



Neutral Citation Number: [2020] EWHC 1089 (QB)

Case No: 9MK90075
Appeal Ref: QA-2019-000161

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ON APPEAL FROM THE ORDER OF MASTER YOXALL
DATED 14 MAY 2019

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6 May 2020

Before :

THE HONOURABLE MR JUSTICE MURRAY

Between :

WILLIAM NICHOLAS BAGSHAWE
- and -
THE LORD CHANCELLOR

Appellant

Respondent

The Appellant appeared in person.

Mr Rupert Cohen (instructed by the Legal Department of the **Legal Aid Agency**) for the
Respondent

Hearing date: 18 February 2020

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down are deemed to be 10:30 am on 6 May 2020.

Mr Justice Murray :

1. This is an appeal by the appellant, Mr W N Bagshawe, from an order of Master Yoxall dated 14 May 2019 (“the 14 May Order”) in which the Master refused his request for the issue of a writ of control under CPR Part 83 against the respondent, the Lord Chancellor, for the reasons given in his judgment handed down on 14 May 2019 (“the Judgment”).
2. Mr Bagshawe’s request for a writ of control (Form PF86A) was dated 18 March 2019. The request stated that a writ of control is sought to enforce “a judgment dated 6th August, 2009 and an N257 interim costs certificate of the costs officer dated 29th August, 2014 as set out in the schedule below”. The schedule in the request specified the amount of £200,000 in “Costs and interest” as due to be paid by the Lord Chancellor to Mr Bagshawe.
3. Mr Bagshawe is a solicitor, who is seeking to recover from the Lord Chancellor profit costs in relation to four legal aid certificates granted in 1994 by the Legal Aid Board (“the LAB”) to his client, Mr Roger Rimmer, in respect of four different actions against Mr Rimmer, which are summarised below. By this action, he is principally seeking an order setting aside the 14 May Order and ordering that the writ of control be issued in accordance with his request of 18 March 2019.
4. The Lord Chancellor says that Mr Bagshawe is not entitled to a writ of control for a number of reasons, including most importantly the fact that on 8 November 2018 payment of Mr Bagshawe’s legal aid costs were deferred, subject to conditions that have yet to be fulfilled, in accordance with Regulation 102 of the Civil Legal Aid (General) Regulations 1989 (SI1989/339) (“the 1989 Regulations”). That deferral was ordered as a result of Mr Bagshawe’s breaches of the 1989 Regulations. His application for a writ of control seeks to go behind that decision and so is an abuse of process.
5. The Lord Chancellor appears in this matter in respect of functions that he exercises through the Legal Aid Agency (“the LAA”), an executive agency of the Ministry of Justice. On 1 April 2013, the Lord Chancellor became responsible under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“LASPO”) for the administration of legal aid, including civil legal aid, in England and Wales.
6. Previously, from 2000, legal aid in England and Wales was administered under the Access to Justice Act 1999 by the Legal Services Commission (“the LSC”), a non-departmental public body. The LSC was the successor to the Legal Aid Board (“LAB”), a non-departmental public body that had administered legal aid in England and Wales from 1988 to 2000 under the Legal Aid Act 1988. A reference in this judgment to the “relevant public funding authority” means whichever of the LAB, the LSC or the Lord Chancellor was responsible for civil legal aid at the relevant time.
7. In contrast to its predecessors, the LAA is not a corporate body with separate legal personality. Under LASPO the Lord Chancellor is to be treated as a corporation sole for all purposes in relation to his functions under Part 1 of LASPO in relation to legal aid. Those functions include appointing a civil servant to be Director of Legal Aid Casework (“the Director”), allocating various functions and responsibilities to the Director and giving the Director directions and guidance. The Director is responsible

for decisions as to the grant of legal aid in individual cases. The Lord Chancellor is directly responsible for the making of legal aid payments and therefore is the respondent to this appeal. The functions and responsibilities of the Lord Chancellor and of the Director in respect of legal aid in England and Wales are exercised through the LAA.

8. This matter has a long and complicated history. It is not, however, necessary to set out that history in great detail as the issues raised by this appeal are ultimately fairly narrow.

The Tiga Race Action (Claim No 1989 E No 1691)

9. The first of the four actions giving rise to the costs proceedings out of which this appeal arises (“the Tiga Race Action”) was brought by E & L Products Limited and Mr James Howden Ganley, as first and second claimants, respectively, against Tiga Race Cars Limited, Mr Rimmer and Mr Brian Edward Ireland, as first, second and third defendants, respectively (Claim No 1989 E No. 1691). In the Tiga Race Action, the claimants obtained a *Mareva* injunction against Mr Rimmer on 20 July 1989.
10. On 23 February 1994 the LAB issued an emergency legal aid certificate with reference number 01/01/94/11111/F to Mr Rimmer as assisted person in respect of the Tiga Race Action and the services of Mr Bagshawe as solicitor. The emergency certificate was issued showing the date of issue of the certificate as 25 February 1994. On 26 July 1994 the LAB issued an amendment stating that the certificate “has been amended [to show] the correct date of issue of the certificate as 23/2/94.” The substantive legal aid certificate was issued on 29 April 1994 under reference number 01/01/94/11111/F (later renumbered 01019411111/A/Z/1) and was discharged on 2 July 2012.
11. On 22 June 2001 Morland J made an order discharging the *Mareva* injunction and awarding Mr Rimmer “3/4” (75 per cent) of his costs against the claimants, to be determined by detailed assessment, if not agreed. Morland J also ordered the claimants to pay to Mr Bagshawe, as Mr Rimmer’s solicitor, such sum as would indemnify the Community Legal Service Fund (as it was then known, having previously been known as the Legal Aid Fund) and Mr Rimmer in respect of such costs. On 29 June 2001 Morland J approved a consent order relating to the taxation of Mr Rimmer’s costs, under which Morland J directed, among other things, that:

“1. For the avoidance of doubt, there be legal aid taxation by detailed assessment of the Second Defendant’s costs in this Action, with leave to tax forthwith, pursuant to Regulation 107 of the Civil Legal Aid (General) Regulations 1989;

...

