Grenfell Tower
Inquiry

RULING

on an

APPLICATION BY THE CROWN PROSECUTION SERVICE

for a

RESTRICTION ORDER

and other relief

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1. I have before me an application by the Crown Prosecution Service ("CPS") for a restriction order under s.19 of the Inquiries Act 2005 in relation to the evidence of three witnesses who are due to give evidence to the Inquiry in the near future, Ms Hanan Wahabi, Mr Marcio Gomes and Mr Zak Chebouini. Ms Wahabi had been due to give evidence on 31 October 2018, but in the event it was not possible for her to do so because the proceedings were interrupted by the initial hearing of this application. Mr. Gomes was due to give evidence on Tuesday 6 November. Mr Chebouini's statement is due to be read into the Inquiry's record on 8 November 2018, when it is intended to contribute to a coherent body of evidence of which it forms part.

2. The application was made in order to prevent what the CPS submitted was a substantial risk that publication of reports of the oral evidence of Ms Wahabi and Mr Gomes and of the reading of Mr Chebouini's statement would prejudice the administration of justice in the form of a trial due to begin at Isleworth Crown Court

on Monday of this week. The trial, in which the defendant is accused of having fraudulently misrepresented to the Royal Borough of Kensington and Chelsea that he was living in Flat 182, Grenfell Tower at the time of the fire, is expected to be concluded within the course of the week.

3. The Crown intends to call Ms Wahabi and Mr Gomes to give evidence in support of the prosecution. Flat 182 was the home of Abdulaziz El-Wahabi and his family, all of whom perished in the fire. Ms Hanan Wahabi is the sister of Abdulaziz El-Wahabi. She was close to her brother and his family and spent a considerable amount of time in their company. She also lived in Grenfell Tower and frequently visited them in their home. Mr Gomes and his family lived in Flat 183. He and his family were neighbours of the El-Wahabi family and knew them well. Both witnesses are expected to say that they saw no sign of the defendant living in Flat 182 at any time. They are therefore important witnesses for the prosecution.

4. The application was originally made by the Metropolitan Police Service acting in the interests of the Crown. Having heard preliminary submissions by Miss Amy Clarke on 31 October 2018, I directed that the application be adjourned to 2 November 2018. I also directed that if the Crown wished to pursue it, it should do so in its own right and that the CPS should make an application in writing accompanied by a skeleton argument by 1.00 pm on 1 November 2018.

5. Pursuant to my direction the CPS made such an application and in effect took over the proceedings. On 2 November I heard submissions from Miss Alexandra Felix on behalf of the CPS in support of that application. At the conclusion of the hearing I refused the application and said that I would give my reasons in writing at a later date. These are my reasons for refusing the application.

6. The primary relief sought by the CPS in its written application was a restriction order preventing any reporting of the witnesses' evidence until after the jury had returned a verdict in the criminal trial; only in the alternative did it seek a direction from me as Chairman of the Inquiry that the evidence of Ms Wahabi and Mr Gomes should not be

heard at all until after a verdict had been returned at the trial. When she came to address me in support of the application, however, Miss Felix put the matter the other way round, her primary submission being that I should direct that Ms Wahabi and Mr Gomes should not give evidence until a verdict had been returned and make a restriction order in relation to their evidence only if I were unwilling to take that course.

7. The grounds on which the application was made are a little complicated. As is well known, the Inquiry's proceedings are streamed live on the internet; they are also recorded and made available for viewing through the Inquiry's website. They can thus be watched by anyone who has access to a computer, either as they take place or subsequently. The proceedings are also the subject of widespread media reporting and have generated a considerable amount interest among the public at large. Miss Felix submitted that if Ms Wahabi and Mr Gomes were allowed to give their evidence in the usual way with no restriction on publication or reporting, it would give the defendant an opportunity to argue that there was a substantial risk that, when the jury came to consider the allegations made against him, their approach to those witnesses might be coloured by sympathy for people who had endured such a terrible tragedy; in other words, that the jury might be more likely to accept their evidence as a result of being moved by having seen and heard them giving evidence to the Inquiry or by the media coverage of it. That might in turn provide the foundation for an application by the defendant to stop the trial or adjourn it to a date when the matter was no longer fresh in the jury's mind. (In the event Miss Felix accepted, rightly in my view, that an application by the defendant to stay the indictment on those grounds would have no prospect of success.)

