he wishes to rely on now. The position remains that your client will be required to attend the Inquiry to give evidence. Your client is in a unique position to assist the Chairman in his search for the truth. In light of his previous comments to the press we anticipate your client will wish to have an opportunity to give an account and address criticism that may be made against him. Any claim to rely on the privilege against self-incrimination will need to be made by him in response to each question he is asked. Your client's blanket assertion of privilege is not accepted.

You have asked for the first time whether the Chairman has requested that the Attorney General issue an undertaking similar to those issued in relation to the Grenfell Tower Inquiry and the Undercover Policing Inquiry. He has not. That is a matter of public record as any such undertaking would be made available on the Inquiry's website, as you will be aware from the other inquiries you have referred to. Similarly, for the first time you have stated that while you "cannot promise that such an undertaking would address all [your client's] concerns … it would radically alter the picture" were such an undertaking in place. If your client's position is that he will answer the Inquiry's questions if an undertaking is in place, he should formally indicate that that is the case in writing and the Chairman will consider the issue and any next steps that are appropriate. Such a formal written indication should be provided by 4pm on 29th April."

34. On 25th April 2021, the Sunday Times published an article about the Respondent with the headline, *"Two years before the Manchester Arena attack, the security services had seen extremist material on Ishmale Abedi's phone"*. The article gave details about alleged extremist mind-set material discovered on the Respondent's Facebook account in 2015.

35. On 29th April 2021 at 15:49 the Respondent's solicitor replied to acknowledge my email of 22nd April and observed that, *"Since then Mr Ben Romdhan has been the subject of another press offensive, this time in the Sunday Times"*. The email continued with a proposed form of words for an undertaking to be sought from the Attorney General. It was explained that this draft form of words was being provided to ensure we were not at "cross-purposes". The proposal was said to be in the same terms of the undertaking agreed between the Chairman of the Undercover Policing Inquiry and the Attorney General. The proposed purpose of the undertaking was to prevent the use of any evidence given by the Respondent to the Inquiry against him in any future criminal proceedings.

36. On 30th April 2021 at 11:54 I replied to explain that I could not give a provisional indication on the wording of an undertaking from the Attorney General. I invited the Respondent, if he wished to do so, to lodge a written application for an undertaking with any proposed wording by 4pm on 7th May 2021, later extended to 10th May. I explained that any application would be circulated to all Core Participants, so they had an opportunity to provide any observations.

37. The Respondent's solicitor lodged an application for an undertaking from the Attorney General on 10th May 2021. A copy of this application is exhibited to this statement as **exhibit TJS/4.** On 17th May 2021, I provided the Respondent's solicitor with a copy of the submissions on the application lodged by Core Participants. These are appended to this statement as **exhibit TJS/5**. There was no uniform position between the bereaved families on the application. Some of the families considered that the positive effect outweighed the negative effect and others felt that the negative effect on the administration of justice outweighed the positive.

38. On 19th May 2021 the Chairman heard oral submissions on the Respondent's application for an undertaking from the Attorney General. A copy of the transcript of the hearing is produced as **exhibit TJS/6.**

39. On 10th June 2021 the Chairman refused the application for an undertaking. A copy of his ruling is appended to this statement as **exhibit TJS/7**. In the ruling the Chairman said as follows:

> *"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.*
>
> *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.*
>
> *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."*

40. Pursuant to section 38 of the Inquiries Act 2005 the time limit for an application for judicial review of a decision made by a chairman is 14 days. No judicial review application against the Chairman's ruling was made.

41. In an email timed at 13:37 on 23rd July 2021 the Respondent's solicitor was served with a notice pursuant to section 21(1)(a) of the Inquiries Act 2005. The notice required the Respondent to give evidence to the Inquiry in person at 09.30 on 21st October 2021. The notice required that any application to set it aside to be lodged by 10.00 on 16th August 2021. A copy of the notice was also served on the Respondent by officers of Greater Manchester Police on 26th July 2021. A copy of the notice is produced as **exhibit TJS/8**.

42. No application to set aside the notice was received by 16th August 2021.

43. On 17th August 2021 at 09:20 I emailed Greater Manchester Police as follows:

> *"As you are aware the GMP team have previously served a s.21 notice on Ishmale Abedi for him to attend the Inquiry to give oral evidence in October. Any objection to that notice was due to be served by 10am yesterday. Nothing was lodged. I wanted to make you aware of this as it would be helpful if you can ensure we are notified asap if there is any information to suggest that Ishmale Abedi may not comply with the notice, for example by leaving the jurisdiction. It would also be helpful if we can receive an update from the officers who have usual contact with Ishmale Abedi about any change in his circumstances between now and when he is called. In October I anticipate we will ask that GMP officers assist Mr Abedi to get to / from court and ensure that any risks that may arise from him attending the Inquiry to give evidence are considered in advance."*

44. On Saturday 28th August 2021, the Respondent was stopped under Schedule 7 of the Terrorism Act 2000 at Manchester International Airport. It is understood that he had a flight booked with Turkish Airlines to Istanbul. The Schedule 7 examination started at 09:52 and ended at 13:20.

