Neutral Citation Number: [2019] EWHC 1941 (QB)

Case No: HQ16P00388
QB/2018/0296

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE
SENIOR COURTS COST OFFICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/07/2019

Before:

THE HONOURABLE MRS JUSTICE SLADE DBE

- -

Between:

DIANA FULLICK **CLARA FULLICK** **DENISE BACCHUS**	**Claimants/ Respondents**
- and -	
THE COMMISSIONER OF POLICE FOR THE METROPOLIS	**Defendant/ Appellant**

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- -

Mr Roger Mallalieu (instructed by **Bhatt Murphy Solicitors**) for the **Claimants/Respondents**
Mr Nicholas Bacon QC (instructed by **Metropolitan Police Service, Directorate of Legal Services**) for the **Defendant/Appellant**

Hearing date: 12th March 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MRS JUSTICE SLADE DBE

Mrs Justice Slade DBE:

1. The Commissioner of Police the Metropolis ('the Defendant') appeals from the judgment of Deputy Master Keens on 1 October 2018 ('the judgment'). Following settlement of a claim by the Claimants arising from the death of Ms Susan Sian Jones at a police station which she had attended voluntarily, on a detailed assessment of costs the Deputy Master ordered the Defendant to pay the Claimants' costs in the sum of £88,356.22. The Claimants are close relatives of the deceased. References to documents in the appeal bundle are given as AB.

2. Mr Bacon QC for the Defendant contended that Deputy Master Keens erred in holding that the costs incurred by the Claimants, in respect of the Inquest, including pre-inquest hearings and the costs involved in the Inquest were recoverable in principle as costs of the claim. The parties were represented before the Deputy Master by costs lawyers, Mr Buckley for the Claimants and Mr Robins for the Defendant. On appeal the Claimants were represented by Mr Mallalieu and the Defendant by Mr Bacon QC.

Outline relevant facts

3. A claim for damages for breach of Article 2 of the **European Convention on Human Rights**, negligence and misfeasance in public office was made following the death of Ms Jones who became ill at a police station. The deceased had attended voluntarily as a witness to a crime. She did not recover and died in hospital eight days later. The Claimants are the deceased's two daughters and her sister.

4. The Claimants instructed solicitors. An Inquest was held. On 11 June 2015 there was an initial pre-inquest review hearing which was attended by representatives of the Claimants. In June 2015 the Claimants were provided with disclosure by the Defendant and the London Ambulance Service. At the end of March 2016 protective court proceedings were commenced and stayed pending the outcome of the Inquest. In September 2016 a second pre-inquest review hearing took place.

5. The Inquest started on 10 October 2016 and lasted seven days, concluding on 20 October 2016. The jury delivered a narrative verdict that the deceased's death had resulted from methadone and alcohol intoxication coupled with inadequate police policies, procedures and training.

6. Without service of a letter of claim or particulars of claim, in March 2017the claim was settled for just over £18,000.

The submissions of the parties to Deputy Master Keens

7. A Bill of Costs was presented on behalf of the Claimants in which £122,000 was claimed. The costs included those related to attending the two pre-inquest hearings, the Inquest and in items 68 and 69 about £36,000 for civil claim documents work. All sums excluded VAT.

8. The Defendant challenged the claim for costs of the pre-inquest hearings on the basis that they were disproportionate. Mr Robins accepted that the costs of attending the Inquest were recoverable [AB 164 L 32] but he challenged the amount claimed. It

was submitted that costs are to be assessed on the 'new' Jackson test in accordance with the guidance given by Mr Justice Leggatt in **Kazakhstan Kagazy Plc v Zhunus** [2015] EWHC 404. Mr Robins contended that Mr Justice Leggatt provided guidance on the post Jackson test of proportionality. He submitted this was 'the lowest amount which [the receiving party] could reasonably be expected to spend in order to have the case conducted and presented proficiently having regard to all the circumstances.' [AB 154 L 22-44].

9. Mr Robins submitted that attendance at the first pre-inquest review hearing 'was not for the purpose of gathering evidence for the civil claim. This is to assist the coroner.' [AB 172 L 1-47] He submitted 'the case law provides that to be recoverable in civil proceedings 'costs in relation to the inquest should be for the benefit of gathering evidence.' [AB 173 L 28, 29].

10. There was an issue between the parties about the reasonableness and proportionality of the amounts claimed for each item, both as to the level of legal representation and the number of hours claimed.

