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ANN COULTER NO 2	

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY ANN COULTER FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

v

LEGAL SERVICES AGENCY FOR NORTHERN IRELAND

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McCLOSKEY J

Introduction

[1] Ann Coulter ("the Applicant") initially challenged by her application for judicial review a ruling of the assigned coroner relating to the application of Article 2 ECHR in the inquest concerning the death of her son Christopher, together with the coroner's treatment of the issue of funded representation. The evolution which these proceedings have undergone stems firstly from this court's *ex tempore* decision, pronounced at the leave stage, on 19 November 2018, partly reproduced below in order to provide desired context. As will become apparent, this judicial review challenge has developed two distinct chapters.

Chapter One

[2] Beginning with the first chapter (now completed), it is appropriate to draw attention to the very sad background of this case. This young teenager was aged only 15 when this tragic fatality occurred. One cannot but be struck by the date of Christopher's death. It was 18 December 1994 - fully 24 years ago. The family received an inquest outcome of "asphyxia due to epileptic seizure" in August 1995. The central issue for the family has at all times revolved around the undisputed fact that some two weeks prior to his death Christopher, who was in perfect health, received a measles/rubella vaccine at school, as part of a national immunisation programme. The family vehemently believe that this is what killed their son.

[3] The family has been battling against the 1995 inquest verdict for over 20 years. An important watershed was reached when the Attorney General made an order under Section 14 of the Coroners Act requiring a new inquest to be held. Once again one is inevitably struck by the date: the order was made on 7 February 2012 and almost seven years later there has still been no fresh inquest.

[4] The first judicial review challenge had two limbs. The first was directed to the Coroner's ruling that an Article 2 ECHR/"Middleton" type inquest is not considered appropriate, albeit the Coroner has stated that this will be subject to review as the inquest progresses. The second related to funded legal representation. The family do not qualify for public funding and are unable to afford legal representation. Their only hope is that the Legal Services Agency for Northern Ireland (hereinafter the "Agency") can be persuaded to grant them so-called "*exceptional funding*" in accordance with the guidance promulgated by the Lord Chancellor. The latter instrument lists, inexhaustively, a series of factors to be taken into account. One of these is the views of the Coroner, where available. In the impugned ruling the Coroner expressed no views on this issue and, indeed, went further, protesting that it was not her function to do so. The Applicant's case was that the Coroner had erred in law in each of the foregoing matters.

[5] I return to the narrative. Following the order of the Attorney General dated 7 February 2012 the Coroner, some 14 months later, by

letter dated 17 April 2013 provided a provisional inquest date hearing of 17 June 2013. Here one finds another disturbing fact, namely that almost 5½ years have elapsed since the Coroner's proposed inquest hearing of 17 June 2013 came and went. There was another hearing date of 19 November 2013 and I take cognisance that the next of kin precipitated the adjournment of that for sundry reasons, one of which was one of the issues that is before this court, being their inability to secure exceptional funding from the Lord Chancellor.

[6] There was then another lengthy delay, of 14 months duration, between February 2015 and April 2016, marked by outright inertia. The funding issue continued to percolate, particularly in 2017. The first preliminary hearing in the Coroner's court was listed for 27 October 2017, just a couple of months shy of six years after the Attorney General had ordered a fresh inquest. While there had been activity during the period of some 12 months, dating from the first preliminary hearing, that activity began many years after it should properly have begun. The court is aware the Coroner's Service, in common with every public authority, has a limited budget and finite resources. But where one has an enormous delay of the dimensions noted already an appeal to limited resources and finite budget begins to lose whatever strength or merit it might otherwise have had.

[7] Summarising, the court is profoundly concerned by the overall delay in this case. This matter has been hanging over the family for 24 years, a highly disturbing figure. In contrast, the journey from the initiation of the first chapter of this judicial review and the delivery of the court's judgment occupied only two months and in the "Chapter 2 " phase, while burdened by the fresh challenge to a different public authority and the new decision making process noted above, was completed by 1 July 2019.

