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Case No: CO/3375/2021

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

Manchester Civil Justice Centre,
1 Bridge Street West, Manchester, M60 9DJ

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Before:

THE HONOURABLE MR JUSTICE JACOBS

Between:

**THE CHAIRMAN OF THE MANCHESTER
ARENA INQUIRY
- and -
AHMED TAGHDI**

Applicant

Respondent

**PAUL GREANEY QC, NICHOLAS DE LA POER QC, ALASDAIR HENDERSON and
AARON MOSS for the Applicant
RICHARD WRIGHT QC for the Respondent**

Approved Judgment

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MR JUSTICE JACOBS:

1. I will say at the start of this short judgment that I will grant the application which is made by the applicant, and these are the reasons for reaching that conclusion.
2. This is an application by Sir John Saunders, the Chairman of the Manchester Arena Inquiry, and he seeks an order that the respondent, Mr Taghdi, should attend the hearing of the Inquiry next week on 21st October. The applicant also seeks a direction that, in the event that Mr Taghdi breaches the order to attend, he can be arrested and brought before the Manchester Arena Inquiry to give evidence. Mr Taghdi, represented by Mr Wright QC, opposes both aspects of the application.
3. It is not necessary for me to describe the factual background to the Inquiry since it is very well-known. It is sufficient to say that Mr Taghdi was a friend of the two individuals, Salman Abedi who detonated the bomb at the Arena, and his brother, Hashem Abedi, who was convicted of murder after a trial at the Old Bailey. The terms of reference of the Inquiry require an investigation into, amongst other things, the radicalisation of Salman Abedi and the circumstances in which the bomb was prepared and assembled.
4. I have read in preparation for the hearing the detailed argument and evidence advanced by Mr Taghdi. He has challenged in different ways the appropriateness and need for him to give evidence to the Inquiry at all. Mr Wright has placed emphasis, in his oral submissions, on the fact that Mr Taghdi has previously provided a witness statement which was adduced by the prosecution at the trial of Hashem Abedi at the Old Bailey, that witness statement being based upon an earlier prepared statement which Mr Taghdi had given to the police when he himself was being questioned. I should say, for the benefit of those who do not already know it, that, although he was questioned, Mr Taghdi was subsequently told that he would not be prosecuted. Mr Wright, notwithstanding the argument described above, has acknowledged in his skeleton argument that it is beyond sensible argument that Mr Taghdi has relevant evidence that he can give to the Inquiry.
5. I have read the statements previously made by Mr Taghdi, and it does not seem to me that they provide answers to all the questions which are within the scope of the Inquiry of the Chairman and they do not provide answers to all the questions which can legitimately be asked. For example, the focus of the statements is not upon the past radicalisation of Salman Abedi and how that came about. That is no criticism of the statements themselves, but one has to recognise that the focus of statements for the purposes of criminal proceedings at the Old Bailey is different in material respects to the scope of the Inquiry on which the Chairman is currently engaged, which is necessarily wider.
6. The legal background to the application under section 36 is the Inquiries Act 2005 and the Inquiry Rules 2006. It is not necessary for me to go through the details of all the statutory provisions. Suffice it to say that section 17 of the Act provides that the procedure and conduct of an Inquiry of this kind are to be such as the Chairman of the Inquiry may direct. Section 18 of the Act provides for the Chairman to take such steps as he considers reasonable to secure that members of the public, including reporters, are able to attend the Inquiry. Section 21 of the Act enables the Chairman of an Inquiry to order a person to attend in order to give evidence, and in the present case that is what the Chairman has done in relation to Mr Taghdi. The Chairman's

direction was originally made in December 2020 with Mr Taghdi being required to give evidence in that month. Mr Taghdi did not in fact attend on 16th December, which was the appointed day, but arguments were advanced on that occasion, and those led the Chairman to obtain medical evidence concerning Mr Taghdi's health. For reasons which I mentioned in the course of argument, I am not going to go into any detail as to Mr Taghdi's health in this judgment beyond saying that I have read the psychiatric report produced as a result of the Chairman's decision in December 2020, and I note, as Mr Wright said in argument, that the evidence is that Mr Taghdi does have a mild to moderate depressive illness.