3. Save that:

subject to further Order or directions of the Costs Judge taxing and determining the Second Defendant’s costs, in order to ensure compliance

with regulation 64 of the Civil Legal Aid (General) Regulations 1989, in particular in relation to those costs incurred immediately prior to the grant of the emergency legal aid certificate, within the meaning of regulation 103(6)(a) and (b) of the Civil Legal Aid (General) Regulations 1989, taxation of the Second Defendant's costs pursuant to regulation 107 of the Civil Legal Aid (General) Regulations 1989 do precede taxation (if not agreed) of the Second Defendant's indemnity basis costs pursuant to the Solicitors Act 1974,

the taxation of the Second Defendant's costs in this Act do proceed as directed."

12. On 20 April 2004 (in an order sealed on 22 April 2004) Master Fontaine ordered that:

"There be legal aid taxation by detailed assessment of costs in this Action of the Second Defendant, Roger Robert Rimmer, with leave to tax forthwith in the Supreme Court Costs Office if so advised, pursuant to Regulation 107 of the Civil Legal Aid (General) Regulations 1989; and the Costs Judge or Costs Officer be and hereby is directed to identify from all legal aid costs of the Second Defendant, Roger Robert Rimmer, including all costs payable to Mr Bagshawe, all those legal aid costs relating to Value Added Tax or arising out of the change of policy by the Legal Aid Board in relation to Value Added Tax and assisted persons, being costs which should not be sought, pursuant to the Order of Morland J dated 22 June 2001, from either or both of the First Plaintiff/Claimant, E. & L. Products Limited, and the Second Plaintiff/Claimant, James Howden Ganley, in any event."

13. On 7 May 2004 the solicitors for the claimants in the Tiga Race Action wrote to Mr Bagshawe asking him to commence detailed assessment proceedings of the inter partes costs pursuant to CPR Part 47. He has never done so and maintains that there are good reasons to justify his not having done so. The Lord Chancellor says that he should have done so and that his failure in that regard is a breach of his obligations under the 1989 Regulations.
14. By a consent order dated 12 May 2004, following settlement of Part 20 proceedings between Mr Rimmer and Mr Ireland, the third defendant, the latter agreed that he would not assert any interest in any monies held in court in any relevant action.

The Midland Bank Action (Claim No 1995-M-1126)

15. On 6 September 1993 Midland Bank plc (as it was then known, now HSBC Bank plc) ("Midland Bank") brought an action against Mr Rimmer (Claim No 1995-M-1126), settlement of which was reflected in a consent order dated 17 December 1999,

providing that the claimant would pay £5,000 into court in full and final settlement, and that there would be no order for costs in favour of either party to the action.

16. On 23 February 1994 the LAB issued an emergency legal aid certificate with reference number 01/01/94/11113/H to Mr Rimmer as assisted person in respect of the Midland Bank Action and the services of Mr Bagshawe as solicitor. The emergency certificate was issued showing the date of issue of the certificate as 25 February 1994. On 14 July 1994 the LAB issued an amendment stating that the certificate “has been amended [to show] the correct date of issue of the certificate to be 23rd February 1994.” The substantive legal aid certificate was issued on 4 July 1994 under reference number 01/01/94/11113/H (later renumbered 01019411113/A/Z/1) and was discharged on 2 July 2012.

The Barclays Possession Action (Claim No HW402519 / 1994-B-2718)

17. On 18 May 1994 Barclays Bank plc brought proceedings for possession of Mr Rimmer’s house (“the Barclays Possession Action”). The action was settled by consent orders dated 24 August 1994, 23 May 1996, and 24 September 2004, which provided that the possession claim be dismissed and that there be no order for costs between the parties.
18. On 19 May 1994 the LAB issued an emergency legal aid certificate to Mr Rimmer as assisted person in respect of the Barclays Possession Action and the services of Mr Bagshawe as solicitor. The substantive legal aid certificate was issued on 7 July 1994 under reference number 01/01/94/29069/A (later renumbered 01019429069/A/Z/1) and was discharged on 2 July 2012.

The Barclaycard Action (Claim No XB4 05166)

19. On 10 May 1994 Barclays Bank plc, trading as Barclaycard, brought an action against Mr Rimmer in respect of a credit card debt (“the Barclaycard Action”). The action was consolidated with the Barclays Possession Action and was also settled with no order for costs in favour of either party.
20. On 27 May 1994 the LAB issued an emergency legal aid certificate with reference number 01/01/94/31201/T to Mr Rimmer as assisted person in respect of the Barclaycard Action and the services of Mr Bagshawe as solicitor. The substantive legal aid certificate was issued on 30 June 1994 under reference number 01/01/94/31201/T (later renumbered 01019431201/A/Z/1) and was discharged on 2 July 2012.

Further costs proceedings relating to the four actions

21. On 3 August 1994 the LAB wrote a letter to Mr Bagshawe with the subject heading “Re: Legal Aid Ref Nos: 1/1/94/11111F – 1/1/94/11113H – 1/1/94/29069A & 1/1/94/31201T” to confirm:

“... that the 4 above [referred] certificate numbers are financially linked and as such should be dealt with as one matter for the purposes of taxation. In particular I confirm that notwithstanding that 2 of the certificates were issued after the

date that the prescribed hourly rates came into force, that because 2 of the certificates were issued prior to that date all 4 certificates must be dealt with under the old rates.”

