Recoverability of inquest costs – what constitutes an 'admission'?

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In this article we look at the recent case of *Greater Manchester Fire and Rescue Service v. Veevers [2020] EWHC 2550 (Comm)* which is the latest case to deal with the issue of recoverability of inquest costs and will be of particular interest to insurers and other indemnifiers given its ramifications.

Key points

Defendants wishing to minimise the risk of facing a claim for inquest costs must make clear and binding admissions of liability prior to an inquest. An offer to pay compensation will not be enough.

What was the case about?

Veevers was a fatal claim arising from the death of the Claimant's son, a firefighter employed by the Greater Manchester Fire and Rescue Service who died in the course of his employment when tackling a fire in July 2013. Liability was admitted in the proceedings and a settlement was reached, together with the usual agreement for the Defendant to pay the Claimant's reasonable costs.

The Claimant claimed £141,000 in her Bill of Costs for the costs of preparing for and attending the inquest into her son's death in April and May 2016 (the claim having been issued subsequently in July 2016). At first instance, the Regional Costs Judge for Manchester held that those costs were recoverable in principle. The Defendant appealed that decision.

The case turned on a pre-inquest exchange of correspondence between the parties in February and March 2016 as follows:

Defendant:

> *"…Our clients are not in a position to consider an admission of liability and we have not undertaken a detailed forensic analysis of the potential for liability in any civil claim on their behalf.*
>
> *The purpose and objective in making the comments which we make directly below is to attempt to remove any additional stress from the family during and immediately after the inquest.*
>
> *We write in open correspondence in order to advise that our clients are willing to compensate the estate and dependents of Stephen Hunt pursuant to the Fatal Accidents Act 1976 and Law Reform (Miscellaneous Provisions) Act 1934, for any loss which they may prove to be attributable to the incident on 13 July 2013 together with payment of their reasonable costs.*
>
> *It is not our client's intention to allege contributory negligence or to seek any reduction of damages in this regard. We confirm that our clients will deal with the claims on a full basis."*

Claimant:

> *"I will be inviting the (Appellant/Defendant) to admit liability upon receipt of the letter of claim because as you are aware the intention to pay compensation to the estate and dependents could be withdrawn at any time.*

Defendant:

> *"In terms of your letter there is no need to prepare a letter of claim on behalf of the estate or dependents. If there are any other claimants however then please let me know and I will consider the position. Obviously our earlier correspondence makes it plain that the claims by the dependents and estate will be met without reduction."*

The decision

Citing the leading case on the issue of recoverability of inquest costs – *Ross v The Owners of the Ship 'Bowbelle'* [1997] 2

Lloyd's Rep 196 – and reviewing various other authorities since, HHJ Pearce, who delivered the Judgment, gave the following useful guidance when it comes to whether or not inquest costs are recoverable by a claimant. In short, inquest costs are potentially recoverable, subject to the facts of the case:

> **(a)** Inquest costs may be recoverable insofar as reasonable and proportionate, so long as they can properly be said to be incidental to the civil claim (as per Ross v. Bowbelle).
>
> **(b)** Such costs will not be recoverable if liability is no longer in issue between the parties, since the costs are simply not incidental to something in issue in the civil claim.
>
> **(c)** In determining whether liability is in issue, the court must look at all the circumstances of the case, but the central issue is likely to be whether the prospective defendant has admitted liability or otherwise indicated a willingness to satisfy the claim.
>
> **(d)** Liability will not be in issue if it has been admitted since such an admission is binding unless the court subsequently permits it to be withdrawn pursuant to CPR 14.1A.
>
> **(e)** However, the Costs Judge is entitled to look with care at anything less than an unqualified admission to see whether the prospective defendant's position is one from which it may resile or which leaves matter in issue between the parties.
>
> **(f)** In particular, if the defendant's position is not one of unqualified admission in circumstances where such an admission could have been made, the Costs Judge may be entitled to find that the failure to make an unqualified admission justified the conclusion that the defendant might exercise its right to resile from the admission and that therefore the costs of the inquest could properly be said to be incidental to the civil claim.
>
> **(g)** If the costs can be justified upon these principles, the mere fact that there are other reasons why the family of the deceased should wish to be represented at an inquest, most obviously to avoid the inequality of arms between unrepresented family members and a represented public body does not mean that the costs are not recoverable. It is enough that the attendance to secure relevant evidence in relation to matters in issues was a material purpose for the attendance.

Applying this guidance, the Judge found that the Costs Judge at first instance had not erred in deciding that the inquest costs in this case were recoverable in principle. There had been no unqualified admission; HHJ Pearce noted of the Defendant's letters: *"their very terms are to admit nothing."* HHJ Pearce specifically noted that in response to the Claimant's letter inviting an admission of liability, the Defendant had declined to do so. Absent an admission of liability, the Claimant was entitled, it was held, to treat the Defendant's statement as capable of withdrawal.

What can we learn from *Veevers*?

Veevers is only a County Court decision, and one which can reasonably be considered harsh when viewed from the Defendant's perspective, but it serves to emphasise the point that nothing short of a full and unequivocal admission of liability prior to an inquest will protect defendants against a potential liability for inquest costs.

It is of note that HHJ Pearce specifically rejected the Defendant's argument that the Claimant could have entered Judgment off the back of the Defendant's correspondence. A good rule of thumb going forward, therefore, when considering pre-inquest concessions is to ask: **(1)** would this be binding; and **(2)** could the Claimant legitimately request Judgment as a result of this concession?

Certainly, it seems that any indication along the lines of "whilst we are not in a position to admit liability, we will negotiate settlement of the claim on a 100% liability basis," will not constitute an 'admission' sufficient to mean that liability should no longer be considered in issue. It goes without saying that any concessions made without prejudice will not suffice either.

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