11. Mr Buckley contended that the correct way to look at proportionality was to run through the factors in CPR 44.3(5). [AB 155 L 19-21]. He submitted, as was accepted by Mr Robins, that the claim was for more than money. It concerned systemic failings and gaps in policy of the police which were matters of public interest as well as interest to those of the parties. [AB 162 L 6,7].

12. Mr Buckley submitted that the first pre-inquest review was not a conventional 15 minute hearing. He said that 'this was the first opportunity… for the claimant to start engaging with the [inaudible] to issues of concern, such as appropriate safeguards for victims like the deceased, the issue of expert evidence on causation, the position that Miss Jones had been left in…' [AB 172 L 21-24].

The Decision of the Deputy Master

13. Deputy Master Keens observed that 'proportionate costs does not necessarily, in my mind, mean the lowest amount.' [AB p155 L 25-27]. He commented that the pre-inquest hearings 'were instrumental in a number of different ways in getting [the Claimant's] own pathology evidence heard at the Inquest, in compelling certain police witnesses to attend.' [AB p163 L 5-7].

14. Deputy Master Keens considered that at the second pre-inquest hearing the Claimants raised questions they wanted to be put to Dr Paul, the pathologist. [AB 174 L 13-15].

15. Deputy Master Keens held at AB 173 L 30-33:

> "I think this inquest, you know, went a lot further than evidence gathering. I mean it was very largely determining the issues and that is why settlement was capable of being reached without the civil proceedings having really needing to be progressed."

16. The Deputy Master then held at AB 174 L 25-31 in respect of the argument that costs of preparation for the Inquest should not be allowed:

> "You know that is what analysis assumes as some sort of passive meaning or definition of the inquest that somehow you just go along and you just wait and see what comes out of it whereas this is actually having input into the inquest to ensure that the evidence is before the coroner should be considering, and the jury as it emerged, and expect a liability and I think it just artificial to say that work done and preparation for the inquest in taking those steps that somehow is not part of the civil claim. I see this all as, so far, as preparatory to the civil claim."

17. The Deputy Master then carried out an assessment of the Bill of Costs.

The Grounds of Appeal

Ground 1

18. It is said in Ground 1 that the Deputy costs judge erred in law in concluding that the costs of £88,356.22 which he ordered to be paid to the Claimants were proportionate within the meaning of CPR 44.3(5). This amount was not proportionate having regard to the fact that the Claimant's claim settled for £18,798 and before the issue of a formal letter of claim and prior to service of proceedings. The Deputy Master failed to apply CPR 44.3 correctly and treated the costs of the Inquest as though it represented the civil trial.

19. By Ground 1 it is further said that the Deputy Master failed to have any or any proper regard to the provision in CPR 44.3(2) that 'costs which are disproportionate in amount may be disallowed or reduced even if they are reasonably or necessarily incurred.' The total costs awarded were disproportionate for the purposes of the civil claim and should have been reduced even if necessarily incurred for the purposes of the Inquest.

20. Yet further by Ground 1 it is said that the Deputy Master wrongly proceeded on the basis that it was both reasonable and proportionate for the vast majority of the Inquest costs incurred by the Claimants to be recoverable as costs in the claim.

Ground 2

21. By Ground 2 it is said that the Deputy Master wrongly accepted the Claimants' argument that 'the general costs of the inquest' were recoverable as costs of the action. By wrongly holding that the Inquest was 'the battleground' for the claim the Deputy Master was led into the error of allowing the vast majority of the Inquest costs as costs of the claim. In doing so he wrongly treated the Inquest as though it was a trial of the civil claim. The costs allowed by the Deputy Master were not the costs of and incidental to the claim. It was not reasonable or proportionate for the Claimants to incur in the civil claim all of the costs of the Inquest which were allowed.

22. Ground 2 contains a table showing those costs said to be irrecoverable as they were in respect of steps which were not progressive of the civil claim nor did they represent a proportionate method of gathering evidence for the civil claim.

Submissions of the Parties

23. Mr Bacon QC opened his submissions by pointing out that this was the first appeal in which the recoverability of inquest costs in civil claims to be considered after the Jackson reforms. Counsel suggested that the court considering the new provisions was not necessarily bound by previous decisions.

24. Counsel emphasised the different purpose and functions of an inquest and a civil claim. The first is inquisitorial. The second determines civil liability. Mr Bacon QC accepted, as had Mr Robins before the Deputy Master, that in principle costs of attending an inquest can be costs in the related civil claim. However to be recoverable as costs of the related civil claim they must have been incurred in taking steps which are relevant to that claim and proportionate.