[8] Resuming the first chapter, the court raised, and considered, the issue of whether the coroner was the appropriate respondent, giving consideration to *Re Darley's Application* [1997] NI 384 and *Re Jordan's Applications* [2016] NI 107 at [16]-[18] especially. The interest of the Public Health Agency (a represented party) in these proceedings was noted.

[9] The first element of the court's initial decision entailed exercising its discretion to extend time under Order 53, rule 4 of the Rules of the Court of Judicature. Next the court examined the first aspect of the Applicant's challenge, namely her attack on the Coroner's ruling that Article 2 ECHR was not applicable at that stage. The court considered that these three words imported a qualification of substance and significance. It considered the decisions in *Re Jordan* [2016] NI 107, together with and *Re McLuckie* [2011] NICA 34 at [26] and *Re C and others* [2012] NICA 47 at [8]. There are other material references, the most recent being *Re Hughes' Application* [2018] NIQB 30 at [25] to [26]. Having done so I expressed the following conclusion;

> "*The significance of this issue may be framed in the following way. There exists a live possibility that the coroner will revisit the Article 2 ruling in the course of the inquest, whether on her own initiative or upon application. There is an equally live possibility, therefore, that the inquest will make findings which are compatible with the Article 2 procedural obligation. The question for this court – a supervisory tribunal of last resort - is whether it should intervene in these circumstances having regard to, inter alia, the entrenched principle that judicial review is a remedy of last resort and the associated, or offshoot, principle which discourages inappropriate satellite judicial review challenges in the course of inquest proceedings. I have concluded that the appropriate course is to stay this aspect of the Applicant's challenge.*"

[10] The judgment then examined the Applicant's discrete challenge to a further element of the Coroner's preliminary decision in which it was stated;

> "*While I fully agree with counsel for the next of kin that it is important that the family are able to engage within the coronial process it is not the function of the coroner to comment upon the provision of legal aid for the purposes of representation at an inquest. ..... I consider that all necessary questions will be asked and*

that the statutory questions will be properly addressed."

Next, the judgment noted that the Lord Chancellor had promulgated guidance dated 15 December 2005 entitled "Lord Chancellor's Guidance on exceptional legal aid funding under Article 10A of the Legal Aid Advice and Assistance (Northern Ireland) Order 1981". This guidance is directed to the Agency. In paragraph 28 it addresses the topic of inquests in the following terms:

> *"For most inquests where the Article 2 obligation arises the coroner will be able to carry out an effective investigation without the need for funded representation of the deceased's family. Only exceptional cases require the public funding of representation in order to meet the ECHR Article 2 obligation. In considering whether funded representation may be necessary to comply with this obligation all the circumstances of the case must be taken into account including:*
> …
>
> *(iv) The views of the coroner where given are material but not determinative."*

The judgment continues at [21]:

> *"There is no reference in the Coroner's ruling to the Lord Chancellor's guidance. It seems to this court tolerably clear that the coroner – as a minimum arguably so - did not take the guidance into account. Any argument to the contrary will be very difficult indeed to sustain. It is at least arguable that the coroner was obliged as a matter of law to take the guidance into account. It is no answer to say that paragraph 28 is confined to cases where the inquest definitively entails an Article 2 obligation and thus to contend that the guidance had no relevance whatsoever in light of the coroner's Article 2 ECHR decision. The reason for that quite simply is that the*

> *coroner has not closed the door on the inquest as a matter of law having to be an Article 2 compliant inquisition. Furthermore, this is an instrument of guidance and it therefore falls to be construed by the court, in accordance with well-established principle, in a flexible and not narrow or rigid manner."*

[11] The court considered that there were compelling indications that the Coroner had failed to have regard to the Lord Chancellor's guidance. The court further identified a mis-statement in the Coroner' ruling of the clear intent and import of the guidance. Leave to apply for judicial review was granted accordingly. At [23] the court expressed certain views on the principles of equality of arms and equal access to justice, stating:

> *"The view that those who would hold that persons in the position of Mrs Coulter do not require legal representation in this inquest are somnambulists in an unreal world is more than respectable."*

The Court's Initial Order

[12] The court ordered:

(i) Leave to apply for judicial review of that aspect of the impugned decision of the Coroner concerning the approach to the Lord Chancellor's Guidance was granted.