7. The present application concerns a second section 21 notice requiring Mr Taghdi to give evidence next week. That notice was served on 13th September 2021, and it led to correspondence which I have considered. The substance of Mr Taghdi's position, for reasons which have been developed in the course of argument, was that he was not willing to attend to give evidence next week.
8. The Act provides for the potential enforcement of a section 21 notice. That is done by means of a certification of the matter by the Chairman to the High Court under section 36 of the Act. That certificate has been made in the present case. A matter may be certified by reason of an actual breach of a notice under section 21: in other words if a person served with a notice does not actually attend on the appointed day. It can also be certified as a result of a threatened breach. In the present case there is clearly, in my view, a threatened breach of a notice under section 21, because Mr Taghdi has said that he does not intend to appear on 21st October having previously made similar statements prior to the December 2020 hearing.
9. The court's powers under section 36 are discretionary powers to make an order, by way of enforcement or otherwise, that it could make if the matter had arisen in proceedings before the court. There is no dispute that in the present case the court's powers include, potentially at least, the orders which the applicant seeks, which are a witness summons backed up by what is generally described as a bench warrant.
10. In addition, a question has arisen in previous cases as to the approach which the court should take under section 36 and, in particular, the extent to which respect should be accorded to decisions which have been made by the Chairman of the Inquiry himself or herself. The way in which the court should exercise its powers under section 36 was reviewed in detail by Gillen J in *Re: Ian Paisley Junior* [2009] NIQB 40 to which the applicant referred in his submissions. That case makes it clear that the court is not simply rubber stamping the decision of the Chairman. The court must give due and proper consideration under section 36 to whether or not it is appropriate to make an enforcement order. The court has a wide discretion in that regard, but must bring its own judgment to bear on the matters and evidence and argument which have been put forward by both parties, including Mr Taghdi. That does not mean, however, that the decision of the Chairman is irrelevant. The cases establish that the decision of a Chairman must carry weight. In *Moore-Bick v Mills* [2020] EWHC 618 (Admin), a case arising out of the Grenfell Inquiry, Mostyn J said that the decision of a Chairman carried considerable weight.
11. In my view, the approach of according weight to the Chairman's decisions applies with particular force where the court is essentially concerned, as to some extent it is in the present case, with the manner in which the Inquiry should deal with the evidence of a witness who has, for reasons which I have already explained, relevant evidence to

give. It seems to me that at least one principal argument which is advanced by Mr Taghdi, as a reason for not giving evidence, is an argument concerning the procedures which the Chairman is proposing to adopt for the giving of that evidence. In particular, a suggestion has been made on behalf of Mr Taghdi in the past that further steps, beyond the special measures which the Chairman has already put in place, should be taken in relation to Mr Taghdi, bearing in mind, as the Chairman has accepted, that Mr Taghdi is a vulnerable witness. It seems to me that the judgment of the Chairman of an Inquiry on procedural matters, such as how the hearing is to be conducted, is a matter to which I should afford considerable weight. I say that particularly bearing in mind that this Chairman has sat in a very sensitive case for 161 days, hearing evidence from numerous witnesses, including witnesses who have been granted anonymity. He has heard evidence from witnesses who are being asked in some respects to re-live what must be traumatic events, including witnesses who were present at the time when the bomb exploded or were concerned with providing treatment to individuals who were victims of the attack. The Chairman's judgment as to how a particular individual, such as Mr Taghdi, should give evidence is a matter which, in my view, should be afforded considerable weight.

12. With that background, I turn to the submissions of the parties, which I will summarise very briefly. Mr Greaney QC for the applicant says that Mr Taghdi has relevant evidence to give. That is a proposition which I accept. He submits that the court should not hesitate to exercise the powers under section 36 in relation to this important Inquiry. He says that none of the reasons advanced by Mr Taghdi for not giving evidence should lead to any concern as to the exercise of the court's power.
13. On behalf of Mr Taghdi, Mr Wright QC submits that the Chairman has correctly decided that Mr Taghdi is a vulnerable witness. He has referred me to the medical report of Dr Vandenebeele, a psychiatrist, who suggested a range of special measures designed to address the vulnerability of Mr Taghdi. The Chairman has put in place some of those measures, but Mr Wright says that they do not amount to very much more than simply giving Mr Taghdi breaks. The Chairman has declined to accept some of the suggestions of the psychiatrist and Mr Wright says that the Chairman should have gone further.
14. In addition, Mr Wright relies upon certain fears on the part of Mr Taghdi as to the risks to his family, and to some extent himself, that may arise from his appearing as a witness. Mr Wright submits that even if objectively the security arrangements which have been put in place, which I will not describe in any detail, are adequate, there is a further relevant factor: in that I should consider the perception of Mr Taghdi himself. Mr Taghdi is suffering from a mild to moderate depressive illness and will naturally be anxious about giving evidence, and those matters may be affected if not exacerbated by his own view as to the security position, even if objectively Greater Manchester Police consider that the security position is satisfactory.
15. Mr Wright also emphasised in his oral submissions that certain witnesses who had given evidence at the Old Bailey trial have been granted anonymity. He drew attention to the fact that that did not happen to Mr Taghdi, whose statement was read. He submitted that, had that not been the position and had Mr Taghdi given live evidence at the Old Bailey, he would have been protected by anonymity. He says that there is differential treatment between Mr Taghdi – whose evidence next week will, if the Chairman's approach is accepted, be broadcast on YouTube – as compared to various other witnesses who gave evidence at the Old Bailey trial.

