Neutral Citation Number: [2026] EWCA Civ 605

Case No: CA-2025-000589

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
His Honour Judge Sephton KC sitting as a Judge of the High Court
AC-2023-MAN-000263

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/05/2026

Before :

LORD JUSTICE NEWEY
LORD JUSTICE EDIS
and
LADY JUSTICE WHIPPLE

- -

Between :

THE KING **On the application of Sharon O'Brien**	**Appellant**
- and -	
HM ASSISTANT CORONER FOR SEFTON, KNOWSLEY AND ST HELENS	**Respondent**
- and -	
(1) THE CHIEF CONSTABLE OF MERSEYSIDE POLICE	**Interested Party**

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Kate Stone (instructed by **Irwin Mitchell LLP**) for the **Appellant**
Louis Browne KC and **David Illingworth** (instructed by **Corporate Legal Resources Sefton Council**) for the **Respondent**
Robert Cohen (instructed by **Legal Services Department, Merseyside Police)** for the **Interested Party**

Decision on costs reached on written submissions without a hearing

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COSTS JUDGMENT

This judgment was handed down remotely at 10.30am on Tuesday 19 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Edis:-

1. In the order of 22 April 2026 allowing the appeal, this court directed that:-

> "The Respondent and the Interested Party shall file and serve written submissions on costs in response to the submissions of the appellant dated 21 April 2026 by 4pm on 29 April 2026. The court intends to decide the costs issue without a further hearing."

2. This direction was given in that form because the Appellant had already made detailed written submissions on costs and it only remained for the Respondent and Interested Party to reply. They have both now done this, and this judgment sets out the decision of the court on the costs of the appeal.

3. The Appellant submits that the general rule is that costs follow the event. She has succeeded in her appeal and should be entitled to recover her costs from one or both of the other parties, both of whom actively defended the application for judicial review and the appeal. The decision she challenged has been quashed, the matter will be remitted to be reconsidered by another coroner, and "this will involve a reconsideration of the decisions about the need for a jury and whether Article 2 is engaged, since those were premised on the coroner's premature decision about causation."

4. The Appellant accepts that specific considerations apply in respect of (a) costs in challenges to coronial decisions by judicial review and (b) costs orders against interested parties. In summary she submits:-

    a. In respect of the Respondent, that whilst he purported to adopt a neutral stance to assist the court, in fact he actively defended the appeal and the underlying application for judicial review, and an order for costs should be made against him in accordance with established case law concerning costs in challenges to coronial decisions; and

    b. In respect of the Interested Party, that the court's discretion as to costs enables it to make an order for costs against an interested party which has opposed a claim or appeal, as the Interested Party has done here, and the court should apply the general rule to order the unsuccessful party (or parties) to pay the costs of the successful party.

Costs against the Respondent

5. Both parties accept that the relevant principles as regards costs in challenges to coronial decisions were set out by Brooke LJ in *R (Davies) v Birmingham Deputy Coroner* [2004] 1 WLR 2739 [47]-[48] in these terms:-

> "[47] It will be apparent from this judgment that the answers to the questions I posed in para 3 above are:
>
> a) the established practice of the courts was to make no order for costs against an inferior court or tribunal which did not appear before it except when there was a flagrant instance of improper behaviour or when the inferior court or tribunal unreasonably declined or neglected to sign a consent order disposing of the proceedings;

b) the established practice of the courts was to treat an inferior court or tribunal which resisted an application actively by way of argument in such a way that it made itself an active party to the litigation, as if it was such a party, so that in the normal course of things costs would follow the event;

c) if, however, an inferior court or tribunal appeared in the proceedings in order to assist the court neutrally on questions of jurisdiction, procedure, specialist case law and such like, the established practice of the courts was to treat it as a neutral party, so that it would not make an order for costs in its favour or an order for costs against it whatever the outcome of the application.

"[48] Needless to say, if a coroner, in the light of this judgment, contents himself with signing a witness statement in which he sets out all the relevant facts surrounding the inquest and responds factually to any specific points made by the claimant in an attitude of strict neutrality, he will not be at risk of an adverse order for costs except in the circumstances set out in paragraph 47(i) above..."