25. Mr Bacon QC referred to the **Roach and Anor v Home Office** [2010] 2 WLR 746 in which Davis J sitting with assessors endorsed the approach of Clarke J in **Ross v Owners of Bowbelle (Note)** [1997] 2 Lloyd's Rep 196. Counsel submitted that even if some steps in proceedings are considered necessary to advance a civil claim they must not be allowed if they are disproportionate. Mr Bacon QC suggested that after the Jackson reforms, proportionality is to be given greater weight than previously. In particular he referred to the costs award of over £88,000 as disproportionate in pursuing a claim which settled for just over £18,000. Counsel relied upon the observation of Davis J in **Roach** in which he said at paragraph 60:

> "I would however wish to add an observation on the question of proportionality. There may well be cases (I think it better to say nothing myself as to whether either of these two cases do or do not fall into such a category: it was and is a matter for the Costs Judge) where the costs of antecedent proceedings claimed as incidental costs are so large by reference to the amount of damages at stake and/or the direct costs of the subsequent civil proceedings, if taken entirely on their own, that a Costs Judge will wish to consider very carefully the issue of proportionality.
>
> …
>
> If an assessment of disproportionality is made then costs will only be allowed if they were necessarily incurred and reasonable in amount."

Counsel submitted that the rule change post Jackson applies a more stringent test. CPR 44.3(2) provides:

> "(2) Where the amount of costs is to be assessed on the standard basis, the court will –
>
> (a) Only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred."

26. Mr Bacon QC submitted that costs which were incurred in amounts over and above the lowest amount which could reasonably have been expected were not recoverable from the paying party. Counsel contended that the Deputy Master erred in rejecting this principle which was derived from the judgment of Mr Justice Legatt in **Kazakhstan Kagazy**.

27. Counsel referred to Rule 13 of the **Coroners (Inquest) Rules 2013** pursuant to which an interested person, such as the Claimants, may obtain disclosure of documents held by the Coroner and, where available, the recording of any inquest hearing held in public. It was suggested that this mechanism could provide a more cost effective way of obtaining evidence than attending the Inquest hearing and pre-inquest hearings. It was submitted that the Deputy Master erred in holding as he referred to in paragraph 2 of Costs Judgment 1 that:

> "in the large the costs involved in the inquest should be regarded as costs of the claim."

Counsel contended that passages to similar effect in the Transcript of Proceedings displayed an error in approach by the Deputy Master. Detailed challenges to the level of legal representative and amount of time allowed by the Deputy Master in respect of each time were made. These are set out in helpful tabular form in the Amended Grounds of Appeal.

28. Mr Bacon QC, submitted that the Defendant should only have to pay the Claimant's costs of the attendance at the Inquest which were for evidence gathering for the civil claim and which were reasonable and proportionate. The attendance at pre-inquest hearings, the preparation for the Inquest and the time spent on documents and conferences with counsel did not fall within this category. It was submitted that the Deputy Master should have but failed to decide whether all these steps were for the purpose of the civil claim.

29. Further it was submitted that the Deputy Master erred in awarding costs for work which was in principle relevant to the civil proceedings but which was unreasonable and disproportionate in amount. Detailed challenges were made to the level of legal representation and amount of time allowed by the Deputy Master. These are set out in helpful tabular form in the Amended Grounds of Appeal.

30. Mr Mallalieu submitted that the Deputy Master did not err in law in his approach to the assessment of costs. His decision on the amount of the award can only be interfered with if it is outside the wide discretion given to him as the decision maker.

31. Counsel submitted that the proper approach to deciding whether the Deputy Master erred in awarding costs of and incidental to the Inquest was to be guided by the current authorities. Costs incurred must be both proportionate and reasonable. The only relevant difference after the 2013 change is that CPR 44.3(2)(a) provides that when assessing costs on the standard basis costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred.

32. Mr Mallalieu traced the power of the court to make orders in civil proceedings to award costs incurred in connection with a related inquest. **The Senior Courts Act 1981** Section 51(1) provides that:

> "Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in –
>
> (b) The High Court…
>
> shall be in the discretion of the court."

33. Counsel referred to CPR 44.3 and 44.4. These rules set out the principles to be applied in making such assessments. Mr Mallalieu submitted that the approach set out in **Re Gibson's Settlement Trusts** [1981] Ch 179 and **Roach** had not been modified by the new Civil Procedure Rules introduced in 2013. In order for the decision of the Deputy Master to be overturned the Defendant would have to show that he had not applied that approach.

34. Counsel referred to the three strands of reasoning set out in **Gibson** to be considered when deciding whether costs are 'of and incidental' to the civil claim. The two which are material to this appeal are: whether the costs would be of use and service in the civil claim and whether they were incurred in relation to something of relevance to an issue in that claim. Mr Mallalieu submitted that if costs of attendance at an inquest are for evidence gathering they are incidental to and recoverable in the civil proceedings.