(ii) The Applicant's separate challenge to the Coroner's provisional decision relating to Article 2 ECHR was stayed.

(iii) A timetable for the completion of these proceedings would be devised

Chapter Two: The Applicant's Reconfigured Challenge

[13] The net result of the reconfiguration of the Applicant's case is that there is no enduring challenge to any aspect of the Coroner's preliminary ruling. Rather, in the most recent phase of these proceedings the court has ordered that the Agency be joined as a further

respondent. This arises as a result of a funding decision of the Agency, *vis a vis* the Applicant which has materialised in the wake of the court's initial (Chapter 1) decision.

The Statutory Scheme

[14] Inquests are excluded proceedings under Schedule 2 of the Access to Justice (NI) Order 2003 ('the Order'). In common with other excluded proceedings they are outwith the "scope" (a favoured word in the prevailing jargon) of legal aid and, hence, excluded from public funding unless they can satisfy the '*exceptional funding*' provision of Article 12A of the Order[1]. In order to gain admittance to Article 12A excluded proceedings, including inquests, must be the subject of an '*exceptional case determination*' or, in the case of inquests only, a '*wider public interest determination*' in relation to the proceedings and the individual concerned[2].

[15] In both instances, as a prerequisite to the grant of public funding the Director must make a determination that the individual satisfies the requirements of Regulations made under Art. 13 of the Order[3]. The relevant statutory measure in this regard is the Civil Legal Services (Financial) Regulations (Northern Ireland) 2015 (the "*Financial Regulations*"). An applicant for legal aid is required to satisfy the financial eligibility limits specified in Regulation 6. In the case of inquests, Regulation 8(1) empowers the Director to adopt one, or both, of the measures of [a] disapplying the financial eligibility limits and [b] waiving any requirement for a contribution to funding.

[16] An applicant must have made an '*application*' for a '*relevant determination*'. A '*relevant determination*' is defined in Regulation 8(3)(a)&(b) by reference to Art 12A of the Order as an application for funding for representation at an inquest which satisfies the requirements of Art 12A. In such circumstances the Director may, where he considers it '*equitable*' to do so, '*disapply the eligibility limits*' and/or '*waive all or part of any contribution payable under Part 3*'.

[1] Art. 12(5) of the Order.
[2] Art 12A(4)(a) & (b)
[3] Art 12A(2)(a) & (4)(c)

[17] Regulation 8(1)(b) empowers the Director to waive any contribution which is payable under Part 3 of the Financial Regulations. This power is clearly confined to the waiver, in part or in whole, of a contribution provided for by Part 3.

[18] Part 3 of the Financial Regulations deals with two classes of contribution: (a) those payable for advice and assistance (the Green Form scheme) and representation in the lower courts, and (b) those payable for representation in the higher courts. By virtue of Regulation 2 of the Financial Regulations lower and higher courts have the meaning given enshrined in Regulation 2 of the Civil Legal Services (General) Regulations (Northern Ireland) 2015. This contains an exhaustive list of the higher courts. Lower courts are defined as the Mental Health Review Tribunal and proceedings in a court of summary jurisdiction as specified in paragraph 2(d) & (hh) of Schedule 2 of the Order. Inquest proceedings do not fall within either of these definitions. However, the court has been informed that they are treated as proceedings before one of the higher courts for the purposes of legal aid funding.