22. I note in this regard that on 25 February 1994 the Civil Legal Aid (General) (Amendment) Regulations 1994 (SI 1994/229) came into effect, introducing prescribed rates that applied to legal aid certificates granted on or after 25 February 1994.
23. According to the Lord Chancellor, in 1997 Mr Bagshawe submitted to the LAB at least two interim bills for payment on account of his legal aid costs. According to a letter dated 7 November 2017 sent by the LAA to Mr Bagshawe, as of that date Mr Bagshawe had received total payments, net of recoupments, in respect of interim assessments of his legal aid costs amounting to £325,864.36. Mr Bagshawe does not dispute this.
24. On 6 August 2009, DJ Chaudhuri, sitting in the Milton Keynes District Registry of the High Court, in proceedings under the case reference 9MK90075 (being the linked costs proceedings in relation to the four legal aid certificates issued to Mr Rimmer), made an order, the first two paragraphs of which read as follows:
 - “1. By consent of the Legal Services Commission, there be permission under rule 47.1 of the Civil Procedure Rules 1998 for legal aid taxation by detailed assessment of costs, being legal aid costs of the Defendant, Roger Robert Rimmer, and costs payable out of the Community Legal Service Fund to the Solicitor to the Defendant, Roger Robert Rimmer, and to Counsel under legal aid certificates 01019411111/A/Z/1, 01019411113/A/Z/1, 01019429069/A/Z/1 and 01019431201/A/Z/1;
 2. There be leave to tax forthwith, pursuant to Regulation 107 of the Civil Legal Aid (General) Regulations 1989, to be in private at the Milton Keynes District Registry and to seek further Directions to be in private at the Milton Keynes District Registry if so advised;”.
25. DJ Chaudhuri noted in the second recital to that order that he had read the letter of the LAB to Mr Bagshawe dated 3 August 1994 confirming that the four legal aid certificates that had been issued to Mr Rimmer were “financially linked” and should be dealt with as one matter for the purposes of taxation.
26. On 5 January 2011 Mr Bagshawe submitted to the court for detailed assessment a bill of legal aid costs in the amount of £1,224,352.54. Between that date and 28 June 2016 DJ Lethem, the Regional Costs Judge, carried out a detailed assessment of that bill of legal aid costs, during the course of which he made a number of orders, including an order made on 5 April 2013 in which he confirmed his ruling that the 1989 Regulations, as in effect before 23 February 1994, applied to the assessment of Mr Bagshawe’s legal aid costs in these proceedings.

27. On 5 September 2011 Mr Bagshawe made an application to the District Registry of the High Court in Milton Keynes for an interim payment of his legal aid costs, DJ Lethem issued an interim costs certificate (Form N257) dated 29 August 2014 (sealed on 10 April 2015) (“the ICC”), addressed to the Lord Chancellor at the address of the office of the LAA in Leeds and showing Mr Bagshawe’s address as the address for payment, with the following text:

“Upon application by the defendant’s former Solicitor on 5th January, 2011 for a detailed assessment hearing pursuant to CPR 47.17 in respect of Legal Aid Certificates numbered 01019411111/A/Z/1, 01019411113/A/Z/1, 01019429069/A/Z/1 and 01019431201/A/Z/1

District Judge Lethem has ordered that you must pay £200,000, net only of any payments already made by you on account under Part XII of the Civil Legal Aid (General) Regulations 1989 in respect of the above Legal Aid Certificates, to the defendant’s Solicitor, William Nicholas Bagshawe practising as Bagshawes (your Supplier No. 0D465R) ... within 14 days from the date of this order.”

28. No amounts were paid to Mr Bagshawe under the ICC. The Lord Chancellor says that the ICC was never seen by the LAA until relatively recently during these proceedings. Mr Bagshawe says that he attached a copy to his CIV Claim 1 form dated 14 April 2015 when he submitted that form to the LAA, which was acknowledged by the LAA’s letter to him dated 26 June 2015. I note that the LAA’s letter to Mr Bagshawe thanked him for submitting the CIV Claim 1 form and returned it to him for re-submission:

“... when you have obtained the court certified assessment certificate. You should also submit the fully copy bill that was subject to the detailed assessment by the court.”

29. On 28 June 2016 the detailed assessment of Mr Bagshawe’s legal aid costs was completed by DJ Lethem, the final amounts due evidenced by a Legal aid/Legal Aid Agency assessment certificate (Form EX80A) (“the Final Legal Aid Certificate”), which was sealed by the court on that day. The Final Legal Aid Certificate showed an amount of zero due in relation to inter partes costs, which is not surprising as no inter partes costs assessment had been undertaken. It showed legal aid costs in the sum of £198,201.43 (including counsel’s fees in the sum of £16,702.92) and costs of the legal aid assessment in the sum of £508,166.53, for a total of £706,367.96, each of the foregoing amounts including VAT.
30. On 16 August 2016 Mr Bagshawe submitted his claim for payment of his profit costs, as evidenced by the Final Legal Aid Certificate, to the LAA.
31. After reviewing Mr Bagshawe’s claim, the LAA sent Mr Bagshawe a letter dated 7 November 2017 in which it indicated the Lord Chancellor’s decision to defer payment of his claim applying Regulation 102(a) of the 1989 Regulations on the grounds that Mr Bagshawe had failed to apply for an inter partes costs assessment and for other failures and breaches of the 1989 Regulations as set out in the letter. The

LAA asserted that Mr Bagshawe's failures and breaches of the 1989 Regulations had led to a loss for the legal aid fund and therefore also to the application of regulation 102B of the 1989 Regulations, which entitles the relevant public funding authority to recover from a solicitor a sum equivalent to the loss caused by that solicitor.

32. On 30 November 2017, having considered Mr Bagshawe's response to its letter of 7 November 2017, the LAA sent a letter to Mr Bagshawe maintaining its position.