6. In *R (Adath Yisroel Burial Society & Anor) v HM Senior Coroner for Inner North London* [2018] EWHC 1286 (Admin), the High Court considered whether the defendant coroner had "at any stage crossed the line from merely seeking to assist the court on relevant aspects of law and procedure into arguing the correctness of the decision under challenge." The court approached this exercise by assessing the contribution to and stance of the coroner by reference to pre-action correspondence, documents filed with the Court and the hearing itself, noting that neutrality is a matter of substance, not form. In that case, the defendant coroner ceased to be neutral when filing Addendum Detailed Grounds which advocated the correctness of her policy and were no longer simply giving information to the court.

7. In *R (Paul Worthington) v Senior Coroner for Cumbria* [2018] EWHC 3386 (Admin), the defendant coroner sought to maintain that he was taking a neutral stance, but the Divisional Court, which included the Chief Coroner, disagreed. The court observed that "both parties clearly sought to persuade us, to the best of their considerable ability, that their submissions should be preferred." The court noted that had the claim been successful, the claimant would have been entitled to his costs against the coroner. At [61] the court said:-

"……we do not condone any practice of Coroners or any form of tribunal defendant in judicial review proceedings, insofar as it exists, of stating that they are taking a neutral stance in respect of those proceedings, but then making submissions that are clearly not neutral but partisan."

8. The Appellant identifies these suggested examples of the Respondent actively defending this case:-

a. In his pre-action response letter, the Respondent argued that "there is no error of law/inadequacy of reasoning demonstrated. On the contrary, the Assistant Coroner was wholly entitled to reach the conclusions he did for the

reasons he gave." In respect of disclosure of documentary evidence, likewise the Respondent argued that "no error of law is demonstrated in the Assistant Coroner's ruling".

b. In his summary grounds for contesting the claim in the High Court, the Respondent argued that the Appellant's statement of facts and grounds "disclosure [sic] no public law errors in D's decision, or the process by which he reached it." and that "D asserts that the decisions he reached were correct in law.". The Respondent referred to his "detailed" pre-action response "setting out fully why the claim was resisted and also why C's claim, as advanced demonstrates no error of law, or other grounds for judicial review". The Respondent concluded: "C fails to demonstrate any error of law in D's decision-making. D respectfully submits that permission for judicial review should be refused."

c. In his skeleton argument in the High Court, the Respondent described the Appellant's argument as "pure speculation" and argued that the court "can properly find that C fails to demonstrate any error of law/inadequacy of reasoning in D's determination. Further, that D was entitled to reach the conclusions he did for the reasons he gave."

d. In his statement in response to the application for permission to appeal, the Respondent said: "the court is invited to refuse permission to appeal on the basis that the appeal has no real prospect of success and there is no other compelling reason for the appeal to be heard.". The Respondent stated that the Appellant's argument was "without merit".

e. In his skeleton argument on appeal, the Respondent characterised the Appellant's arguments as "pure speculation", "unfair" and "entirely speculative" and argued that the Appellant failed to demonstrate any error of law in the approach of the High Court.

9. The Appellant particularly relies on the statement in the Respondent's summary grounds in the High Court that he "asserts that the decisions he reached were correct in law". She submits that this is not a case, as in *Adath Yisroel*, where the defendant coroner only 'crossed the line' into actively defending the proceedings at a late stage.

10. In response, Mr Browne KC, in his written submissions on costs, submits that the Respondent has repeatedly made clear that he was not advocating for a particular outcome. He points to some passages in his skeleton argument on appeal (which was in substance very similar to the skeleton argument in the court below). It was there submitted:-

> "7. He takes a neutral position. He will assist the Court with the applicable statutory provisions and relevant legal principles to be applied in understanding his decision on scope.
>
> "8. In the light of that, it is a matter for the Court then to determine whether the learned Judge was wrong to the requisite extent that permits this Court to interfere with and set aside the Order……"

11. He indicated in that skeleton that the court "may conclude that each of [his] findings were properly open to him and C fails to demonstrate any error of law in his

approach", but, he says, he did not positively invite the court so to conclude.