35. It was submitted that each case must be decided on its own facts. **Lynch v Chief Constable of Warwickshire and others** Case No: JR 1305127 relied upon by Mr Bacon QC did not lay down any new principle. In that case Master Rowley held that the costs incurred in connection with an inquest were disproportionately high having regard to the sum at issue in the related civil action. Mr Bacon QC had drawn attention to the reference by Master Rowley in paragraph 64 to 'the necessity test as promulgated in **Lownds v Home Office** [2002] EWCA Civ 365. However, as pointed out in **Roach**, proportionality is a matter for the costs judge bearing in mind that the purpose of an inquest is to determine the cause of death not liability.

36. Mr Mallalieu contended that on the facts before him the Deputy Master did not err in deciding that the costs incurred in attending the two pre-inquest hearings as well as the Inquest itself were reasonably incurred and relevant to the civil claim. The transcript of proceedings record at AB 172 that at the first pre-inquest review hearing there was consideration of issues of concern such as appropriate safeguards for victims like the deceased, the issue of expert evidence on causation, the position in which the deceased had been left and other matters. At AB 174 the Deputy Master observed of the second pre-inquest hearing that the Claimants were having input into the Inquest to ensure that the evidence was before the coroner. He considered that it was artificial to say that work done and preparation for the Inquest in taking those steps was not part of the civil claim.

37. Mr Mallalieu pointed out that some challenges made on appeal went further than objections taken by Mr Robins before the Deputy Master. It was submitted that it was accepted before the Deputy Master that the attendance of counsel and a fee earner at the Inquest was proportional, although the level of fee earner and amounts charged were challenged. However on appeal it was being said that the Deputy Master should not have allowed costs of both counsel and a fee earner to attend the Inquest. Mr Mallalieu referred to a number of items on the schedule in the Amended Grounds of

Appeal on which it appeared from the Transcript of Proceedings that no detailed argument had been made by the Defendant before the Deputy Master. This applied for example to items 23, 24, 25, 28, 36, 61, 62, 68 and 69.

38. Mr Mallalieu submitted that the case before him required a multifactorial decision from the Deputy Master. The arguments advanced on behalf of the Defendant would have required the Deputy Master to disregard the importance of the claim beyond its financial value. The verdict of the coroner on the cause of death and any comment on the verdict was significant for the civil claim.

Discussion and Conclusion

39. The issue raised by both grounds of this appeal is whether the Deputy Master erred in awarding all the costs of and related to the Inquest into the death of the subject of a civil claim as costs in that claim. That issue was raised in Ground 1 as a challenge to the amount of the costs award of £88,356.22 for a claim settled for £18,798 without any proceedings being served. It was said that the test of proportionality set out in CPR 44.3(2) was not properly applied. Ground 2 asserts that the Deputy Master erred in treating the Inquest as though it was a trial of the civil claim which led him wrongly to award the costs of all steps in the Inquest as costs in the civil claim.

40. Mr Bacon QC rightly submitted that the functions of an inquest and of a civil claim are different. He referred to Jervis on the Office and Duties of Coroners thirteenth edition. At paragraph 1-22 the editor explained:

> "The functions of an inquest on a dead body at the present day are really to determine certain facts about the deceased, the cause of death, and the circumstances surrounding both death and that cause. Lord Lane CJ once summarised this by saying that: 'The function of an inquest is to seek out and record as many of the facts concerning the death as public interest requires.'"

Jervis continued at paragraph 1-24 that in **R v North Humberside Coroner ex parte Jamieson** [1995] 1 QB1 the Court of Appeal held:

> "It is not the function of a coroner or his jury to determine, or appear to determine, any question of criminal or civil liability, to apportion guilt or attribute blame."

An inquest is inquisitorial. A civil claim is adversarial.

41. The **Senior Courts Act 1981** provides:

> "51(1) Subject to the provisions of this or any other enactment and to rules of court, the costs of and incidental to all proceedings in –
>
> (b) the High Court; and
>
> (c) the county court,

shall be in the discretion of the court."