Mr Bagshawe's appeal to a panel of independent cost assessors

33. Both the letter of 7 November 2017 and the letter of 30 November 2017 set out the views of a senior caseworker at the LAA. Regulation 102 gives the power to defer payment of legal aid costs claimed by a solicitor to a "costs committee", being a committee appointed under regulation 4 of the 1989 Regulations which, prior to entry into force of the Access to Justice Act 1999 had been referred to as an "area committee", a term apparently still used informally.
34. Under the arrangements in place at that time, the powers of a costs committee under regulation 102 were exercisable by a panel of independent costs assessors ("a Panel") appointed by the Lord Chancellor. In its decision-making process, a Panel was required, in relation to a case started before 1 April 2013, to have regard to the relevant appeals process at the time the case was started. A Panel had the power to deal with a matter referred to it on the papers or to hold an oral hearing.
35. A Panel, comprised of three independent cost assessors, was appointed to consider Mr Bagshawe's appeal against the decisions of the LAA set out in the letters of 7 and 30 November 2017. The Panel's formal remit was to decide whether payment of Mr Bagshawe's profit costs should be deferred under Regulation 102(1) of the 1989 Regulations. The Panel met on 22 June 2018, at which it concluded that an oral hearing with Mr Bagshawe and the Lord Chancellor attending would be required and gave directions for the hearing.
36. The hearing took place on 19 October 2018, with Mr Bagshawe representing himself at the hearing. On the morning of the hearing, a Mr Halden, retired counsel, appeared in relation to his own fees, but made no submissions once the LAA confirmed that counsel's fees were outside the scope of the hearing. In the afternoon, Mr Rees, of counsel, and his pupil attended the second part of the hearing, but Mr Rees made no submissions. The Lord Chancellor was represented by Mr Rupert Cohen, of counsel. Mr Michael Rimer, a senior lawyer in the Government Legal Department who works in the Central Legal Team of the LAA, also attended the hearing.

The Panel Decision

37. On 8 November 2018 the Panel issued its decision ("the Panel Decision") in which it concluded that Mr Bagshawe had breached Regulations 67, 90, 105(12), 107(1) and 110 of the 1989 Regulations and that, as a consequence of those breaches, the legal aid fund had incurred losses.
38. One of the central findings of the Panel was that Mr Bagshawe had given "unreasonable and potentially improper advice" regarding the conduct of the inter

partes costs assessment in respect of the Tiga Race Action, where Mr Rimmer had been awarded 75 per cent of his inter partes costs. As an example, the Panel noted at paragraph 29 of the Panel Decision that in a letter to Mr Rimmer dated 22 April 2004, Mr Bagshawe had confirmed that he intended:

“to spin out the inter partes taxation process, with a view, possibly, to achieving by means of the statutory interest rate on costs at £8 per centum per annum simple, running from 22nd June, 2001, if this can be achieved (which is not guaranteed), recovery of 100% of your costs, which might (again not guaranteed) result in the statutory charge in favour of the Community Legal Service Fund ... [being satisfied]”.

A copy of the letter from which the Panel drew this quotation was exhibited to a witness statement of 4 March 2019 prepared by Mr Michael Rimer of the LAA in the circumstances described at [45] below.

39. The Panel noted that Mr Rimmer endorsed this advice by agreeing to this course of action a few days later.
40. As the correctness of the Panel Decision does not arise on this appeal, notwithstanding that Mr Bagshawe continues to dispute the findings of the Panel, it is not necessary for me to summarise those findings in detail. In brief, the Panel concluded that Mr Bagshawe:
 - i) breached Regulation 67 of the 1989 Regulations by failing to report to the relevant public funding authority as unreasonable behaviour that would cause unjustifiable expense to the legal aid fund that he, Mr Bagshawe, had given Mr Rimmer unreasonable and potentially improper advice and that Mr Rimmer had endorsed that advice;
 - ii) possibly breached Regulation 90 by failing to pay to the relevant public funding authority monies recovered by Mr Rimmer in the amount of £51,121.54, which would have been subject to the statutory charge under section 16(6) of the Legal Aid Act 1988, and instead paying those monies to Midland Bank in satisfaction of a debt;
 - iii) breached Regulation 105(12) by failing to carry out the inter partes and the legal aid costs assessments concurrently (rejecting Mr Bagshawe’s argument that the order of Master Fontaine dated 20 April 2004 required that a legal aid assessment should be concluded before any inter partes assessment);
 - iv) breached Regulation 107(1) by not applying for an assessment of inter partes costs further to the two orders of Morland J made on 22 June 2001; and
 - v) breached Regulation 110, which requires a solicitor to safeguard the interests of the legal aid fund on any inter partes detailed assessment pursuant to an order for costs, by failing to commence an inter partes assessment.
41. The Panel concluded that, as a result of the foregoing breaches, the legal aid fund incurred:

- i) an actual loss of £352,864.36 that had already been paid to Mr Bagshawe on account, less the 25 per cent that would have been payable to him in any event;
 - ii) a possible loss of £51,121.54 depending on whether that sum, which had been recovered by Mr Rimmer in relevant proceedings and then paid to Midland Bank, had been paid to Midland Bank in satisfaction of an unsecured debt (in which case it should, instead, have been preserved and paid to the LAA in accordance with regulation 90 in satisfaction of the statutory charge in favour of the LAA) or had been paid to Midland Bank in satisfaction of a debt secured by a charge in favour of Midland Bank ranking ahead of the LAA's statutory charge (in which case regulation 90 did not apply); and
 - iii) a potential loss of £508,166.53 if Mr Bagshawe's bill were paid, being costs that, in the judgment of the Panel, he would not have claimed for had he acted in accordance with the relevant regulations.
42. Accordingly, the Panel decided that payment of Mr Bagshawe's profit costs should be deferred until the following conditions were met, namely:
- i) the carrying out and conclusion of the inter partes costs assessment;
 - ii) the repayment by Mr Bagshawe of £51,121.54 to the LAA or, in the alternative, the provision of proof by Mr Bagshawe that the monies recovered by Mr Rimmer related to a debt secured by a charge in favour of Midland Bank and not a simple debt to Midland Bank; and
 - iii) the repayment by Mr Bagshawe to the LAA of 75 per cent of the amount he had received as a payment on account of costs in respect of his interim bills.
43. Following the Panel's decision, the LAA received evidence from Mr Bagshawe on the basis of which it concluded that the second condition above was satisfied, and therefore that Mr Bagshawe had not breached Regulation 90 of the 1989 Regulations.
44. Mr Bagshawe did not bring judicial review proceedings in relation to the Panel Decision.

