Neutral Citation Number: [2024] EWHC 227 (KB)

Case No: KB-2023-002102

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 February 2024

Before :

MASTER DAVISON

- -

Between :

(1) MARTIN HIBBERT
(2) EVE HIBBERT
(By her mother and litigation friend
SARAH GILLBARD) **Claimants**

- and –

RICHARD D HALL **Defendant**

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- -

Mr Jonathan Price (instructed by **Hudgell Solicitors**) appeared for the **claimants**
The **defendant** appeared in person

Hearing date: 29 January 2024

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Judgment

This judgment was handed down remotely at 10.00 am on 8 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Master Davison:

(A) Introduction

1. The claimants, Martin and Eve Hibbert, are father and daughter. On 22 May 2017, when Eve was 14 years old, Martin Hibbert took her to the Ariana Grande concert at the Manchester Arena. They and others left the concert via the "City Room". As they did so, an Islamic terrorist, Salman Abedi, detonated an explosive device carried in a rucksack killing and injuring many people. Both Martin Hibbert and Eve Hibbert were severely injured. Martin Hibbert was rendered paraplegic. Eve Hibbert suffered a life-changing traumatic brain injury. In addition to the inquests into the deaths, these events have been the subject of a public inquiry conducted by Sir John Saunders pursuant to section 26 of the Inquiries Act 2005 and a criminal trial at the Central Criminal Court at which the bomber's brother, Hashem Abedi, was convicted of 22 counts of murder, one count of attempted murder and one count of conspiracy to cause an explosion likely to endanger life.

2. The defendant in this case is Mr Richard Hall. He is described in the Defence as a journalist, broadcaster and media producer. One of the subjects upon which he has published extensively is the Manchester bombing. He is the author of a book, published on 27 March 2020, entitled "Manchester: The Night of the Bang". He maintains that the attack was "a staged operation using an intelligence asset [Salman Abedi] as an alleged perpetrator". He believes that the "incident" (as he labels it) was not a genuine event but, rather, a "staged scenario" or "drill" orchestrated by "various public sector agencies" using "numerous recruited members of the public, potentially a hundred or more" some of whom were "tasked with portraying fake injuries". A "select few" within the emergency services were also "briefed and aware of the staged nature of the event". There was no explosion as such, but rather the use of a "loud pyrotechnic device" whose role was to contribute to the "perceived realism deceiving witnesses in the City Room". The defendant maintains that Salman Abedi himself "evaded the scene" and was "later apprehended by regular police and subsequently cleared". As to the deaths and injuries, he maintains that Martin and Eve Hibbert "were likely harmed before the attack and recruited but did not attend the concert". Three individuals "may have perished before the concert due to accidents or natural causes, their deaths exploited to fabricate genuine grief among families". Others alleged to have died in fact "might have started new lives abroad, an aspect that might seem implausible but which [the defendant believes] was part of extensive planning". (Quotations taken from paragraphs 81 to 89 of the defendant's witness statement dated 27 December 2023 in these proceedings.)

3. As to motive, I will set out in full paragraph 90 of the defendant's witness statement:

> "Multiple motives underpin this orchestrated event. It served to tighten public control and facilitated the passing of legislation like Martyn's Law. Furthermore, it bolstered security service budgets and justified heightened military actions in Libya. The incident also played into President Trump's efforts to impose travel bans, particularly on Muslim-majority countries, bolstered by the narrative surrounding the Manchester incident."

4. On 17 April 2023 the claimants commenced proceedings against the defendant for harassment, misuse of private information and data protection breaches. Essentially,

the claimants complain that in his book, in videos published on his website and on YouTube, and in public lectures the defendant has accused them of lies and deception and has misused personal data including their names, images and medical information. One aspect of the claim is that in September 2019 the defendant visited Eve's home where she lives with her mother. The visit was unannounced. The defendant's account is that it was his intention to ask Eve's mother for an interview. Having received no response to his knocking on the door, he set up a camera inside his vehicle and recorded footage of Eve, her mother and her carer.