42. The decision of the Deputy Master on the award of costs in the civil claim was to be determined by applying CPR 44 which provides:

> "44.3(1) Where the court is to assess the amount of costs (whether by summary or detailed assessment) it will assess those costs –
>
> on the standard basis; or
>
> on the indemnity basis,
>
> but the court will not in either case allow costs which have been unreasonably incurred or are unreasonable in amount.
>
> (2) Where the amount of costs is to be assessed on the standard basis, the court will –
>
> (a) only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred; and
>
> (b) resolve any doubt which it may have as to whether costs were reasonably and proportionately incurred or were reasonable and proportionate in amount in favour of the paying party.
>
> (Factors which the court may take into account are set out in rule 44.4.)
>
> 44.4(1) The court will have regard to all the circumstances in deciding whether costs were –
>
> (a) if it is assessing costs on the standard basis –
>
> (i) proportionately and reasonably incurred; or
>
> (ii) proportionate and reasonable in amount
>
> (3) The court will also have regard to –
>
> (a) the conduct of all the parties, including in particular –
>
> …
>
> (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
>
> (b) the amount or value of any money or property involved;

> (c) the importance of the matter to all the parties;"

43. Mr Bacon QC rightly accepted, as had the Defendant below, that costs of attending the Inquest are recoverable. The civil claim concerned the cause of death of the person who was the subject of the Inquest.

44. Mr Bacon QC contended that authorities decided before the introduction of the post Jackson provisions in the CPR regarding costs were now not binding. I disagree. In my judgment there is no reason to disregard previous authorities where and insofar as they deal with considerations in the current rules of court which are to be applied when assessing costs.

45. In **Roach** Mr Justice Davis (as he then was) held at paragraph 48

> "It follows that, in agreement with the Cost Judges in each of these cases, I consider that the approach taken by Clarke J in the Bowbelle was correct. Costs of attendance at an inquest are not incapable of being recoverable as costs incidental to subsequent civil proceedings. Nor does this give rise to any unprincipled approach – because the relevant principles, as conveniently set out in Gibson, are available to be applied by Costs Judges in a way appropriate to the circumstances of each case. It may also be remembered that Clarke J in fact disallowed some of the costs relating to the inquest claimed as costs incidental to the civil proceedings (the overall approach illustrating just how important the factor of *relevance* is)."

In **Gibson** Sir Robert Megarry VC at page 186 identified three strands of reasoning to be applied in deciding whether costs incurred before the relevant proceedings in which costs are claimed are recoverable. These are whether those prior steps were of use and service in the proceedings, were of relevance to an issue and to attributability of the defendant's conduct to the claim.

46. These authorities emphasise the need to identify the issues raised in the civil claim and the relevance of matters in other proceedings, the inquest in **Roach**, or procedures, in **Gibson**, to determine as a first question, whether any of those costs can in principle be claimed in the civil proceedings. Once the threshold of relevance has been passed, the costs judge will decide whether the costs claimed in respect of, in this case, the Inquest, were proportionate to the matters in issue in the civil proceedings. As for the amount of those costs, those which are disproportionate may be disallowed or reduced even if they were reasonably and necessarily incurred.

47. It is trite but important to emphasise that each application for costs in a civil claim and related to an inquest must be determined on its own facts. This is illustrated in two authorities relied upon by Mr Bacon QC. In allowing the claimant's appeal in **Roach** from the decision of the Master to allow only half the costs of the inquest, in addition to the observation at paragraph 60, Davis J held at paragraph 58:

> "It is further essential, applying the principles in *In re Gibson's Settlement Trusts* [1981] Ch 179, to have regard to considerations of *relevance* where the costs of attendance at an

> inquest are claimed, in whole or in part, as costs incidental to the subsequent civil proceedings."

In support of his contention that the Deputy Master erred in awarding the costs of the pre-inquest hearings, counsel relied upon the judgment of Mr Justice Clarke (as he then was) in **Bowbelle** at page 2019 that:

> "I do not think that by the spring of 1990 all the costs of attending a full inquest could fairly be regarded as costs of or incidental to the contemplated proceedings against the shipowners. By that time negligence had been conceded."

However this observation, as that in **Roach**, does no more than emphasise the need to consider the facts of each case in order to decide whether the costs of attendance at the whole or part of an inquest are proportionate to the matters in issue in the civil proceedings. In **Bowbelle** negligence had been conceded before the inquest. The coroner did not proceed with an inquiry into the causes of the collision because of an intention to proceed with a criminal prosecution.

48. Amongst other matters, paragraph A of Appeal Ground 1 relies upon the fact that the claim in this case settled before the issue of a formal letter of claim and prior to the service of proceedings. That this is the case does not necessarily lead to a conclusion that costs incurred in and related to an inquest in which issues relevant to a contemplated civil claim are not recoverable was made clear by Mr Justice Davis in **Roach**. At paragraph 48 he commented:

> "Mr Westgate in fact was, I think entitled to observe – as he did – that it was open in the instant case to the Home Office likewise to seek to avoid or minimise any potential liability for such costs here by admitting liability prior to the inquest. He and Mr Post were also entitled to observe that the inquests here in practice seem to have had the effect of causing the civil proceedings thereafter relatively speedily (and thereby in a way saving of some costs) to be compromised."