Subsequent events

45. By his letter dated 13 January 2019 Mr Bagshawe sought from the High Court a certificate under section 25 of the Crown Proceedings Act 1947 ("a Section 25 Certificate"), seeking to enforce the amount that Mr Bagshawe said was due under the ICC, namely, £200,000. In opposition to Mr Bagshawe's request, the LAA filed a witness statement of Mr Rimer dated 4 March 2019, together with various exhibits, setting out the history of the matter and, including, among other things, the Panel Decision.
46. At a hearing on 5 March 2019 before Master Yoxall, attended by Mr Bagshawe and Mr Tom Morris, of counsel, for the Lord Chancellor, the Master dismissed Mr Bagshawe's application for a Section 25 Certificate. The Master noted in the Judgment at [5] that it was clear to him at that hearing that "there were a number of issues between Mr Bagshawe and the LAA".

47. On 18 March 2018 Mr Bagshawe filed his request for the issue of a writ of control against the Lord Chancellor to enforce the amount of £200,000 that he claimed was due under the ICC. Master Yoxall ordered that there be a hearing, on notice to the LAA, to consider the request. The hearing was listed before him on 27 March 2019.
48. On 8 April 2019 DJ Lethem made an order vacating a further hearing that had been due to take place before him on 20 May 2019 in relation to costs and ordering that the file be transferred to the Senior Courts Costs Office (“SCCO”) to be placed before a costs judge to consider re-location of the file within the SCCO or to a regional costs judge.

The hearing before Master Yoxall, his order and judgment

49. At the hearing on 27 March 2019 Master Yoxall heard argument from Mr Bagshawe and from Mr Tom Morris, of counsel, who appeared for the Lord Chancellor. He also had before him a witness statement dated 25 March 2019 of Mr Rimer, together with exhibited correspondence between Mr Rimer and Mr Bagshawe, as well as Mr Rimer’s witness statement of 4 March 2019, with its exhibits, to which I have already referred.
50. On 14 May 2019 Master Yoxall handed down the Judgment and made the 14 May Order, refusing Mr Bagshawe’s request for a writ of control. At [7] of the Judgment, Master Yoxall noted the principal submissions of the Lord Chancellor, namely:
 - i) there is no jurisdiction to issue an interim costs certificate against the Lord Chancellor under the 1989 Regulations, however the LAA can make a payment on account under Regulation 100;
 - ii) Mr Bagshawe is not a judgment creditor; and
 - iii) by virtue of the Panel Decision, Mr Bagshawe’s costs are deferred, subject to conditions (a) and (c) of paragraph 60 of the Panel Decision.
51. Regarding (i) above, Master Yoxall noted in a footnote that there was a question whether the ICC was actually made by DJ Lethem, but he proceeded on the basis that DJ Lethem had done so. I proceed on the same basis.
52. Master Yoxall noted in the Judgment that Mr Bagshawe did not agree with the conclusions in the Panel Decision. In particular, he contended that he could not proceed with an inter partes assessment without the instructions of his client, Mr Rimmer, or the LAA. He also contended that DJ Lethem had no jurisdiction to deal with inter partes costs. Finally, Mr Bagshawe contended that regulation 102 was not applicable or “was not in force at the time of the costs in question”.
53. At [9] of the Judgment, Master Yoxall concluded that it was not for him to determine whether the Panel Decision was correct, noting that:

“... [t]hat might be a matter for determination by way of Judicial Review or other proceedings. Mr. Bagshawe will have to take advice on that.”

54. At [10], the final paragraph of the Judgment, Master Yoxall concluded:

“I prefer the submissions made on behalf of the LAA. On the evidence before me, I am not satisfied that Mr. Bagshawe is a judgment creditor either on the face of the interim certificate or, perhaps more importantly, in substance. He is clearly not a judgment creditor on the face of the 6th August 2009 order. Accordingly, I shall order that the request for the issue of a writ of control be refused.”

55. In the 14 May 2019 Order Master Yoxall refused Mr Bagshawe’s request for the issue of a writ of control against the Lord Chancellor, refused permission to appeal, extended the time for Mr Bagshawe to file an appellant’s notice and ordered that Mr Bagshawe pay the costs of the Lord Chancellor, summarily assessed in the sum of £1,900.50.

Permission to appeal

56. Mr Bagshawe filed his appellant’s notice on 10 June 2019 and applied for a stay of execution of the 14 May Order. On 12 June 2019 Jay J refused the application for a stay of execution.
57. On 31 July 2019 Stewart J granted Mr Bagshawe’s application for permission to appeal on one ground only, namely, the ground set out in paragraph 24 of the Grounds of Appeal, which reads as follows:

“24. Master Yoxall was wrong in law to find that the Appellant Solicitor was not a judgment creditor on the face of the Interim Costs Certificate or in substance. Master Yoxall wrongly declined, when asked in writing and orally, to give reasons why the Appellant Solicitor was not a judgment creditor who had ‘obtained’ the interim costs certificate as defined by CPR rule 70.1(2)(a) and (b) and CPR rule 70.4. The Appellant Solicitor is in law a judgment creditor who has ‘obtained’ the interim costs certificate as defined by CPR rule 70.1(2)(a), (b) and (d) and CPR rule 70.4. The Lord Chancellor is the Judgment Creditor, beyond peradventure.”

58. In granting permission on this one ground, Stewart J said in his order:

“There is a real prospect of success that the Master was wrong to find that the [Appellant] was not a judgment creditor. The Interim Costs Certificate of 29 August 2014 orders payment of £200[,1000 to the Appellant. The Master does not explain why, irrespective of whether District Judge Lethem had jurisdiction to make the Order, that Order is not valid and enforceable unless and until it is varied/set aside/quashed/cancelled (under Rule 47.16).”