5. The proceedings are defended.

6. Paragraphs 3 – 6 of the Particulars of Claim allege, amongst other things, that:

   i) On 22 May 2017 22 innocent people were murdered in a bomb explosion carried out by a terrorist at the Manchester Arena at the conclusion of a concert performed by Ariana Grande;

   ii) The claimants were present at the Manchester Arena at the time of the bombing;

   iii) They were severely injured rendering Martin Hibbert paralysed from the waist down and Eve Hibbert brain damaged; and

   iv) The cause of these injuries was the explosion of the bomb.

7. All these allegations are either denied or not admitted by the defendant. They are therefore issues in the case, ("the Issues").

The application

8. On 9 November 2023, the claimants applied for summary judgment on the Issues pleaded at paragraphs 3 – 6 and which I have summarised and re-ordered as set out above. (There was, at that time, a further issue, namely whether the claimants were father and daughter. The defendant has now conceded that issue.)

9. The application was supported by witness statements from Martin Hibbert and Eve's mother and litigation friend, Sarah Gillbard, both dated 16 November 2023. The defendant served a witness statement in opposition dated 27 December 2023.

10. Two further witness statements followed in response to that from the defendant: a witness statement from Mr Terry Wilcox dated 5 January 2024 and a second statement from Martin Hibbert dated 9 January 2024.

11. The application was listed before me for half a day on 29 January 2024. The claimants were represented by Mr Jonathan Price. The defendant represented himself with the aid of a Mackenzie friend, a retired solicitor, Mr Tony Bennett. I record my gratitude to both the defendant and Mr Bennett. The defendant submitted a skeleton argument and made oral submissions which were articulate and well-organised.

(B) The law

12. The law in this area is very familiar. Having regard to the fact that the defendant was unrepresented, Mr Price had set out in his skeleton argument a very full exposition of the relevant authorities. In this judgment, I will confine myself to the main ones.

13. Pursuant to CPR 24.2(a)(ii) and (b), the court may give summary judgment against a defendant "on a particular issue if it considers that: (a) he has no real prospect of successfully defending the issue; and (b) there is no other compelling reason why the issue should be disposed of at a trial".

14. The principles governing the court's approach to this task were formulated by Lewison J in *Easyair Ltd v Opal Telecom* Ltd [2009] EWHC 339 (Ch) at [15] and approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098 at [24]. They can be summarised as follows:

    i) The court must consider whether the defendant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 91;

    ii) A "realistic" defence is one that carries some degree of conviction. This means a defence that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472;

    iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*;

    iv) This does not mean that the court must take at face value and without analysis everything that a defendant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];

    v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No.5)* [2001] EWCA Civ 550;

    vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2006] EWCA Civ 661; [2007] F.S.R. 3;

    vii) On the other hand it is not uncommon for an application under Pt 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument,

it should grasp the nettle and decide it: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.

15. In *Vardy v Rooney* [2021] EWHC 1888 (QB) at [75], Steyn J endorsed the analysis of Fancourt J in *Anan Kasei Co v Neo Chemicals* [2021] EWHC 1035 (Ch) as to the sorts of issues that were apt for summary determination:

> "The "issue" to which rule 24.2… and PD 24 refers is a part of the claim, whether a severable part of the proceedings (e.g. a claim for damages caused by particular acts of infringement or non-payment of several debts) or a component of a single claim (e.g. the question of infringement, or the existence of a duty, breach of a duty, causation or loss). It is not any factual or legal issue that is one among many that would need to be decided at trial to resolve such a claim or part of a claim. If the determination of an issue before trial has no consequences except that there is one fewer issue for trial then the court has not given summary judgment and the application was not for summary judgment. If it were otherwise, parties would be able to pick and choose the issues on which they thought their cases were strong and seek to have them determined in isolation, in an attempt to achieve a tactical victory and cause the respondent to incur heavy costs liability at an early stage."

16. Steyn J declined to grant the claimant's summary judgment application. She said:

> "In effect, the claimant is seeking the determination of a preliminary issue rather than summary judgment. Yet the issue which she seeks to have determined on a preliminary basis is not one which any court would have acceded to setting down as a preliminary issue. It is one of many factual issues to be resolved at trial in determining whether the truth defence is made out. It seems highly unlikely that resolution of this issue would assist the parties to settle the claim."
>
> And:
>
> "It is not a wholly discrete issue that is incapable of being affected by the evidence as to whether there was a pattern of disclosure by the claimant of private information from the defendant's Posts."