12. He submits that the conclusion was expressed in similarly neutral terms and did not advocate for any particular outcome**:**

> '[56] It is hoped the above submissions will assist the Court in understanding D's decision on scope. Should the court consider that the decision of the learned Judge does not disclose an error of law, it would follow that the appeal can be dismissed.'

13. Mr Browne submits that he also made this stance expressly clear in the course of responding to the Appellant's submissions before the Court of Appeal.

14. In dealing with some of the points made by the Appellant which are said to demonstrate the Respondent "actively defending this case", Mr Browne submits:-

- "The stance adopted pre-action is irrelevant to the question of costs when applying the *Davies* principles. The Respondent was required by the Pre-Action Protocol to explain and justify his position pre-action. He was entitled to defend his decision pre-action before adopting a neutral stance in the proceedings to assist the court. The *Davies* principles only apply to the Respondent's conduct once proceedings are issued.
- The points made by the Respondent in response to an application for permission to appeal are of no assistance in deciding whether the Respondent was arguing the correctness of the decision challenged. The Respondent was entitled to resist the application for permission to appeal and, in doing so, was asserting the absence of viable grounds for appeal rather than re-asserting the correctness of his original decision.
- The quotations from the Respondent's skeleton argument must be understood in their proper context:

  "The references to "*speculation*" as to what may have happened in the counterfactual were merely explaining the Respondent's rationale for making the decisions he did on scope**.**

  The Respondent did not characterise the Appellant's arguments as "*unfair*". The Respondent was making a procedural point, entirely properly, about the Appellant seeking to take points on appeal which were not taken below."

Decision: the Assistant Coroner

15. In my judgment the Appellant is right in her submissions. The approach of the Assistant Coroner was, in substance, a defence of his decision mounted in just the

same way as would a litigant seeking to uphold it. The claims to neutrality were not made out by the content of the submissions made. This applied throughout the proceedings. I have reviewed the skeleton argument placed before the judge and that relied upon on this appeal and find that far from being neutral in substance they each contain a robust defence of the decision of the coroner advancing submissions which this court found should have been rejected. The inclusion of the words relied upon by Mr Browne at [10]-[14] above do not deprive the submissions made at various stages of this quality.

16. Mr. Browne cites no authority for the proposition that the content of the Pre-Action Protocol letter is irrelevant to this issue, and I do not accept it. The Respondent was not required "to explain and justify" his decision. He chose to do that. He could have accepted that he had taken a decision on causation prematurely and without considering relevant materials. He could have simply left it to the Court to decide the merits of the challenge. Instead, he supplemented the reasons he had given in his Decision Notice by setting out the submissions of the Interested Party which, he said, he accepted.

17. For these reasons I would make an order that the Respondent shall pay the Appellant's reasonable costs of the judicial review proceedings and this appeal on the standard basis, to be quantified on detailed assessment if not agreed.

Costs against the Interested Party, the Chief Constable

18. The starting point is that the court has discretion as to whether costs are payable by one party to another, in accordance with CPR r.44(1)(a). This applies equally to interested parties, as the Administrative Court Judicial Review Guide 2025 implicitly recognises at §25.6, when considering the circumstances in which an unsuccessful claimant may be ordered to pay the costs of both the defendant and an interested party. The court may order such a claimant to pay two sets of costs when the defendant and interested party have different interests which require separate representation.

19. In this case, the interests of the Respondent and Interested Party were different but aligned to the same objective: both parties sought to persuade the High Court and the Court of Appeal of the correctness of the decision under challenge. As it would be open to the court to award costs to an interested party from an unsuccessful claimant, so is it open to the court to award costs to a successful claimant from an interested party. The principle to be applied is the general rule.

20. In *R (Easter) v Mid-Suffolk District Council* [2020] EWCA Civ 1378, the Court of Appeal upheld an order for an interested party to pay the costs of the claimant from the date on which the defendant agreed to concede the claim by consent (with the defendant paying the claimant's costs up to that date). This was because the interested party "had taken on the burden of defending the claim".

21. In these proceedings, the High Court, when dismissing the Appellant's claim for judicial review, ordered that she must pay the costs of the Interested Party, applying the general rule on the basis that the Interested Party "opposed the claimant's application successfully" and therefore "the general rule ought to apply as to the costs as between the claimant and the first interested party".