[19] Financial contributions to legal aid funding for representation in proceedings in the higher courts are regulated by Part 3 by Regulations 62 & 63 of the Financial Regulations. Regulation 62 (2) prescribes how the assessing authority is to determine the maximum contribution payable in accordance with Art. 17 of the Order. Art. 17(1) restricts any payment by an individual in respect of funded services to that provided for by Regulations.

The Impugned Decision

[20] By way of preface: where Art 2 ECHR is engaged in inquest proceedings provision exists for the public funding of participants by legal aid. In the ordinary course of events inquest proceedings are not otherwise within the scope of legal aid funding. In this case the Agency considered it appropriate to make an offer of legal aid funding to the Applicant by its letter of determination dated 30/05/2019, via a carefully charted route.

[21] In summary, in its impugned decision the Agency noted that the Applicant exceeds the statutory disposable income and capital limits by

the sum of £24,186 and £371,097 respectively; recorded that the Applicant's estimate of her legal representation in the inquest proceedings was £12,000; made the assumption, (favourable to the Applicant) that the inquest was of the Article 2 ECHR species; determined to exercise its discretion under Regulation 8 (1) (b) of the Financial Regulations; further determined that it would be equitable to disapply the statutory financial eligibility limits; considered that the Applicant's contribution under Regulation 62(2)(b) would equate to the abovementioned £12,000; and, "... using the basis of the Applicant's available disposable capital exceeding £3,000 ...", determined to waive 25% (£3,000) of the contribution otherwise payable. This would require the Applicant to fund £9,000 of her projected inquest legal costs of £12,000.

[22] The Applicant's dissatisfaction with the terms of the Agency's offer of funding was expressed in further correspondence. The Agency maintained its stance. The substantive hearing before this court ensued (on 25 June 2019).

The Battle Lines Drawn

[23] The Applicant's case, in brief compass, is that the Agency, having waived the financial eligibility criteria for the grant of legal aid funding for inquest proceedings, has made a determination whereby she is required to make a financial contribution which is greater than that permitted by the Financial Regulations.

[24] On behalf of the Applicant Ms Monye Anyadike-Danes QC (with Mr Eugene McKenna, of counsel) advanced the following main submissions;

(i) In the letter of determination of 30/05/2019 the Director indicates that a decision has been taken to disapply the financial eligibility limits as it is equitable to do so in exercise of the power under Regulation 8(1)(a) of the Financial Regulations; that under Regulation 62(2)(b) the Applicant's contribution would be the full current projected cost of the inquest; and that the amount of £3,000 or 25% would be waived. In coming to this decision the Director has borne in

mind the provisions of Reg. 13 which relates to *'over-capital'* cases. The Applicant is to be responsible for all costs associated with the proceedings in excess of this amount.

(ii) The Applicant responded by letter dated 10 June 2019 taking issue with the Director's decision only insofar as it relates to the issue of any contribution payable under Part 3, highlighting that any contribution must be subject to a clearly defined maximum which is provided for in Part 3 by calculation of the excess between the contribution threshold of £3,000 and the upper limit for eligibility under Regulation 6. Furthermore, the decision in effect meant that in circumstances where it was considered equitable that the state should fund representation at the inquest the Applicant would nevertheless be responsible for the majority of the funding.

(iii) In his rejoinder the Director contended that Regulation 62 does not cross-refer to any other provision in Part 3 or to Regulation 6 and provides a complete scheme for the calculation of capital contribution. The *'excess'* specified in Regulation 62(2)(b) is therefore the amount which lies between the contribution threshold and the amount of disposable capital available to the Applicant. The Applicant rejects this interpretation of Regulation 62(2)(b) as being irrational and wholly inconsistent with the notion of what is equitable under Regulation 8 (1)(a).