17. Subject to section 11 of the Civil Evidence Act 1968 (see further below) the legal burden of proof rests on the claimants throughout. But once they have adduced credible evidence in support of the application the defendant comes under an evidential burden to prove some real prospect of success or other reason for having a trial on those issues; see *Korea National Insurance Corp v Allianz Global Corporate & Speciality AG (formerly Allianz Marine & Aviation Vershicherungs AG)* [2007] EWCA Civ 1066; [2007] 2 CLC 748, as cited in Volume 1 of the White Book at 24.2.4 (p. 676):

> "It is incumbent on a party responding to an application for summary judgment to put forward sufficient evidence to satisfy the court that it has a real prospect of succeeding at trial. If it wishes to rely on the likelihood that further evidence will be available at that stage, it must substantiate that assertion by describing, at least in general terms, the nature of the evidence, its source and its relevance to the issues before the court. The court may then be able to see that there is some substance in the point and that the party in question is not simply playing for time in the hope that something will turn up. It is not sufficient, therefore, for a party simply to say

> that further evidence will or may be available, especially when that evidence is, or can be expected to be, already within its possession, as is the case here … ([14] per Moore-Bick LJ)."

18. Similarly (and specifically in relation to disclosure of documents), the correct question to ask is whether there are reasonable grounds for believing that disclosure may materially add to or alter the evidence relevant to whether the defence has a real prospect of success; see *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3; [2021] Bus LR 332 at [127]-[128].

19. As to the court's approach to the evidence, the editors of the White Book cite Cockerill J in *King v Stiefel* [2021] EWHC 1045 (Comm) at [21]-[22]:

> "[21] The authorities therefore make clear that in the context of summary judgment the court is by no means barred from evaluating the evidence, and concluding that on the evidence there is no real (as opposed to fanciful) prospect of success. It will of course be cautious in doing so. It will bear in mind the clarity of the evidence available and the potential for other evidence to be available at trial which is likely to bear on the issues. It will avoid conducting a mini-trial. But there will be cases where the Court will be entitled to draw a line and say that - even bearing well in mind all of those points - it would be contrary to principle for a case to proceed to trial.
>
> "[22] So, when faced with a summary judgment application it is not enough to say, with Mr Micawber, that something may turn up."

20. By s.11, Civil Evidence Act 1968 ("CEA 1968"):

> 11 *Convictions as evidence in civil proceedings*
>
> (1) In any civil proceedings the fact that a person has been convicted of an offence by or before any court in the United Kingdom or of a service offence (anywhere) shall (subject to subsection (3) below) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence, whether he was so convicted upon a plea of guilty or otherwise and whether or not he is a party to the civil proceedings; but no conviction other than a subsisting one shall be admissible in evidence by virtue of this section.
>
> (2) In any civil proceedings in which by virtue of this section a person is proved to have been convicted of an offence by or before any court in the United Kingdom or of a service offence—
>
> (a) he shall be taken to have committed that offence unless the contrary is proved; and
>
> (b) without prejudice to the reception of any other admissible evidence for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the information, complaint, indictment

> or charge-sheet on which the person in question was convicted, shall be admissible in evidence for that purpose.

21. It was held in *CXX v DXX* [2012] EWHC 1535 (QB) that the effect of section 11 was that a criminal conviction was not merely a trigger for the presumption in subsection (2)(a) but "a weighty piece of evidence of itself" which, in that case, was not displaced by the defendant's attack on the claimant's credibility.

(C) Discussion

Are the Issues suitable for summary determination?