59. Stewart J refused permission on the grounds set out in paragraphs 12-14, 16, 20-23 and 25-27 of Mr Bagshawe's Grounds of Appeal. Mr Bagshawe then sent to the court email messages dated 8 August 2019 and 28 September 2019 and a letter dated 13 September 2019, in response to which Stewart J amended his order of 31 July 2019 under the slip rule and added various observations addressing points raised by Mr Bagshawe in correspondence. In particular, Stewart J indicated that he was not persuaded that the hearing of the appeal should be in private or anonymised. He noted that if such an application was to be made, then it would need to be made in the proper form, supported by evidence and with both sides having the opportunity to make representations. In the event, no such application was made.
60. Following further email messages dated 7 October 2019 and 12 October 2019 by Mr Bagshawe to the court, Stewart J issued a further order on 18 October 2019 recording that there were typographical errors in the order he had made on 2 October 2019 and making further observations on points raised by Mr Bagshawe in correspondence, none of which need to be set out here.
61. On 13 November 2019 Stewart J, having read further email messages from Mr Bagshawe dated 29 October 2019, 5 November 2019 and 7 November 2019 and a letter from the Lord Chancellor dated 17 October 2019, gave directions for the hearing of the appeal, including listing the hearing for 18 February 2020.
62. For the appeal, Mr Bagshawe filed three lever arch files containing over two thousand pages of documents, together with a meticulously prepared and comprehensive index. The Lord Chancellor provided a supplementary bundle containing just over two hundred pages of documents that were before Master Yoxall at the hearing on 27 March 2019, namely, the two witness statements of Mr Rimer dated 4 and 25 March 2019 and their various exhibits, to which I have already made reference.
63. Mr Bagshawe filed a skeleton argument dated 24 June 2019 and a supplementary skeleton argument dated 13 February 2020. Mr Rupert Cohen, of counsel, for the Lord Chancellor filed a skeleton argument dated 12 February 2020.

Submissions

64. In his two skeleton arguments, Mr Bagshawe has made many submissions on points that do not arise for decision on this appeal, particularly in relation to whether the conclusions of the Panel set out in the Panel Decision were correct. If Mr Bagshawe wished to challenge the Panel Decision, he should have done so by bringing judicial review proceedings. I must proceed on the basis that the Panel Decision was correctly decided and has the effect of deferring Mr Bagshawe's entitlement to payment of his legal aid costs until the two remaining conditions in paragraph 60 of the Panel Decision, namely, conditions (a) and (c), are satisfied.
65. Accordingly, it is not necessary for me to determine whether Mr Bagshawe was within his rights not to pursue the inter partes costs assessment and/or was not able to pursue the inter partes costs assessment without the authorisation of Mr Rimmer or the Lord Chancellor and/or is prevented from doing so for other reasons. I do not need to decide whether the advice Mr Bagshawe gave Mr Rimmer was "unreasonable or potentially improper", as the Panel concluded, or reasonable and proper, as Mr Bagshawe contends. I do not need to decide whether I prefer Mr Bagshawe's

interpretation of Master Fontaine's order of 20 April 2004 or that of the Lord Chancellor. Finally, I do not need to decide on this appeal what further steps should be taken in relation to the inter partes costs assessment in these proceedings and who should take them, nor am I required to make any order or give any directions in that regard.

66. Mr Cohen in his skeleton argument has raised questions regarding the validity of the ICC and whether DJ Lethem had the jurisdiction to issue it. I consider, however, that I must proceed, as did Master Yoxall, on the basis that DJ Lethem had the jurisdiction to make the ICC.
67. The principal submissions made by Mr Bagshawe in support of his appeal are as follows:
 - i) The Lord Chancellor owes a statutory debt to Mr Bagshawe in respect of the four legal aid certificates issued to his client, Mr Rimmer, by the LAB under the Legal Aid Act 1988. The ICC represents a portion of that debt, namely, £200,000 plus interest. No application has ever been made to vary or set aside the ICC, nor has there been any such order. Accordingly, the ICC remains valid and in force.
 - ii) CPR rule 47.16(2) provides that an interim costs certificate will include an order to pay the costs to which it relates unless the court orders otherwise. PD47, paragraph 16.12, provides that an interim costs certificate may be enforced as if it were a judgment for the payment of an amount of money. Accordingly, the ICC is enforceable as an order or judgment of the court and therefore clearly a "judgment or order for the payment of money" for the purposes of CPR rule 70.1(2)(d), which makes it clear that that term includes a judgment or order for the payment of costs. CPR rule 70.1(2)(a) defines a "judgment creditor" as "a person who has obtained or is entitled to enforce a judgment or order". Master Yoxall was therefore wrong to find in the Judgment at [10] that Mr Bagshawe was not "a judgment creditor either on the face of the interim certificate or, perhaps more importantly, in substance".
 - iii) Mr Bagshawe, being a judgment creditor in relation to the ICC, was entitled to the issue of a writ of control to enforce the ICC.
 - iv) For this purpose, it is irrelevant as a matter of law whether either of Mr Bagshawe or the Lord Chancellor is formally a party to the proceedings (namely, the four actions described at [9]-[20] above) out of which these costs proceedings arise. In any event, each of Mr Bagshawe and the Lord Chancellor are, in fact, parties to the proceedings within the meaning of section 151(1) of the Senior Courts Act 1981.
 - v) Master Yoxall had indicated on 5 March 2019 that he required to see the order that the Lord Chancellor must pay the sum indicated in the ICC. The ICC, however, itself contained the wording required by Master Yoxall. The order of DJ Chaudhuri dated 6 August 2009 was the document giving Mr Bagshawe his right to detailed assessment. Its date is relevant to the calculation of interest under the *incipitur* rule pursuant to paragraph 19 of the second order made by DJ Lethem on 29 August 2014 during the course of the legal aid assessment.