45. During his Schedule 7 examination the Respondent said that he was planning to meet his parents in Turkey. He stated that he was going for approximately three weeks, returning on 18th/19th September via the same route.

46. As a result of this port stop, the Respondent missed his flight. I understand that a mobile phone the Respondent had with him when he was stopped was seized as part of the Schedule 7 examination.

47. On the following day, 29th August 2021, the Respondent returned to Manchester International Airport. He collected his phone which had been seized the day before. He then took a flight at 11:20 to Istanbul with Turkish Airlines. I was informed that the Respondent had left the jurisdiction in an email from Greater Manchester Police on 31st August 2021.

48. The Respondent has not returned to the United Kingdom since his departure on 29th August 2021.

49. On 19th October 2021 Counsel to the Inquiry made an opening statement to the Chairman about the Inquiry's Chapter 13 evidence which is exploring the radicalisation of Salman Abedi. In this statement, Counsel to the Inquiry explained that:

> *"This week, sir, we intend that you will hear evidence, either directly from or relating to Salman Abedi's family and his friends and associates. The inquiry legal team, as you know, has done all it can to obtain evidence from Salman Abedi's immediate family. Ramadan Abedi, his father, Samia Tabbal, his mother, and their younger children, are all presently in Libya, as far as the inquiry is aware. Although Ramadan and Samia have been contacted, they have refused to cooperate with the inquiry or provide any statements or evidence of any kind. Salman Abedi's older brother, Ismail Abedi, does generally still reside in the United Kingdom. It is highly regrettable that he has also refused to provide a statement or cooperate with the inquiry in any meaningful way. A Section 21 notice has been issued to him, requiring him to attend the inquiry this Thursday, 21 October, in order to give oral evidence. However, we understand that he is not currently in the country and there is no indication as to when he will return. Ismail Abedi clearly has important evidence to give to the inquiry and we urge him today to make contact with the inquiry legal team, either directly or through his own legal representatives. As he surely must understand, if he does not do so, the public may infer that he has something to hide and so, sir, may you. We expect that you will use such powers as are at your disposal to compel his attendance and to respond if he does not attend. And may we say, sir, that you have shown no hesitation in doing so in relation to other witnesses."*

50. On 20th October 2021, the day before the Respondent was required to give evidence to the Inquiry pursuant to the section 21 notice, I wrote to his solicitor in the following terms:

> *"Further to our previous correspondence about your client Ishmale Abedi (aka Ben Romdhan) please can you confirm if you remain instructed on his behalf and if you have any information about whether he plans to attend the Manchester Arena Inquiry to give evidence tomorrow as required by a section 21 Notice served on him on 22nd July 2021?*

You may have seen press reports yesterday that it is understood that Mr Abedi is currently outside the UK and we wish to ensure he is aware he is legally required to attend the Inquiry to give evidence tomorrow and that if he fails to do so without reasonable excuse that will be considered a breach of the notice and enforcement proceedings will be commenced in the High Court pursuant to section 36 of the 2005 Act."

51. I received an email reply the same date from Mr Hawthorn at 17:46. His email said, *"Mr Abedi will not be attending tomorrow. He is aware of the notice. Attached is a short statement that we would ask you to pass to the Inquiry."* The statement provided by the Respondent's solicitor purported to provide an explanation why the Respondent would not attend to give evidence. It explained that, *"Mr Abedi will not be attending before the inquiry. He intends no disrespect to any of the parties, but he is unwilling to give evidence."* The statement continued that, *"The inquiry is aware of the hostile media coverage that Mr Abedi has already received. This has led to the police helping to secure his home and family against attack. He has refused engagement with the media over safety concerns since the time of the attack and has been assigned a new identity to protect him. Requiring him to attend before the inquiry will place him and his family at further risk."*. A copy of the statement is produced as **exhibit TJS/9**.

52. On 21st October at 08:49 in light of the statement provided by his solicitor I wrote to the Respondent as follows:

"I understand from your solicitor that you will not attend the Inquiry to give evidence today as required by the section 21 notice served on your solicitor on 23rd July and on you on 26th July 2021. Please can you confirm when you will return to the UK so we can re-schedule the date for your evidence? I anticipate that the Chairman will now commence enforcement proceedings for the failure to comply with the section 21 notice and it is therefore important that you take steps to make yourself available to give evidence to the Inquiry as a matter of urgency."

53. I have not received a reply to this email and, at the date of this statement, the position remains that the Respondent has failed without seeking to put forward a reasonable excuse to comply with two section 21 notices served on him. He has failed to attend an interview to provide a written statement and,

having left the jurisdiction on 29th August 2021, he failed to attend to give evidence as required on 21st October 2021.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth

Signed……

Dated: 26th October 2021