[25] The immediately foregoing submission is developed in the following way:

(a) If it is equitable to waive financial eligibility limits so that funding is to be provided in an inquest by the state on the basis that Art 2 is engaged it cannot similarly be equitable to require the applicant to provide the overwhelming majority of that funding. This interpretation makes a nonsense of the provision of a power to disapply financial eligibility limits. The applicant now finds herself in the same position, save for a contribution by the state authorities of £3,000, that she

would have been in had it not been considered equitable to provide legal aid funding.

(b) The interpretation called for by the Director does not provide any measure of certainty for an applicant. The potential *'contribution'* by an applicant is effectively unlimited. The *'assessing authority*[4]*'* must determine *'the* ***maximum*** *contribution'* (emphasis added) and then decide whether to waive all or part under Regulation 8(1)(b) – that has not been done and the matter has been left open-ended.

(c) Regulation 13 of the Financial Regulations, which the Director has relied on in the decision of 30/05/2019, recognises that there is to be a clearly defined *'maximum'* which is payable under Part 3. Contrary to the presumption that the provision has meaning, the interpretation called for by the Director renders that provision otiose in its reference to a *'maximum'*.

(d) Regulation 62 deals with contributions in respect of both '*disposable income'* and '*disposable capital'* These terms are defined in Regulation 2 as:

'the income and capital of the person concerned, calculated in accordance with Chapters 3 to 5 of Part 2'

It is therefore clear that Regulation 62 does 'cross-refer' to other provisions of the Financial Regulations contrary to what is asserted in the Director's correspondence dated 13/06/2019. Chapters 4 & 5 of Part 2 set out how eligibility is to be calculated by reference to *'disposable income'* and *'disposable capital'* respectively[5]. Regulation 6 sets out the ceilings for eligibility also by reference to *'disposable income'*[6] and *'disposable capital'*[7].

[4] Formerly the Legal Aid Assessment Office within the Department of Social Development, now the Director: Reg. 3 of the Civil Legal Services (Financial) (Amendment) Regulations (Northern Ireland) 2019.
[5] Regs. 33 & 44
[6] Reg 6(4)
[7] Reg 6(5)(a)

(e) The term *'disposable income'* is also found elsewhere in Part 3 at Regulation 59 which relates to contributions payable for advice and assistance and representation in the lower courts. This provision sets out how *'the supplier'* (in the ordinary course of events a solicitor) is to calculate fixed contributions. That provision provides for a sliding scale which is capped at a maximum by reference to the disposable income ceiling for funding of those services. The approach set out which a supplier must follow under Regulation 59 is that which the applicant says the *'assessing authority'* must also follow under Reg. 62. There is no provision or rational basis for two contradictory approaches within Part 3 in calculating contributions determined only by the court in which the proceedings are heard.

(f) An Act or other legislative instrument is to be read as a whole, so that an enactment within it is not treated as standing alone but is interpreted in its context as part of the instrument.[8] Reading a legislative document as a whole may reveal that a proposition in one part of the legislation sheds light on the meaning of provisions elsewhere in it. The Applicant contends that is a canon of construction applicable to the provisions at issue in this case.

[26] On behalf of the Agency Mr Tony McGleenan QC (with Mr Matthew Corkey, of counsel) developed an argument which highlighted specified facts and factors and contained the following central submissions:

(i) The Applicant's disposable income comfortably exceeds the lower income limit of £3,355, by £24,186. The Director could have sought a contribution from income of up to one third of that amount. The Director decided to waive that requirement in full.

[8] *Bennion* at 21.1 citing *Customs and Excise Commissioners v Zielinski Baker & Partners Ltd* [2004] UKHL 7 at [38]

(ii) The Applicant's disposable capital was calculated as being £374,097. The lower limit for disposable capital is £3,000. The excess available to her (£371,097) was also above the (disapplied) upper capital limit for eligibility in Regulation 6 of £6,750. She would, therefore, have been ineligible for legal aid but for the discretionary disapplication of that limit pursuant to Regulation 8(1)(a). The potential contribution from capital was, therefore, the excess above the lower capital limit – the entirety of disposable capital sum available to her - £371,097.