- vi) The ICC is *res judicata* in relation to the £200,000 of interim legal aid costs plus interest that it represents. It is an order of the court and takes precedence over the Panel Decision, which is a purely administrative decision taken by individuals who are neither impartial nor independent from the Lord Chancellor and the LAA.
 - vii) Even if that is wrong, the Lord Chancellor took unconscionably long to raise the point with Mr Bagshawe that it was his responsibility to carry out the inter partes costs assessment, even if he had had proper authorisation and had agreed to do so.
 - viii) The ICC is an order of the court for the payment of money and, as noted in paragraph 23.4.1 on page 139 of the Queen's Bench Guide 2018:

“The usual means of execution in the High Court of a judgment or order for the payment of money is by the issue of a writ of control.”
 - ix) There is no public law reason why a writ of control cannot be issued against the Lord Chancellor as a corporation sole. Article 47 of the EU Charter of Fundamental Rights and Article 13 of the European Convention on Human Rights (ECHR) guarantee Mr Bagshawe's right to an effective remedy against the Lord Chancellor.
68. Mr Bagshawe also submitted that Master Yoxall's failure to give reasons for his conclusion that Mr Bagshawe was not a judgment creditor is a “failure of process” such that “by law, this Appeal must be allowed in any event”.
69. In his supplementary skeleton, in response to points raised in the Lord Chancellor's skeleton argument, Mr Bagshawe made the following submissions:
- i) In response to the argument that the amount due under the ICC had already been satisfied by prior payments made by the relevant public funding authority, Mr Bagshawe asserted that this was untrue. Previous payments he had received in respect of earlier interim bills had already been taxed and therefore were no longer payments on account as contemplated by the ICC.
 - ii) In relation to the Lord Chancellor's reliance on the Panel Decision and the fact that Mr Bagshawe did not seek judicial review of the Panel Decision, this is a red herring. Mr Bagshawe is not seeking any form of relief for which judicial review proceedings would be appropriate. There is a public policy against multiplicity of proceedings. The Lord Chancellor is already within the jurisdiction of the Milton Keynes District Registry of the Queen's Bench Division for purposes of the legal aid assessment.
 - iii) Regarding the Lord Chancellor's argument that the ICC has been superseded by the Final Legal Aid Certificate, that certificate does not have that effect. No Final Costs Certificate (Form N256) has been issued (the failure to issue which is, in any event, the fault of the Lord Chancellor) and therefore there has been no merger of the ICC into a Final Costs Certificate. The Final Legal Aid Certificate fails to include an order to pay the costs to which it relates, whereas

a Final Costs Certificate will normally do so, unless the court orders otherwise (CPR rule 47.17(5)), as noted at paragraph 19.3 of the Senior Courts Costs Office Guide in volume 2 of the White Book 2020 at paragraph 1C-118.

70. Finally, I note that Mr Bagshawe in his supplemental skeleton argument, under the heading “Hearing in private, anonymisation and restrictions on reporting”, again raised the question of whether the appeal hearing should be in private and whether anonymisation and restrictions on reporting should apply. He said that these matters need to be considered because the “[Lord Chancellor] and his Legal Aid Agency need to be saved from their own folly and failure to grasp basic principles”. He made a couple of additional points in support of this submission in his supplemental skeleton.
71. Although Mr Bagshawe had not made a formal application about these matters as Stewart J had indicated he should do if he wished to pursue them, at the beginning of the hearing I raised them with him, given that he had raised them in his supplemental skeleton argument. At the hearing Mr Bagshawe appeared to take the position that it was principally for the Lord Chancellor to seek appropriate privacy restrictions, and he did not press the matter. Mr Cohen indicated that the Lord Chancellor saw no reason why there should be any derogation from the principle of open justice in this case. Accordingly, I need say no more about that.
72. Mr Cohen’s principal argument in response to the appeal is that no amount is due from the Lord Chancellor following the Panel Decision, which has the effect of deferring Mr Bagshawe’s entitlement to payment of his legal aid costs, as certified by the Final Legal Aid Certificate, until he has satisfied the conditions set out in the Panel Decision, two of which remain unfulfilled. Mr Cohen noted that Mr Bagshawe chose not to challenge the Panel Decision, which he could have done by bringing judicial review proceedings. He is now out of time to do so, and the Panel Decision stands.
73. Mr Cohen submitted that since, following the Panel Decision, no amount is due from the Lord Chancellor, he cannot be a “judgment debtor” for the purposes of the issue of a writ of control, and therefore the Master was correct as a matter of law to conclude that Mr Bagshawe’s request for a writ of control established no basis on which the Master could issue it. Accordingly, the request had to be, and was, properly refused by the Master. There was no error of law by the Master, and therefore this appeal must be dismissed.
74. Mr Cohen noted that CPR rule 47.18 and PD47, paragraph 17, govern the mechanics of the detailed assessment of legal aid costs (“a Legal Aid Assessment”), and that this process is entirely distinct from the detailed assessment of inter partes costs (“an Inter-Partes Assessment”). The former is governed by the 1989 Regulations. Furthermore, the twin tracks have unique features. Mr Cohen submitted that an obvious example of this is that on an Inter-Partes Assessment, the receiving party, both in the sense of the recipient of the funds but also as a named party to the assessment, will be the solicitor’s client. An Inter-Partes Assessment is governed by the process set out in other parts of CPR Part 47, under which the paying party is served with a notice of commencement and given the opportunity to dispute the items claimed. In a Legal Aid Assessment, it is the solicitor to whom, subject to the 1989 Regulations, funds are eventually paid by the relevant public funding authority. The solicitor is, however, never a *party* to the assessment.