8. The full significance of that submission is explained in paragraph 16 of the application, which reads as follows:

> 16. In this regard it is important to note that [the defendant] is currently remanded in custody with his custody time limits (CTLs) due to expire on 24 December 2018. If the trial has to be adjourned to a later date to avoid any prejudice and the trial cannot be accommodated prior to the expiry of

> the CTLs, then the Crown Court will need to consider an application to extend the CTLs. To avoid any prejudice, it is likely that any such adjournment would have to be to a date after the expiry of the CTLs. In determining such an application the Court will have regard to whether the Crown has acted with all due diligence and expedition. If the Court is not satisfied that the Crown has acted with all due diligence and expedition, then the CTLs will not be extended and [the defendant] must be admitted to bail. He has a history of Bail Act offences and of course it is notable that he does not have a home address so that the risk of his absconding must be high. It is submitted that there must be a public interest in such serious allegations as are made against [the defendant] being tried.

9. When I first read that paragraph I understood that Miss Felix was saying that the risk of prejudice to the criminal proceedings lay in the possibility that the defendant might for all practical purposes escape justice by absconding while on bail, but in argument she made it clear that she did not go that far, describing the chain of events set out there as no more than an indication of what might occur if the trial were adjourned. The real prejudice, she submitted, lay in the adjournment itself, regardless of what might occur thereafter.

10. It is convenient to begin by considering the application for a restriction order, since it gives rise to considerations similar to those that have to be taken into account in relation to the question whether the Inquiry's timetable should be altered to accommodate the criminal proceedings. Applications for reporting restrictions are more commonly made under section 4(2) of the Contempt of Court Act 1981, which gives the court power to impose temporary reporting restrictions where that appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those or any other proceedings. As the authorities make clear, the two expressions of particular importance in that subsection are "necessary" and "substantial risk of prejudice".

11. This application is not made under the Contempt of Court Act but under section 19 of the Inquiries Act 2005, which provides that:

> "(1) Restrictions may, in accordance with this section, be imposed on–
> (a) . . .
> (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.

(2) . . .

(3) A restriction notice or restriction order must specify only such restrictions–
(a) as are required by any statutory provision, enforceable EU obligation or rule of law, or
(b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

(4) Those matters are–
(a) . . .
(b) any risk of harm or damage that could be avoided or reduced by any such restriction;"

12. The language may be different, but Miss Felix accepted that the principles that apply to the imposition of reporting restrictions under section 4(2) provide useful guidance in relation to the approach that I ought to take to the application for a restriction order in the present case, given the similarity in the nature of the orders sought. (I am prepared to assume for present purposes that section 19 gives me power to make an order of the kind sought in the present case, although, for reasons which will become apparent it is unnecessary for me to reach any final conclusion on that question.)

13. At the heart of this application lies the need to resolve a tension between two competing principles, in relation to each of which there is a strong public interest: open justice and the effective administration of justice. The principle of open justice as it applies to proceedings in court is too well known to require citation of authority, but it is important to recognise that the authorities make it clear that it is a principle that can properly be departed from only if it is necessary to do so. The test, reflected in section 4(2) of the Contempt of Court Act, is one of necessity, not convenience.

14. Every inquiry conducted under the Inquiries Act 2005 is by definition a public inquiry and the chairman is obliged by section 18 of the Act (subject to any restrictions imposed under section 19) to take such steps as he considers reasonable to secure that members of the public (including reporters) are able to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry and to obtain or view a

record of evidence given to the inquiry. It is of the very essence of a public inquiry, therefore, that its proceedings are open to the public, and accordingly that which in the context of proceedings in court is referred to as the principle of open justice applies with just as much force to such an inquiry. The principle of open justice is not absolute, as section 19 of the Act itself demonstrates, but it is of very great importance and can be departed from only when it is necessary to do so. For that reason I am of the view that the principles developed by the courts in relation to applications under section 4(2) of the Contempt of Court Act are of assistance when determining an application of the present kind under section 19 of the Inquiries Act. Miss Felix did not dissent from that.