(iii) The proposed costs of the litigation were asserted by the Applicant's solicitor to be £12,000. Accordingly, with an available excess of £371,097 the Applicant could have been assessed as being required to make a contribution towards her legal costs of £12,000. The Director had a discretion pursuant to Regulation 8(1) to waive part of that sum and he chose to exercise that discretion in relation to 25% of the overall projected cost. The Applicant in consequence was required to make a contribution to the projected costs of £9,000.

(iv) In the further correspondence generated by the Applicant's challenge to the foregoing , the argument canvassed is, in effect, that once the Director has exercised his Regulation 8 discretion to disapply the eligibility requirements he must fund the entirety of the legal representation costs save for a maximum contribution from capital £3,750. This approach would apply regardless of the disposable capital available to a legal aid applicant and is not consonant with the operation of a means-tested legal aid scheme.

[27] Next, Mr McGleenan drew attention to the series of arguments (reproduced below) advanced in the Applicant's skeleton argument, all arranged under the banner of irrationality. In what follows, I shall incorporate the Agency's riposte (via counsel's submissions):

(i) First, it is argued that the imposition of a contribution is "inequitable" and inconsistent with the decision to "waive"

the financial eligibility limits (para 14(a) Applicant's skeleton). However, this submission fails to engage with the fact that, absent the exercise of the Regulation 8 discretion, the statutory scheme excludes the Applicant entirely from public funding because of the operation of the application of the financial eligibility limits. Regulation 8 (1)(a) empowers the Director to "disapply" (not waive) the financial eligibility limits in Regulation 6. The effect of the disapplication is to permit the Applicant to be eligible for legal assistance. The disapplication does not mandate any particular outcome in terms of the extent of that assistance. The amount of assistance is determined by the exercise of the discretion in Regulation 8(1)(b) which allows the Director to waive all or any part of the contribution payable under Part 3. There is nothing inconsistent with exercising the first discretion to render an Applicant eligible for legal assistance while also exercising the second discretion to require a contribution (of varying extents). If the legislature had intended the disapplication to result in full funding then it would not have enacted Regulation 8(1)(b). There is nothing in the exercise of the Regulation 8 discretion which is inconsistent with the statutory scheme.

(ii) Second, it is argued that the Director's interpretation does not provide certainty to the Applicant (see para 14(b) Applicant's skeleton). It is suggested that the Applicant's contribution has been left "open-ended". This is not correct. The Applicant has been asked to provide a projected cost for the representation at the inquest. The Applicant has indicated that the projected cost is £12,000. She knows that she will be required to meet 75% of this cost. The exposure is not "open ended".

(iii) Third, the Applicant relies upon Regulation 13 and the reference therein to the maximum contribution payable by the client pursuant to Part 3 (see para 14 (c) skeleton). However, this submission again fails to engage with the fact that the eligibility limits have been disapplied. The maximum contribution where the limits have not been disapplied are set

out in Regulation 6. Where the upper limit is reached the Applicant becomes ineligible for legal aid and no assistance can be provided. In cases where an Applicant is eligible for legal aid and where the available capital is more than £3,000 but less than £6,750 the latter figure will be used as an upper threshold. Thus, a person with a disposable capital of £6,000 may be asked to make a contribution of up to £3,000. In contrast, a person who has disposable capital of £6,800 will not be asked to make a contribution of £3,800 but rather will simply be ineligible for legal aid. In the present case the Applicant has a disposable capital figure many times in excess of the threshold but, since the eligibility limits have been disapplied, the ceiling of £6,750 has no application to her and does not disbar her from accessing legal assistance. The Regulation 13 reference to a "maximum" is not, as the Applicant suggests, otiose. Rather, it simply has no application in a case where the eligibility limits in Regulation 6 have been disapplied.