22. This point was not directly addressed by the defendant in his skeleton argument or his oral submissions. But it is an important point. In the language used by Fancourt J in the *Anan Kasei* case, the Issues in this case are not, or not obviously, severable parts of the proceedings or component elements of a single claim. They are better described as factual issues, albeit ones that are very relevant to the causes of action relied upon and the defendant's responses to them, including, for example, the reasonableness of his course of conduct and his compliance with data processing principles. However, I agree with the proposition put forward in paragraph 11 of Mr Price's skeleton argument that the principles enunciated by Fancourt J and Steyn J in *Anan Kasei Co v Neo Chemicals* and *Vardy v Rooney* respectively do not prevent a court from giving summary judgment on a severable issue which does not dispose of the claim or part of the claim. The factors that appear to me to be relevant in this case are these:

i) The Issues are (unlike *Vardy v Rooney*) discrete factual issues which do not depend on and will not be affected by other factual findings. Further, they may be described as threshold issues in the sense that if the claimants were unable to establish them their claims would automatically fail.

ii) The Issues could (again, unlike *Vardy v Rooney*) appropriately be set down as preliminary issues. The obstacle is not that they are unsuitable to be tried as preliminary issues but, rather, that there would be no point in doing that if the defendant had no "real prospect" of success on them.

iii) There is considerable practical utility in disposing of the Issues summarily, if appropriate, because otherwise they will contribute greatly to the cost, expense and duration of the litigation process and trial. If summary determination of the Issues is unavailable, the defendant will use the trial as a vehicle to advance and test his "staged attack" hypothesis. This intention is plainly evident from his witness statement. At many points in that statement, he calls for further investigation and inquiry. He has also issued (so far) two applications for wide-ranging third party disclosure. The first in time names Greater Manchester Police and Pete Weatherby KC (one of the counsel involved in the Saunders Inquiry) as respondents and seeks disclosure of CCTV moving images showing victims Martin and Eve Hibbert. The second in time names the claimants' GP and their treating hospital as respondents and seeks disclosure of their medical records.

iv) Although perhaps secondary to proportionality considerations such as value and complexity, the personal impact of the proceedings on the parties is also a

relevant consideration. If the Issues can only be dealt with at trial, that will actively serve and promote the defendant's interests (including, it is fair to assume, his financial interests). But the claimants will face a long drawn-out process in which their credibility, *bona fides* and, to some extent, their privacy will be under an attack which they maintain should never have been made in the first place and which has no real prospect of success.

v) All other things being equal, resolving the Issues summarily would be likely to promote settlement or, at least, early resolution of the claim.

23. These factors point strongly to the conclusion that the Issues are suitable issues for summary judgment. In my view, that would be very much in accordance with the overriding objective contained in CPR rule 1.1(1) namely to deal with the case "justly and at proportionate cost".

Issue 1

24. Issue 1 is whether on 22 May 2017 22 innocent people were murdered in a bomb explosion carried out by a terrorist at the Manchester Arena at the conclusion of a concert performed by Ariana Grande.

25. This Issue is obviously made out by the fact that Hashem Abedi was (as the defendant accepts) convicted of 22 counts of murder in respect of the bombing. His conviction followed a six week trial at the Central Criminal Court which concluded on 17 March 2020. Following *CXX v DXX* (which resolved a longstanding controversy about the evidential effect of a conviction) Abedi's conviction is a "weighty piece of evidence" in its own right. It falls to the defendant to prove the contrary, which is a burden I find he has no "real prospect" of discharging. I do not propose to engage with the detail of the defendant's evidence. Suffice it to say that, although his beliefs may be genuinely held, his theory that the Manchester bombing was an operation staged by government agencies in which no one was genuinely killed or injured is absurd and fantastical and it provides no basis to rebut the conviction.

Issues 2, 3 & 4

26. These Issues can conveniently be taken together.

27. Issue 2 is whether the claimants were present at the Manchester Arena at the time of the bombing.

28. Issue 3 is whether the claimants were severely injured rendering Martin Hibbert paralysed from the waist down and Eve Hibbert brain damaged.

29. Issue 4 is whether the cause of these injuries was the explosion of the bomb.

30. In relation to their presence at the Arena, the claimants have provided a witness statement from the first claimant, Martin Hibbert, that confirms that they were, indeed, there. That witness statement refers to Mr Hibbert's evidence to the police and to the Saunders Inquiry, which were to the same effect. (He was able to review stills of the CCTV evidence when preparing that evidence. The stills showed him and Eve immediately before the detonation of the bomb.) Mr Hibbert has provided the invoice

for the tickets to the concert. Mr Terry Wilcox, a solicitor who was instructed on behalf of two victims' families, and who was able to review the CCTV footage on terms of strict confidentiality (because the footage was too graphic for public release) has provided a witness statement in which he confirms from the CCTV that Martin and Eve Hibbert were both present at the Arena on 22 May 2017 and were observed both before and after the detonation of the explosive device. Section 4 of the Civil Evidence Act 1995 sets out a list of factors to which a court may have regard when considering the reliability of such evidence and the weight to be attached to it. Those factors strongly favour Mr Wilcox's evidence. Lastly, Hashem Abedi was convicted of attempted murder of persons who included the claimants and section 11 CEA 1969 applies.