49. The provisions of CPR 44.4(1)(a) make it clear that costs proportionately and reasonably incurred must also be proportionate and reasonable in amount.

50. As to the amount of costs to be awarded in respect of attendance at the Inquest, Mr Bacon QC submitted that the judgment of Mr Justice Leggatt in **Kazakhstan Kagazy** established that:

> "The touchstone is not the amount of costs which it was in a party's best interests to incur but the lowest amount which it could reasonably have been expected to spend in order to have its case conducted and presented proficiently, having regard to all the relevant circumstances. Expenditure over and above this level should be for a party's own account and not recoverable from the other party."

However, Mr Justice Leggatt made these observations on the facts and circumstances of the particular case before him. The passage relied upon by Mr Bacon QC was preceded by the following:

> "13. In a case such as this where very large amounts of money are at stake, it may be entirely reasonable from the point of view of a party incurring costs to spare no expense that might possibly help to influence the result of the proceedings. It does not follow, however, that such expense should be regarded as reasonably or proportionately incurred or reasonable and proportionate in amount when it comes to determining what costs are recoverable from the other party. What is reasonable and proportionate in that context must be judged objectively."

Unlike **Kazakhstan Kagazy** the civil claim in this case was about more than money. It challenged police practices and procedures and asserted breaches of Article 2 of the **European Convention on Human Rights**. Counsel relied upon **Coroners (Inquest) Rules 2013** Rule 13 to challenge the need for the level of costs for attending the Inquest hearing.

51. Each case must be judged on its own facts as to whether the amount claimed as costs for an allowable item is proportionate and reasonable. This court can only interfere with the judgment of the Deputy Master if he erred in law or reached a conclusion which was not open to him on the material before him, in other words, was perverse.

52. Whilst the 'battleground' reference may have been unfortunate, the Deputy Master did not err in his conclusion that the costs attendance at the Inquest hearing were reasonably and proportionately incurred. Mr Robins for the Defendant had not challenged that costs of attendance at the Inquest by legal representatives of the Claimants was allowable. The challenge was to the amount of those costs. The cause of death and recommendations for changes in police procedure were relevant to the civil claim. The claim was for damages for breaches of Article 2 of the **European Convention on Human Rights** in relation to the death of Ms Jones at a police station. Evidence on the cause of death and actions and procedures of the police given in the Inquest and the verdict reached are relevant to those issues. Consideration should be given to whether all or only some of the steps in the Inquest proceedings are relevant to the civil claim. If they are, whether the costs incurred in participation by the Claimant in each of those steps is proportionate and reasonable. If some of those steps are agreed, such as the giving of certain evidence, it is unlikely to be proportionate or reasonable for a receiving party to attend a pre-hearing review to deal with agreed matters.

53. It was perhaps infelicitous for the Deputy Master to refer to the 'inquest proceedings as the battleground for fighting out between the parties the issues that needed to be resolved' in the civil proceedings. Whilst the term 'battleground' may be said to fail to recognise the difference between an inquest and an adversarial civil trial to determine liability, the import of the observation was open to the Deputy Master in relation to this Inquest. The Defendant had not conceded the cause of death or defects in their procedures. The Inquest jury delivered a verdict on the cause of death attributing it in part to defaults on the part of the Defendant: inadequate policies,

procedures and training. It was not suggested by the Defendant that these were not issues raised in the contemplated civil proceedings.

54. The Defendant challenged the award of costs for attending the first pre-inquest review hearing. It appears from the transcript of the proceedings before the Deputy Master that he was informed that this was the first opportunity for the Claimants to 'engage' with issues of concern (AB 172 L21,22). These included expert evidence on causation and the position the deceased had been left in at the police station when she became ill. This account of the pre-inquest hearing was not challenged.

55. In my judgment it cannot be said that the Deputy Master erred in holding that 'it would be [a] remiss in pursuing this claim not to be there. (AB 173 L4,5) The Deputy Master did not err in deciding that costs of such attendance were payable and that they were proportionately and reasonable incurred.

56. The Defendant also challenged the order to pay costs of the second pre-inquest review hearing. Master Keens referred to what the Claimant's representative did at the one hour hearing as 'that is getting questions to the coroner, that they – or questions that they wanted to put to Dr Paul.' (AB 174 L13-15) That account of the content of the second pre-inquest review hearing was not challenged. In my judgment it cannot be said that the Deputy Master erred in allowing the Claimant's claim for the costs of the second pre-inquest review hearing.

