## 4849---Matthew-Harman-SB-and-TW.jpg

## Lynch -v- Chief Constable of Warwickshire Police, Warwickshire County Council and Coventry and Warwickshire NHS Trust

### It was in 2009 in the case of Roach v The Home Office that the recovery of inquest costs was last considered by the Courts. In that case it was concluded by Davis J that inquest costs were recoverable as costs ‘of and incidental to’ the civil proceedings.

### The case of Lynch has now led to a detailed consideration of the issue by Master Rowley and this consideration certainly represents one of the first proper reviews of what should be considered reasonable and proportionate recoverable costs of inquests claimed in subsequent civil proceedings.

### Master Rowley’s decision provides significant guidance and makes it clear that there are limitations to recovery of these costs that can be utilised when applying the test of reasonableness and proportionality to the receiving party’s bill.

### The Costs Judge considered that when assessing the recoverable inquest costs in subsequent civil proceedings it was important that the court was clear that it was not assessing the “reasonable and proportionate costs of an inquest” but was instead charged with assessing and determining what “*the reasonable and proportionate elements of inquest costs are also reasonable and proportionate costs of the civil proceeding*s”.

### Colette Lynch had been murdered by her former partner. The inquest was opened in February 2005, however, it was to be four years before the inquest hearing actually took place, pending the outcome of associated proceedings and investigations.

### The hearing started in October 2009 and lasted for two and a half months.

### Subsequently a civil action, arising from the Police’s failings and brought on behalf of the estate and Colette Lynch’s family, was settled for a confidential sum in 2012. The family sought to recover costs of £1.5m including approximately £750,000 for the pre-inquest preparation and the inquest itself.

### In his judgment Master Rowley warns that ‘*It is not for me to lay down any form of general guidelines and the conclusions in this judgment relate to this case alone*’ but one cannot help but heed the guidance and apply the same when dealing with the opposition to costs of and incidental to any inquiry.

### As previously stated the case of Roach had concluded that Inquest costs are recoverable in principle where they are costs ‘of and incidental to’ the civil proceedings. However since that case there has been a major change in the position occasioned by The Coroner’s (Inquests) Rules 2013 with regard to prior disclosure.

### As a result of these rules disclosure prior to an inquest is now routine and this has had a significant impact on whether the costs of full attendance are costs ‘of and incidental to’ the civil proceedings.

### As mentioned the costs claimed relating to the inquest amounted to £750,000, of which approximately £600,000 related to the attendance. The claimants had been represented at the inquest by a team comprising senior and junior counsel, a partner and a trainee solicitor.

### Master Rowley found the claimants’ costs to be globally disproportionate; finding it ‘*inconceivable*” that the approach adopted by the claimants in this case would have been upheld as a proportionate method of bringing these claims to a civil hearing had the matter required a case management hearing.

### He commented further that “no case managing judge would allow sums of the magnitude claimed here to be spent in the working up of the claim before the close of pleadings in the court proceedings’.

### Of course this smacks of hindsight but the Master goes on to deal with this view in some detail at para. 68 onwards of his full judgment.

### The Master was in agreement that, as per *Roach*, attendance may be justified for the purposes of gathering evidence, however successful recovery of the costs of such an attendance required justification as being of benefit to the civil claim and that the costs involved were reasonable and proportionate in the pursuit of that civil claim.

### In the assessment of costs the defendants had raised the issues of necessity and proportionality, emphasising that as a result of the disclosure that had taken place prior to the hearing, the claimants already had access to supporting evidence in respect of each particular in the civil claim, thereby negating the need for attendance at the level claimed at the inquest hearing itself.

### It is useful to note that the Costs Judge went on to find that costs incurred in the following categories (as raised by the Defendant) were not recoverable in this case:

### - (Para 78) Time spent that was irrelevant to the civil claim such as attending pre-inquest reviews, the opening of the inquest, procedural matters, summing up, jury questions and waiting for the jury.

### - (Para 77) Time spent listening to witness statements being read out.

### In addition the Master disallowed the costs of leading counsel attending the inquest. He allowing only the cost of junior counsel (though observed a senior solicitor may be equally suitable) for the following categories:

### - (Para 86 onwards) Attendance during the evidence of the Claimants’ own witnesses

### - (Para 86 onwards) Attendance when no questions were asked of witnesses by the Claimants’ team

### - (Para 86 onwards) Attendance during the evidence of witnesses whom the coroner described as not being directly involved

### - (Para 86 onwards) Attendance during the evidence of the Defendants’ systems witnesses

The Master also concluded that:

### - (Para 95) For attendances where witness evidence was being given by witnesses who had previously given evidence in other related proceedings (in this case there had been a police disciplinary hearing), all that was recoverable were the costs of the attendance of a trainee solicitor to take a note.

And

**At Para 97 the Costs Judge added that ‘client care’ or ‘hand-holding’ fell within the private/public funding retainer regarding attending the inquest and was not part of the civil claim.**

### This was a robust decision from a Costs Judge known to be willing to raise his head above the parapet and has been welcomed, unsurprisingly, by Defendants; it is clear that there must be substantial evidence that the work undertaken preparing for and attending at the inquest was of benefit to the civil claim and that the work undertaken was reasonable, proportionate and necessary.

### Should anyone require the full transcript of this case please contact us.