

Inquests: can the costs of representation be recovered?

Coroners have no power to award costs of legal advice or representation at inquests. Where a successful civil claim follows, parties will naturally wish to recover the costs of the inquests as well as the costs of the civil proceedings from the losing party. The starting point is Section 51 of the Supreme Court Act 1981 which enables the court to award costs “of and incidental to” civil proceedings.

The Gibson Test

Inquest costs may be recovered however the threshold is high. In Re Gibson's Settlement Trusts [1981] Ch 179 it was held that pre-action costs were, in principle, “incidental” to the proceedings however a threefold test had to be satisfied to recover the costs: (1) proven use and service in the civil action; (2) bear relevance to an issue in the proceedings; and (3) be attributable to the paying party's conduct.

Roach v Home Office

The HO's arguments in Roach v Home Office [2009] EWGC 312 (QB) that the costs of one set of proceedings were never recoverable as costs of and incidental to, another set of proceedings, was rejected. The extent of the recoverability of those costs depends on the specific facts of each case. Mr Justice Davis in Roach therefore refused to lay down any general guidelines in light of this.

At first instance, Master Hurst allowed the Claimant to recover only 50% of the costs of attending the inquest as, whilst some of those costs were for questioning witnesses and obtaining evidence for the subsequent civil claim, there was also a dual purpose to the inquest to assist the coroner. This approach was rejected on appeal by Mr Justice Davis as the purpose of the inquest was a relevant consideration but not decisive. In cases where the inquests costs are significant in comparison to the amount at stake or the direct costs of the civil proceedings, then proportionality will be a central consideration.

Lynch and Others v Chief Constable of Warwickshire Police and Others (2014) SCCO 14 November 2014

In this case, the Claimants have been represented at the ten week inquest by leading and junior counsel in addition to a senior solicitor and junior fee earner. The Defendant argued that this approach had been unnecessary and disproportionate. Further, it was argued that, as a result of extensive pre-inquest disclosure, it was not necessary for the Claimants to attend the inquest in order to plead their civil case (therefore the costs of attendance did not meet the first limb of the Gibson test).

Although in Roach, the inquest was considered as a way of evidence-gathering for the subsequent claim, Master Rowley stated: “cases involving long running inquests invariably stand the evidence gathering approach in Roach on its head. Instead of it

being a cost-effective method of gathering evidence, it becomes a disproportionate expensive way of doing so”.

The parties’ approaches at the assessment was summarised: “the Claimant’s approach is to take events as they happen and, as long as they were of some use and benefit in the civil claim, then they must be recoverable. The Defendants’ approach is to cut out periods of time which can be said to be incidental to the civil claim from the overall inquest process”. Master Rowley preferred the approach put forward by the Defendant, and a forensic analysis of the costs was necessary.

The costs of the following were allowed:

- Periods when the following were giving evidence: Claimant’s witnesses, witnesses as to the Defendant’s system, witnesses whose involvement was ruled out by the coroner;
- Periods when no questions were being asked by the Claimant;
- Periods when witnesses who had already given evidence at the disciplinary hearing were in attendance (fees of a note taker only recovered).

The costs of the following were not allowed:

- Attendance on procedural matters relating to the inquest (e.g. summing up, jury questions, pre-inquest review);
- When witness statements were being read;
- Costs of leading counsel;
- Client care.

Conclusion

The extent of the recoverability of inquests costs is case-specific and it is clear that since Lynch, those costs are subject to greater scrutiny by the court. Defendants can make significant in-roads into those costs. Claimants or representatives of families or interested parties clearly have to bear this in mind and accept that only a proportion of the costs of an inquest (whether as a result of legal aid or private fees) may be recovered, particularly if the civil claim is likely to fall within the new “intermediate track” and fixed recoverable costs proposed by Lord Justice Jackson in his Review of Civil Litigation Costs.

Park Square Barristers offer continuity of representation for families or interested parties in both inquest and subsequent civil proceedings.

Kate Wilson is instructed to provide advice and representation on behalf of regulatory bodies including the Care Quality Commission.

To book Kate, please contact her clerk, Madeleine Gray on 0113 202 8603