(iv) Fourth, the Applicant contends that Regulation 62 contains references to "disposable income" and "disposable capital" and, therefore, cross-refers to other provisions. This submission does not advance the Applicant's case. It is put forward in response to the LSA's statement that Regulation 62 provides a self-contained scheme for the assessment of contributions. The fact that Regulation 62 uses terminology that is defined elsewhere in the Regulations does not undermine that submission. Regulation 62 is the bespoke provision directed to the determination of contributions from income and capital. It makes no provision for a ceiling on contributions from capital in cases where the Regulation 6 eligibility criteria have been disapplied.

(v) Fifth, the Applicant seeks to draw conclusions from the operation of the Regulation 59 provision which deals with the assessment of contributions for representation in the lower courts. Regulation 59 relates to the calculation of maximum contributions from disposable income. However, this provision only applies to disposable income within a specified

range (from £100 per week to £234 per week). Where the disposable income is above those thresholds then, pursuant to Regulation 6(3), the client will not be eligible for legal aid. The Regulation 59 analogy is of no relevance to an assessment of *capital* in the context of higher court representation where the eligibility thresholds have been disapplied.

(vi) Sixth, the Applicant contends that the 2015 Regulations must be read as a whole. This is not a contentious proposition. Reading the legislation as a whole requires an acknowledgement that the provisions which allow for exceptional funding require a suspension of the normal rules of eligibility while also affording the Director a wide discretion as to the extent of assistance provided. The interpretation that the Applicant contends for – that there be a maximum ceiling on a contribution of £3,750 – would mean that any disapplication of the eligibility criteria would open up the prospect of unlimited financial liability for representation regardless of the capital and disposable income available to the person concerned. On the Applicant's case the oligarch's contribution could never be more than £3,750. This would be contrary to both the letter and spirit of the Act and runs counter to the underpinning policy intention.

Conclusions

[28] I take the following starting point. Properly analysed, I consider that the Applicant's attack on the impugned decision of the Agency entails the central contention that it is erroneous in law by reason of the misinterpretation and/or unlawful application of certain of the provisions enshrined in the Financial Regulations.

[29] From the foregoing springboard, the first conclusion to be made is uncontentious: the Applicant, by virtue of her available capital, is excluded from the possibility of being funded under the statutory scheme, subject only to the application of the discretion conferred by Regulation 8 of the 2015 Regulations. This provision requires the Director to exercise his discretion, in whatever way chosen by him, by making an assessment of whether he "*considers it equitable*" to disapply

the financial eligibility limits and/or waive all or part of any contribution payable. Regulation 8 is couched in terms which invest the Director with a statutory discretion of demonstrable breadth. The only express qualification, or constraint, is that he must have regard to any Article 2 ECHR rights that are engaged.

[30] The terms of regulation 8 convey clearly that a conscious decision has been made by the legislator to confer on the Director two separate, different powers. The first is to disapply the eligibility limits. The second is to waive all or part of any contribution payable. Giving these words their ordinary and natural meaning: if the Director chooses to disapply the relevant eligibility limits, the result is that they have no application; and if he chooses to exercise his power of waiver, this will result in – depending on how he does so – all or part of the contribution payable being forgiven. The exercise of the former power operates to remove the barrier which would otherwise exclude the applicant from eligiblity for public funding. I agree with Mr McGleenan that where this discrete power is exercised, the beneficiary can lay claim to no particular outcome. This is, rather, simply a step – an indispensable one – towards one of a series of notional outcomes belonging to a broad spectrum. The reason for this lies in the breadth of the Director's discretion under the "waiver" provision.

[31] Where – as in the present case - the Director determines to disapply the financial eligibility limits I construe the relevant statutory provisions to mean that the financial ceiling of £6,750 enshrined in Regulation 13 has no application to the beneficiary of the exercise of the disapplication discretion, the effect whereof is that the beneficiary is no longer excluded from the possibility of securing the public funding. Thus I concur with the Agency's submission on this issue.