15. The approach to be applied on an application for reporting restrictions has recently been considered by the Court of Appeal in *R v Sarker* [2018] EWCA Crim 1341, in which Lord Burnett C.J. summarised the principles to be derived from the earlier authorities. In paragraph 30 of the judgment His Lordship said:

> 30. A clear articulation of the approach to be adopted is to be found in the judgment of Longmore LJ in *Sherwood* at [22] (which was approved by the Privy Council in *Independent Publishing Co Ltd* at [69]).
>
> (i) The first question is whether reporting would give rise to a substantial risk of prejudice to the administration of justice in the relevant proceedings (see paragraph 32 below). If not, that will be the end of the matter.
>
> (ii) If such a risk is perceived to exist, then the second question arises: would a section 4(2) order eliminate it? If not, there could be no necessity to impose such a ban. On the other hand, even if the judge is satisfied that an order would achieve the objective, he or she would still have to consider whether the risk could satisfactorily be overcome by some less restrictive means. If so, it could not be said to be "necessary" to take the more drastic approach: *ex parte Central Television plc* at 8D-G per Lord Lane CJ.
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> (iii) If the judge is satisfied that there is indeed no other way of eliminating the perceived risk of prejudice; it still does not necessarily follow that an order has to be made. The judge may still have to ask whether the degree of risk contemplated should be regarded as tolerable in the sense of being "the lesser of two evils". It is at this stage that value judgments may have to be made as to the priority between the competing public interests; fair trial and freedom of expression/open justice: *ex parte Telegraph plc* at 986B-C.

I propose to adopt a similar approach in determining the present application.

16. On the question of what constitutes a "substantial" risk of prejudice Lord Burnett C.J. said:

> 31. The word "substantial" in the section does not mean "weighty". It means "not insubstantial" or "not minimal": *Attorney General -v- News Group Newspapers* [1987] QB 1, at 15D-E per Lord Donaldson MR; *Re MGN Limited* at [15] per Lord Judge CJ.

17. In paragraph 32 His Lordship made this observation, which in my view applies not only to reports of the trial itself, but more generally:

> . . . juries have "a passionate and profound belief in, and commitment to the right of a defendant to be given a fair trial" and their integrity "is an essential feature of our trial process"; juries will abide by the directions of the trial judge, not only because they are directions of law that they must follow, but because they will "appeal directly to their own instinctive and fundamental belief in the need for the trial process to be fair": *R -v- B* at [31] per Sir Igor Judge PQBD; *ex parte Telegraph plc* at 987E-G per Lord Taylor CJ. (We note these statements are borne out by the evidenced-based conclusions of the Law Commission in their 2014 Report *"Contempt of Court (2): Court Reporting"* (Law Com No.344) paragraph 2.30(3) that "jurors find the trial process absorbing, and significantly prioritise what they hear during the trial over what they might have heard from the media outside of the trial");

18. I have no reason to think that the jury in the forthcoming trial will not take that principled approach to its task; indeed I am confident that it will. Moreover, I think one can safely assume that in this case the trial judge will direct the jury firmly and clearly that they must try the defendant on the evidence put before them in the trial and must put out of their minds anything they may have seen or heard outside the trial. I think the risk of an adjournment is remote. Juries are often required to hear evidence from victims of crime for whom they may understandably have great sympathy, but they can and do resist allowing their sympathy to colour their approach to the evidence. If the defendant does express concern about the appearance of Ms Wahabi or Mr. Gomes as witnesses before the Inquiry, the judge may, if he or she thinks it appropriate to do so, direct the jury expressly that they must not allow themselves to be swayed by sympathy for the witnesses, much as they may be

deserving of it. The same applies in relation to any report of Mr. Chebouini's statement.