57. The additional more substantial items listed in the Amended Grounds of Appeal as wrongly held to be recoverable as costs of the civil claim included the following from the Bill of Costs: 12, 13, 43, 54, 68 and 69. The global point of challenge to the Deputy Master allowing costs for all these items was that they were incurred preparing for the Inquest and were not reasonably or proportionately incurred in pursuing the civil claim. The challenges to items 14, 25 and 28 of the Bill of Costs to the level of representation at the Inquest hearing had been considered by the Deputy Master. The reductions he made and conclusions reached were within the parameters of his discretion on assessment.

58. The contentions of the Defendant in relation to each of these items are set out in the Schedule to the Amended Grounds of Appeal. Whilst it was rightly observed by Mr Mallalieu that the Deputy Master reduced the amounts claimed in respect of the challenged items, the question of whether the costs of these items should have been allowed at all is different from the issue of whether the amounts claimed in respect of them was proportionate and reasonable.

59. In respect of items 12 and 13, time spent in conference with counsel preparing for the Inquest, the Deputy Master observed: 'I am satisfied with 12 and 13 need for a pre-inquest conference.' (AB 176 L23) The challenge in respect of item 43 shown in the schedule is that the conclusion that all work reasonably undertaken for the Inquest was reasonably undertaken for the civil claim was flawed. Objections made by the Defendant before the Deputy Master were of excessive time spent on these items and that some of it was spent on the Inquest and related judicial review proceedings. Although the Defendant lists a challenge to issue 53 on the Schedule in the Amended Notice of Appeal, it appears from the transcript of proceedings before the Deputy Master that Mr Robins did not object to that item as there were costs of attendance on the Defendant. (AB 194 L15,16) The Deputy Master allowed item 54 on the basis that

correspondence with the London Ambulance Service was relevant to the claim. (AB 195 L6,7)

60. The largest sums of costs challenged on appeal were those for items 68 and 69, 72 hours of Grade A fee earner's time and 25 hours of Grade D time in respect of civil claim documents work. The challenge was both to the number of hours found to be attributed to the civil claim and also the amounts allowed in respect of those hours.

61. In deciding the number and grade of fee earner's hours attributable to the civil claim the Deputy Master observed in Cost Judgment 1:

> "The defendant's challenge, as premised in the points of dispute, was really focused on matters of principle really where I have found against the defendants in that I have held that in the large the costs involved in the inquest should be regarded as costs of the claim, so – as against that finding, the defendant's contending per the points of dispute that only a third really of the documents time at about 30 hours should be allowed to the Grade A is unrealistic and falls away. The claimants made a proposal of reduction, in respect of Grade A fee earner time to 80 hours; I think the reduction should be greater but not very much more so. I propose to reduce the 91.9 hours claimed for the Grade A fee earner by 19.9 hours to 72 hours and having made that disallowance there are six hours of that time that I think should be transferred to the Grade D fee earner in relation to preparation of bundles."

62. The passages referred to in the transcript of proceedings before the Deputy Master support his decision to award costs to the receiving party in respect of all the challenged items in the Bill of Costs save for items 68 and 69. In my judgment the Deputy Master erred in law in dealing with items 68 and 69 on the Bill of Costs in that he failed to decide which work claimed was relevant to pursuing the civil claim. The Deputy Master failed to consider the categories and subject matter of the documents in respect of which time spent on the civil claim was spent. This broad brush approach fails to distinguish between costs incurred in different steps in the Inquest. The percentage of costs incurred in each which were attributable to the civil claim may well have differed. The Deputy Master did not assess the time relevant to the civil claim spent on considering documents. Items 68 and 69 do not set out the categories and numbers of documents which were relevant to the civil claim. As this was not done, the Deputy Master was not in a position to assess whether those costs were proportionately or reasonably incurred or were proportionate and reasonable in amount. It is only once this has been decided that the Deputy Master would be in a position to assess whether those costs were proportionately and reasonably claimed and proportionate and reasonable in amount. This should be decided before considering the overall amount of the costs award having regard to proportionality

63. Appeal Ground 2 succeeds in relation only to the award of costs for items 68 and 69. The sum ordered to be paid by the Defendant to the Claimant in respect of these items is set aside. These items are to be reassessed.