[32] The next element of the Applicant's challenge requires the court to focus on, and construe, Regulation 62 of the 2015 Regulations. This provision has two basic ingredients. First, the Agency must determine the maximum contribution, if any, payable under Article 17 of the 1981 Order. The second element of Regulation 62 is formulated in familiar empowering, discretionary terms. It is directed expressly only to representation in the "higher courts", as defined. In cases where the litigant concerned is in receipt of such representation the maximum

contribution which they must make to the Agency (a) may include a contribution from their disposable income where this is in excess of £3,355 per annum, not greater than one third of the excess and (b) where their disposable capital exceeds £3,000, a contribution not greater than the excess. I consider that, as argued by Mr McGleenan, this is indeed a self-contained, bespoke scheme. It does not cross-refer to any other provisions of the Regulations, nor is it expressed to be "subject to" any of those provisions. The submission that Regulation 62 does not serve to promote the Applicant's case is accepted.

[33] The key to resolving the Applicant's freestanding argument based upon Regulation 13 is, in my estimation, that the financial eligibility limits have been disapplied. The effect of this, in my judgement, is twofold. The first, beneficial to the Applicant, is that her ineligibility for public funding has been extinguished. The second is that the specified ceiling of £6,750 has no application in such a case. It follows that the Applicant's invocation of Regulation 13 does not advance her case.

[34] The submissions of Mrs Danes also pray in aid Regulation 59 of the 2015 Regulations. I consider that this does not advance the Applicant's case, for two main reasons. First, as a matter of basic principle a discrete statutory provision relating to the assessment of contributions for representation in the lower courts is intrinsically unlikely to provide reliable illumination in the exercise of construing other statutory provisions relating to quite different types of representation in other fora. Second, Regulation 59 is concerned with the calculation of maximum contributions from disposable income. One of the indelible features of the factual framework of the Applicant's case is that disposable income has nothing to do with the impugned decision of the Agency. Rather the stand out feature of the factual framework of the Applicant's case is that of disposable capital. This factor on its own serves to highlight the distance, a gaping chasm in truth, separating the Applicant's case from the Regulation 59 regime.

[35] The two final features of counsels' submissions entail an assertion of uncertainty and the requirement of reading the 2015 Regulations as a whole. The former complaint does not in my view sound on the clinical, detached exercise which falls to be undertaken in every case of statutory interpretation and, further, is difficult to reconcile with any recognisable

public law ground of challenge. Furthermore and in the event I accept Mr McGleenan's submission that there is no uncertainty in a decision which requires the Applicant to fund 75% of the projected cost of legal representation of £12,000 which she has provided.

[36] In the exercise of addressing the discrete submissions of counsel relating to the specified provisions of the 2015 Regulations I have identified what I consider to be the incurable frailties in the arguments formulated. I consider that resort to the uncontentious principle that the Regulations must be considered as a whole does not avail the Applicant in her quest to establish that the impugned decision of the Agency is vitiated in law.

[37] Finally, if and to the extent that there is any doubt regarding the court's resolution of the central issues, I make clear that the Agency's principal arguments have prevailed.

Omnibus Conclusion

[38] Ultimately, returning to the court's point of departure in [28] above, the main ingredients of Mrs Coulter's challenge are statutory construction and statutory discretion, each overlapping. On the grounds and for the reasons elaborated I conclude that while the threshold for the grant of leave to apply for judicial review is overcome, the substantive application must be dismissed.

[39] This is a conclusion which the court makes with no enthusiasm having regard to the appalling tragedy suffered by Mrs Coulter and the seemingly interminable uncertainty and delay in her interaction with the legal system which have been her lot ever since. I can only repeat this court's exhortation, frequently expressed, to the Coroner. A sympathetic approach to the issue of the costs of the Agency will, I trust, be possible.