16. Those are the arguments of the parties. In addressing those arguments and in reaching my conclusions I start with a number of general considerations.
17. First, as I have said, it is beyond argument that Mr Taghdi has relevant evidence to give. The Chairman, in my judgment correctly, does not consider that the witness statements previously provided give answers to all the questions which can legitimately be asked as part of the Inquiry on which he is engaged.
18. Secondly, the Inquiry is a Public Inquiry carried out pursuant to the Act and the starting point under section 18 is that there should be public access to the evidence being given at the hearing. It is clear that the Chairman, in deciding the manner in which Mr Taghdi should give evidence, and the fact that it is to be available on the YouTube channel, is paying regard and indeed is entitled to pay regard to that important principle which is enshrined in section 18.
19. Thirdly, as I have said, the procedure for carrying out an Inquiry is to be determined by the Chairman under section 17. I accept, as Mr Greaney acknowledged in his argument, that it would be open to the court to say that the procedure proposed by the Chairman is not satisfactory and that therefore either no section 36 order should be made, or at least that it should be made on terms that the Chairman's approach should be modified. However, where issues arise as to the manner in which evidence is to be given by an individual who clearly has relevant evidence to give, the approach of the Chairman is, for reasons which I have already indicated, to be given considerable weight. I bear in mind that it is the Chairman who is running the Inquiry. It is not the court which is doing so. Furthermore, this Chairman has very considerable experience of hearing from a very large number of witnesses, including those who have experienced trauma as a result of the events which he is investigating, and is therefore in a position to reach well-informed conclusions as to what procedures are appropriate for particular witnesses.
20. Against that background, I have no doubt that it is appropriate, as I indicated at the start of this judgment, to grant the present application. It is sufficient to say, in my view, that as far as special measures are concerned, those were put in place after the Chairman had read the psychiatric evidence, which I too have read. The correspondence with the solicitor to the Inquiry has left open the possibility of further measures, depending upon further possible evidence. But there is nothing which persuades me that what has been put in place is in any way inadequate or causes such concern as to mean that the court should not make an order under section 36. The Chairman, in deciding the nature of the measures to be put in place, has to balance various factors. Mr Taghdi's health and personal position are clearly relevant factors, but the public interest in the Public Inquiry being open to the public and the interests of core participants, including bereaved families, are also very relevant. It seems to me that he has carried out that balance. His approach is entitled to be afforded weight by this court and I am not persuaded that anything he has done in this regard is inadequate.
21. I reach the same conclusion in relation to security measures. Those have been assessed by the Greater Manchester Police on, as I read the correspondence, two occasions. They were considered in December 2020 and reconsidered again in March of 2021. I have no reason to think that the measures which have been put in place, which I will not describe in detail, are inadequate or inappropriate or that they provide a reason for Mr Taghdi not to attend to answer questions next week.

22. Some particular matters were addressed in the witness statement of Ms Khan (the solicitor for Mr Taghdi) about certain incidents which raised concerns as to security. These were set out in her witness statement. But those points, to my mind, were satisfactorily answered in some detail in the second witness statement of Mr Suter, the solicitor to the Inquiry, served two days ago.
23. In short, there is nothing raised by Mr Taghdi which causes me to conclude that an order under section 36 should not be granted and I consider it should be granted. That conclusion is not affected by Mr Wright's differential treatment argument. It seems to me that anonymity was granted to certain witnesses in the Old Bailey trial for reasons which have not been fully explained to me, and that it was not necessary to fully explain to me in the course of this application. The decision to grant anonymity to those witnesses has been respected and in effect continued by the Chairman of the Inquiry. But no anonymity was granted to Mr Taghdi, and it is not clear to me that it was in fact ever applied for by Mr Taghdi. Anonymity could have been applied for or ordered, even though Mr Taghdi ultimately was not called to give live evidence at the Old Bailey trial, because his statement was read. There is nothing which leads me to conclude that Mr Taghdi would have been treated in the same way as other witnesses, who did apply for and were granted anonymity, if he had been called as a live witness.
24. But, in any event, I have to look at the position now and decide whether a section 36 order is appropriate. The position is that, even if matters might possibly have proceeded differently in the Old Bailey trial, I have to look at how they actually did proceed. The position is that they did proceed on the basis that Mr Taghdi's statement was read without any anonymity order. It was reported on and therefore he is not beneath the surface in the way that other witnesses, who gave evidence at the Old Bailey trial with the benefit an anonymity order, could be said to be. Ultimately, I do not consider that the exercise of the section 36 power can be affected by what the position might have been if the Old Bailey trial and Mr Taghdi's involvement in it had taken a different course.
25. There is a separate issue as to whether or not it is appropriate to issue a bench warrant to give effect and give teeth to the orders which are sought for a witness summons. I consider that it is appropriate to take that extra step. Mr Taghdi, has made it clear on a number of occasions that his instructions are that he is not going to give evidence. There must be a strong possibility, and in my view a very strong possibility to say the least, that a witness summons on its own will be ineffective. It is very important in terms of the timing of the Inquiry that Mr Taghdi gives his evidence when scheduled to do so next week. The test which I apply is whether it is necessary to take this additional step, which has been described in *Hanson v Carlino* [2019] EWHC 1366 as an "extreme step". In my view, it is justified in the circumstances of the present case, given what has been said in the past and the likely result if I were not to make that order.
26. I will therefore make the order which has been requested but I will look at its detailed terms and hear any points which Mr Wright has on it and I have one point myself which I wish to raise with Mr Greaney.

This Judgment has been approved by the Judge.