22. The High Court was correct to observe that the Interested Party opposed the application for judicial review. The Interested Party likewise opposed the appeal.

The Interested Party was awarded his costs by the High Court on the basis of the general rule and would no doubt have sought his costs from the Court of Appeal on the same grounds had the appeal been dismissed.

23. The Interested Party has been consistent throughout the proceedings in opposing the Appellant's claim for judicial review and seeking to uphold the lawfulness of the decision under challenge:

    a. In the Interested Party's detailed grounds of resistance in the High Court, he argued that the claim should be dismissed.

    b. In the Interested Party's skeleton argument in the High Court, he argued that the Respondent "applied the law in a straightforward manner and exercised his discretion lawfully".

    c. In the Interested Party's statement in response to the application for permission to appeal, he argued that "the proposed appeal does not have a real prospect of success and there is no other compelling reason for the appeal to be heard."

    d. In the Interested Party's skeleton argument on appeal, he argued that "the court below and the Respondent made no error of law" and that the appeal should be dismissed.

24. In his submissions on costs to the High Court, the Interested Party said this:

> "8. If the court determines, in accordance with the Claimant's invitation, that the Defendant cannot recover costs because it was neutral, this does not make it illogical to allow the Chief Constable to recover costs. The Chief Constable was not neutral (and made that clear at each stage of the litigation). The fact that an interested party participates in a judicial review alongside a neutral party does not mean that the interested party is assumed to be the subject of the same principles on costs."

25. Mr Cohen, on behalf of the Interested Party, accepts that the Court retains considerable discretion in respect of costs under CPR Pt. 44, and acknowledges that the Appellant succeeded in her appeal and that the Chief Constable was one of the parties resisting the appeal. However, he submits that this does not justify an order that he should pay the Appellant's costs. He submits that the primary unsuccessful party to the appeal was the Respondent.
26. In particular, he submits that the primary defect in the initial decision, and the decision of the Court below, was attributable to the coroner having decided a question of scope prematurely and without regard to the relevant principles of criminal procedure. Those errors, he says, are wholly apart from the Chief Constable. He agrees that in this instance the Respondent actively opposed the appeal and took points which sought to proactively defend the correctness of the decision.
27. The Chief Constable had a proper and distinct interest in the issue before the Court. The proposed relief would affect the future conduct of the inquest, including whether the conduct of Merseyside Police would fall within its scope and whether police acts or omissions might form part of any causation inquiry. It was therefore both reasonable and proportionate for the Chief Constable to make submissions. That legitimate participation should not, without more, attract an adverse costs order.

Decision: the Chief Constable

28. The answer to Mr Cohen's submissions is found in the Assistant Coroner's Pre-Action Protocol Response Letter, referred to above and at [20] and [28] of the judgment on the appeal. This simply sets out the submissions which the Chief Constable had made to the coroner and accepts them. These submissions were the origin of the legal error which led this court to allow the appeal against the dismissal by the judge of the claim for judicial review. They successfully persuaded the coroner, and later the judge, that any enquiry as to the probable course of events had an arrest taken place on 7 April 2020 was pure speculation. This court has found that these submissions led the coroner and the judge into error.

29. It is also relevant that the Interested Party had the institutional competence to assist the coroner on what would have happened had Alan McMahon been arrested, as he should have been, on 7 April 2020. They could have supplied details of what happened at the court appearances the previous August, and the following June. The nature of the offences for which he was sentenced on those two occasions could, and should, have been before the coroner. The previous convictions of Alan McMahon were in the public domain at both those hearings and the coroner could, and should, have been supplied.

30. For these reasons I would order that the Interested Party shall pay the Appellant's reasonable costs of the judicial review proceedings and this appeal on the standard basis, to be quantified on detailed assessment if not agreed.

Apportionment

31. The Respondent and the Interested Party shall be jointly and severally liable for the costs identified at [17] and [30] above, but as between themselves should each bear 50% of them.

Lady Justice Whipple

32. I agree.

Lord Justice Newey

33. I also agree.