64. As for Ground 1 of the Appeal, CPR 44.4 provides that when a court is assessing costs on the standard basis it will have regard to all the circumstances in deciding whether costs are proportionately and reasonably incurred or are proportionate and reasonable in amount. One of the matters to which the court will have regard apart from the amount at issue is the importance of the matter to all the parties.

65. In this case the amount of damages at issue was relatively small. However it was acknowledged by the Defendant that the claim was not just about money. This case is very different from that considered by Mr Justice Leggatt in **Kazakhstan Kagazy** in which the claim was for a large sum of money.

66. The Deputy Master did not err in taking into account that the issues raised in the civil claim were not only financial but were of importance to the deceased's family. The Inquest proceedings held the police to account in some measure for the death of Ms Jones. The settlement of the claim gave rise to agreement to revise policies, protocols and training which should avoid for the future the situation which arose in this case. These issues were of wider public interest than that of the Claimants.

67. In considering proportionality, the Deputy Master took into account that once the Inquest verdict had been delivered with a finding of at least partial responsibility on the part of the Defendant, the civil claim could be resolved shortly afterwards. Far from being a factor against allowing costs of the Inquest as costs of the civil claim, the approach of the Deputy Master is supported by observations of Mr Justice Davis at paragraph 48 of **Roach** that counsel were entitled to observe that the inquests in those cases in practice seemed to have the effect of causing the civil proceedings thereafter relatively speedy to be compromised.

68. In Costs Judgment 2 the Deputy Master referred to his reduction of the Claimant's claimed costs from something over £122,000 in the Bill of Costs to somewhere around £88,500 as what he considered to be reasonable and proportionate 'costs recoverable inter partes.' He stated that 'Having regard to the factors to which I have alluded, I do not consider it is appropriate to make any further reduction on the grounds of disproportionality. I do not find those costs as assessed by me today to be disproportionate to the issues.'

69. The reference by the Deputy Master to consideration of whether costs were proportionate to the issues is, in my view, of central importance to the assessment he was to make. The costs incurred by the Claimants in connection with the Inquest must be relevant to issues in the civil claim to be recoverable as costs in that claim. That requires identification of outstanding issues which are necessary to the civil claim in respect of which the Claimants' case would be advanced by participation in the Inquest. The assessment also required the identification of what it was **in that participation** which would assist with the civil claim. The value of that assistance would then be weighed against the cost of pursuing that particular point in the Inquest.

70. Performing the exercise of identifying and evaluating the relevance and utility to the civil claim of participating in the Inquest may be onerous but in my judgment it is necessary. It may be necessary and would be prudent to stand back to consider whether the total costs of participation in the Inquest are proportionate to its utility and relevance to outstanding issues in the civil claim.

71. The decision in each case will depend on its own facts. The approach to the assessment of costs set out in this judgment is applicable to the circumstance of this particular case. It is derived from CPR 44 and from the earlier judgments referred to which are relevant to the issues in this appeal.

72. This Inquest was concerned with the cause of death and police procedures and actions which were said to have been contributory factors. These matters were relevant to the civil claim which had been notified but not set out in Particulars of Claim. It had been rightly conceded that the cost of attendance at the Inquest hearing was relevant to the civil claim although the proportionality of the level and cost of participation was questioned.

73. The only items on the Bill of Costs in respect of which the challenge in Appeal Ground 2 has been held to be well founded are items 68 and 69. These are to be reassessed. In that reassessment the approach set out in the preceding paragraph and other relevant passages of this judgment are to be applied to ascertain how much of the work in respect of which costs are claimed for items 68 and 69 are relevant to the civil claim and whether they are proportionate in terms of their utility and amount. Once that figure has been arrived at, the proportionality of the total reasonable costs relevant to the civil claim can be assessed applying the principles which the Deputy Master rightly relied upon when conducting that exercise albeit that it will now be carried out using what may be a different figure for items 68 and 69.

74. Ground 2 is allowed to the extent that the reasonableness and proportionality of the costs incurred in relation to the Inquest which are to be awarded to the Claimants in the civil claim is to be re-examined in light of the re-assessment of items 68 and 69 in the Bill of Costs.

75. I am grateful to Costs Judge, Master Rowley who has sat with me in this appeal as Assessor for his experience in assessing costs. However this judgment is mine alone.

Disposal

76. Appeal Ground 2 succeeds only in relation to the award of costs for items 68 and 69 which are set aside.

77. Appeal Ground 1 succeeds to the extent that the total costs to be awarded are to be re-assessed in light of the re-assessment of items 68 and 69.

78. The assessment of costs in accordance with this judgment is to be carried out by a Costs Judge other than Master Rowley who will also deal with the costs of the appeal.