19. I am afraid that I found the chain of reasoning in paragraph 16 of the application somewhat tenuous. An application for an adjournment of the trial may not in the event be made and, if made, is in my view unlikely to be granted, having regard to the confidence which judges have traditionally placed in the jury's ability to carry out their task dispassionately and in accordance with the directions given to them. Even if an adjournment were granted, the trial might still be fixed to start on a date earlier than 24 December. If it were not, an application to extend custody time limits could be made and I was given no reason to think that it would be refused. However, once Miss Felix had made it clear that she was not relying on that potential chain of events to establish prejudice in the form of the defendant's evading justice, it became clear that all that was in issue was the timing of the trial rather than anything more serious. Indeed, Miss Felix was ultimately driven to accept that the prejudice on which she really relied was the inconvenience that would be caused to the witnesses, who are currently due to give evidence in the coming week, of being required to attend at some later date. I accept that inconvenience to witnesses should not be taken lightly, all the more so when they have been the victims of personal tragedies of the kind that Ms Wahabi and Mr Gomes have suffered and may be apprehensive about attending court to give evidence. But that is not the same as prejudicing the administration of justice, given that there is no reason to think that they will not be available to give evidence at a later date.

20. In these circumstances I am entirely unpersuaded that allowing Ms Wahabi and Mr Gomes to give their evidence to the Inquiry in public in the usual way before a verdict has been delivered would give rise to a significant risk of prejudice to the administration of justice and I can see no basis at all for thinking that reading aloud salient passages from the statement of Mr Chebouini, whenever that occurs, could prejudice the trial. In those circumstances Miss Felix has failed to establish the threshold requirement which must be present before I could properly make a restriction order of the kind sought.

21. For the same reasons she has failed in my view to establish any proper basis for asking that the Inquiry defer taking evidence from Ms Wahabi and Mr Gomes until after a verdict has been delivered in the criminal trial. Such an application calls for a balance to be struck between the public interest in the effective conduct of the Inquiry and the public interest in the administration of justice. The Inquiry is currently hearing evidence from the bereaved, survivors and residents and will go on to hear evidence from others, including expert witnesses, in the coming weeks. There is a strong public interest in ensuring that this stage of the Inquiry is completed as quickly as possible and in order to achieve that end a carefully organised timetable has been established with a view to completing the current hearings before Christmas. That timetable allows little or no room for slippage and any disruption is to be avoided if at all possible.

22. Deferring witnesses has many undesirable consequences. As far as the Inquiry itself is concerned, it involves disruption of the timetable and the potential loss of valuable time. It may also result in evidence being presented in a less effective and intelligible manner than would otherwise have been the case. But the matter does not end there. Many witnesses have important commitments outside the Inquiry and have made arrangements to attend to give evidence on specific days. That applies particularly to those from the public services whose duty rosters have often to be arranged some time in advance. It is not always easy to alter arrangements of that kind at short notice and any disruption to the current arrangements may result in difficulty for others.

23. Just as important, however, is the position of those of the bereaved survivors and residents who are still to give evidence to the Inquiry. Many of them also have commitments which have to be accommodated in one way or another and cannot be changed at short notice without a great deal of personal inconvenience. For many of the witnesses the prospect of being asked to re-live in public their experience of the disaster is a daunting prospect which they (and often their families) have prepared themselves to face on the day when they are scheduled to give evidence. To change arrangements at short notice can be not only disappointing but also very

disconcerting, since they then have the prospect of having to prepare themselves for the same challenge for a second time.

24. Interference with the timetable can have yet wider consequences. For example, arrangements have been made for experts to give their evidence on specific days. The timing of their evidence has been fixed to ensure that they will have had a reasonable opportunity to digest the evidence given by those who directly experienced the fire and can take it into account. One can fairly assume that they too have other professional and personal commitments and have organised their lives to enable them to be present on the days allocated to them. Since the need to hear this application has already involved some interference with the Inquiry's arrangements, it is not certain now when Ms Wahabi or Mr Gomes will be able to give evidence. However, to direct here and now that they should not give evidence until after the jury has delivered its verdict would inevitably be disruptive and inject an unwelcome additional degree of uncertainty. Such a course could be justified only if it were necessary to avoid prejudicing the administration of justice.

25. However, for the reasons I have already given I do not think that to allow Ms Wahabi and Mr Gomes to give evidence under the usual conditions during the coming week or to read Mr Chebouini's statement would give rise to a substantial risk of prejudice to the administration of justice. It follows that the application had to be refused.

Martin Moore-Bick

5 November 2018