31. In relation to the injuries, Mr Hibbert's witness statement says:

> "[5] I am now wheelchair-bound; paralysed from the waist down. Of those who survived the blast, I was closest to it. I received 22 shrapnel wounds, and my life was only saved by emergency surgery. I continue to suffer from PTSD.
>
> "[6] Eve suffered a catastrophic brain injury when a bolt from the bomb struck her in the head and destroyed the frontal lobe. She was initially presumed dead by responders at the scene. She spent the next 9 months in hospital, with her family being told that she would likely never again see, hear, speak or move. Her condition has since improved and is better than medical expectations, however it remains the case that she will require permanent care for the rest of her life. She has significant permanent cognitive impairment and suffers from PTSD and depression."

32. In addition to that witness statement, the claimants have provided medical evidence in the form of medical reports from Mr BM Soni, who is Mr Hibbert's treating consultant, dated 14 February 2020 and a short-form medical report from Dr Rajpura who is Eve's GP. Both reports were produced for the purpose of the claimants' claims to the Criminal Injuries Compensation Authority. The reports describe the injuries sustained by the claimants. Mr Soni (who had access to the hospital medical records) ascribes the injuries to the bombing. The GP report is silent on causation of Eve's injuries. But Martin Hibbert's witness statement confirms how she came by those injuries and the claimants have also provided a witness statement dated 16 November 2023 from Eve's mother, Sarah Gillbard, providing the same confirmation.

33. The combination of the evidence described above more than satisfies the burden on the claimants to produce credible evidence in support of their application for summary judgment on Issues 2, 3 & 4. The defendant has therefore come under an evidential burden to demonstrate that he nevertheless has a "real prospect" of contesting these Issues.

34. I can summarise the defendant's submissions as follows:

    i) He claims that Martin Hibbert has been inconsistent in the statements he has made about the events of 22 May 2017 and about the impact of those events and his injuries.

    ii) He claims that there is no "reliable, verifiable evidence" of the claimants' attendance.

iii) He questions the extent and causation of the injuries – relying, to some extent, on a witness statement from a retired orthopaedic consultant, Mr David Halpin FRCS, dated 30 December 2023.

iv) He relies on inconsistencies and anomalies in (a) the evidence of injuries to other victims and (b) the evidence that there was an explosion.

v) He proposes that Salman Abedi was not killed, but escaped. He relies on police radio communications for this proposition.

vi) Relying on principle (vi) of the *Easyair* principles, he pointed to the likely availability of further evidence at trial (for example the evidence he was seeking in his third party disclosure applications) which might put a different complexion on the case and materially affect the outcome.

35. Before coming directly to these submissions, there are two general points to be made.

36. First, the context in which the submissions were framed was set out in the opening paragraph of the defendant's skeleton argument in which he said that it had "always been my position that if incontrovertible evidence was brought forward which proves beyond doubt each of the claimants' assertions, I would be willing to modify the opinions expressed about the claimants in my publications to reflect this". But this is not the test that is applied in civil proceedings. The civil standard of proof is the balance of probabilities, i.e. whether something is more likely than not. When evaluating whether a party has a "real prospect of succeeding" on a claim or issue, it is by that standard that the prospect is measured. Thus, it is no answer to the claimants' application to say that at trial they may fall short of a standard of incontrovertible proof because this is not the standard that will be applied in this, or any, case.

37. Second, I have already referred to the inherent implausibility of the defendant's "staged attack" hypothesis. Whilst acknowledging that issues as to the claimants' presence at the attack and the attack itself are separate and distinct, once the defendant's general hypothesis has been rejected (as I have rejected it) it is unrealistic to maintain that the claimants were not there and were either not severely injured at all or acquired their injuries earlier and by a different mechanism than the bombing. Indeed, the latter points are simply preposterous.

38. Turning to the defendant's specific submissions and taking them in the order in which they are summarised above:

i) In his second witness statement dated 9 January 2024, Mr Hibbert has explained the alleged inconsistencies in his account of the incident and his injuries. Given the highly traumatic nature of the event and the multiple times that he has recounted his experiences and heard others recount theirs, it would be surprising if there were not inconsistencies.

ii) It is obviously incorrect to say that there is no "reliable, verifiable evidence" of the claimants' attendance at the concert. The contrary is the case. The evidence is summarised at paragraph 30 above.

iii) The claimants' injuries and how they came by them are described by Martin Hibbert, by Eve's mother and in medical evidence from Mr Hibbert's treating consultant and Eve's GP. The defendant's own analysis and observations on these topics are of no value because he is not qualified to comment. The witness statement of Mr Halpin FRCS (consisting of his observations on one x ray and one image of Mr Hibbert) does not take matters any further and does not contradict the claimants' evidence. As I have already observed, to maintain that the claimants "visibly injured, were likely harmed before the attack and recruited but did not attend the concert" (paragraph 89 of the defendant's witness statement) is preposterous and untenable.

iv) Alleged inconsistencies and anomalies in the publicly available evidence concerning the Manchester bombing have been put forward by the defendant at great length and in great detail in his book and other publications. Exhibit RDH 1 to his witness statement, running to approximately 100 pages, contains a section headed "Evidence which refutes the official Manchester narrative and justifies an independent investigation". Sub-headings include "Type of explosive allegedly used", "Lack of building damage", "Apparently unharmed victims" and so on. I will not embark on a more detailed description. They all tend to the same conclusion, which is that the Manchester bombing was a staged and therefore fake event involving conspiracy on a grand scale orchestrated by malign UK government agencies and in which the ("recruited") claimants were complicit. I will not repeat the epithets that I have already applied to this hypothesis. Suffice it only to add that the defendant's points are directed towards evidence not actually relied upon by these claimants and they do not answer or cast any serious doubt on that evidence.

v) There was, as required by law, an inquest into Salman Abedi's death, the findings of which are publicly available. Those parts relating to the fact, date and cause of death are admissible in evidence; see *Daniel and another v St George's Healthcare NHS Trust and another* [2016] EWHC 23 (QB) [2016] 4 W.L.R. 32 at paragraphs 39 & 40. Salman Abedi was found to have died on 22 May 2017. The cause of death was "blast injuries". Hashem Abedi's convictions for murder rest on evidence that his brother was the bomber and died in the attack. It is fanciful to propose that Salman Abedi did not die. It is still more fanciful to propose that he escaped, was apprehended and then "cleared" (on the basis, as the defendant explained, that he was an intelligence asset).

vi) It is true that if the Issues formed part of the trial, there would likely be more evidence on them. Where summary judgment applications are concerned, that is very often the case. Self-evidently, that is not in itself a reason to direct disposal of the Issues at a trial. What the court must consider is whether reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case; see *Easyair* principle (vi). In relation to disclosure, the test is the same, namely whether there are reasonable grounds for believing that disclosure may materially add to or alter the evidence relevant to whether the defence has a real prospect of success; see *Okpabi* at paragraph 18 above. The important and governing principle is whether there are reasonable grounds for

believing that further evidence or investigation would *affect the outcome of the case* (or, in this case, the Issues). There are no such reasonable grounds. Further evidence and investigation will increase the volume of material that a trial judge would have to consider and the time required to do so. But it is clear that the material will not affect the outcome.

Conclusion

39. For these reasons, I find that the defendant has not discharged the evidential burden which rests on him. He has no real prospect, indeed no prospect at all, of success on the Issues and I will resolve them in the claimants' favour.

40. The defendant's applications for third party disclosure are also dismissed.

41. I will list the case for a further hearing to decide consequential orders, costs and directions to take the claim forward to a final determination. I invite the parties to submit a draft order reflecting the outcome of this hearing and a draft order for directions for future conduct.