75. Mr Cohen noted that an Inter-Partes Assessment will take place on the standard or on the indemnity basis, subject to the principles that govern the determination and recovery of inter partes costs. A Legal Aid Assessment is subject to the rules of recovery set out in the 1989 Regulations. An Inter-Partes Assessment results in an order that the paying party pay the assessed sum. A Legal Aid Assessment results in the issue of a certificate as to the amount payable, namely, a Legal aid/Legal Aid Agency assessment certificate (Form EX80A), which the solicitor then submits to the Lord Chancellor, who then determines whether it is payable in accordance with the 1989 Regulations.
76. Mr Cohen submitted that it is a feature of Legal Aid Assessment that up until the submission of the final certificate to the LAA, the LAA will not have been involved in the process. Legal aid costs payable to a solicitor following a Legal Aid Assessment are not payable pursuant to an order of court but as a statutory payment obligation of the relevant public funding authority, which is currently the Lord Chancellor acting through the LAA. The Lord Chancellor's obligation to pay legal aid costs to a solicitor is subject, among other things, to Regulation 102 of the 1989 Regulations.
77. Regarding the ICC, Mr Cohen makes a number of criticisms of DJ Lethem's decision to issue it. He also criticised the text of the ICC, the wording of which had been adapted by Mr Bagshawe from the normal form Interim Costs Certificate (Form N257) and presented in that adapted form to DJ Lethem for approval. The normal form contemplates only a payment by a defendant to a claimant or vice versa, not a payment to a solicitor by the relevant public funding authority. Mr Cohen submitted that a solicitor seeking a payment on account of legal aid costs should do so in accordance with Regulation 100 of the 1989 Regulations, not by way of obtaining the issue of an interim costs certificate on Form N257 from a costs judge.
78. Mr Cohen also noted that the legal aid assessment conducted by DJ Lethem simply involved Mr Bagshawe justifying his bill to DJ Lethem, with the LAA playing no part in the proceedings. Mr Cohen submitted that DJ Lethem did not have jurisdiction to issue the ICC given Regulation 100 of the 1989 Regulations. Mr Cohen asserted that the issue of the ICC was "wrong on many levels", and he raised other arguments, including regarding the proper construction of the ICC. I find that there is some force in these criticisms of the ICC and DJ Lethem's decision to issue it. However, as I have already indicated, I proceed for the purposes of these proceedings on the basis that DJ Lethem had the jurisdiction to issue the ICC, that it was properly issued and that it has not, to date, been varied, set aside, quashed or cancelled.
79. Mr Cohen submitted that, given that £352,864.36 had already been paid to Mr Bagshawe by the relevant public funding authority under interim bills he had previously submitted and given that such amount exceeds the £200,000 shown on the ICC, no amount was, in any event, due to Mr Bagshawe by way of payment on account of legal aid costs in respect of the ICC.
80. Regarding this point, Mr Bagshawe asserted that those interim bills had already been taxed and so were no longer payments on account as contemplated by the ICC. Furthermore, he submitted the issue of quantum was not raised during the hearing before Master Yoxall and therefore was not an issue in the appeal. He referred to the legal aid taxation certificates of 30 June 1995, 8 September 1995, 27 January 1997, 15 August 1997 and 20 November 1997, which were included in his hearing bundles.

81. In my view, this appeal does not turn on this point. I therefore do not need to decide it.
82. Finally, Mr Cohen submitted that Mr Bagshawe's request to obtain a writ of control was a collateral attack on the Panel Decision, which he chose not to challenge by way of judicial review, and these proceedings are therefore an abuse of process.

Analysis

83. In my view, Mr Cohen's principal response to this appeal is correct. The amount shown due on the ICC represents a statutory payment obligation of the Lord Chancellor arising under the legislation that governs civil legal aid. It does not, by virtue of the ICC, have an independent existence as an absolute debt following the making of the ICC. The ICC simply represents an amount that the court has determined is payable as interim legal aid costs of Mr Bagshawe on account under the relevant legislation.
84. I have already noted that, while I have some sympathy with the various criticisms that Mr Cohen has raised in respect of the ICC, I have proceeded on the basis that it was validly issued and has not yet been varied, set aside, quashed or cancelled. I also accept Mr Bagshawe's submission that under CPR rule 47.16(2) an interim costs certificate "will include an order to pay the costs to which it relates". I also note that PD47, para 16.12 makes it clear that an interim costs certificate "may be enforced *as if it were* a judgment for the payment of an amount of money" (emphasis added). Finally, I note that "judgment creditor" is defined in CPR rule 70.1(2)(a) to mean "a person who has obtained or is entitled to enforce a judgment or order".
85. It is arguable, therefore, that Master Yoxall was wrong to conclude in the Judgment at [10] that Mr Bagshawe was not a judgment creditor "on the face of the interim certificate". The Master was clearly correct to have concluded that Mr Bagshawe was not a judgment creditor on the face of the order made by DJ Chaudhuri on 6 August 2009, but Mr Bagshawe clarified that he relied on that order, not because it shows on its face that he is a judgment creditor, but because it is the order giving him his right to a detailed assessment and establishes the date from which the calculation of interest runs under the *incipitur* rule pursuant to paragraph 19 of the second order made by DJ Lethem on 29 August 2014 during the course of the legal aid assessment, as I noted at [67(vii)] above.
86. Master Yoxall was, however, right to conclude at [10] of the Judgment that Mr Bagshawe was not a judgment creditor "in substance". The fact that the ICC was enforceable "*as if it were* a judgment for the payment of an amount of money" does not mean that the ICC gave rise to an absolute debt obligation owed by the Lord Chancellor that is free-standing from the legislation under which the Lord Chancellor's statutory payment obligation arose. That payment obligation, being a creature of statute, was always subject to the conditions imposed by the relevant statutory framework, including Regulation 102 of the 1989 Regulations. Due to the Panel Decision, by the time the matter came to be considered by Master Yoxall, the Lord Chancellor had no present payment obligation under the civil legal aid legislation to Mr Bagshawe for the reasons set out in the Panel Decision. Accordingly, the ICC was by then of no effect, not because it had been varied, set aside, quashed or cancelled, but simply because it represented on its face a statutory payment obligation

that, under the statutory provisions under which it had originally arisen and to which it remained subject, was not due and payable.

87. Mr Bagshawe never attempted to enforce the ICC and instead submitted his final bill on the basis of the Final Legal Aid Certificate, which led ultimately to the Panel Decision. Had he attempted to enforce the ICC between the time of its issue and the time he submitted his final bill for legal aid costs, I suspect that he would have been met with the objection that he had failed to comply with Regulation 100 of the 1989 Regulations. It is now an academic question whether he could have nonetheless enforced the ICC against the Lord Chancellor prior to the Panel Decision.
88. Mr Cohen argued that the ICC was superseded by or merged into the Final Legal Aid Certificate. I have already noted Mr Bagshawe's response to this point at [69(iii)] above. I am inclined to agree with Mr Bagshawe that the ICC was not, strictly speaking, superseded by or merged into the Final Legal Certificate. That, however, does not help him. The ICC represented an entitlement to an interim payment on account of legal aid costs that Mr Bagshawe never sought to enforce prior to the issue of the Final Legal Aid Certificate. The Final Legal Aid Certificate represents the whole amount, certified as arising payable under the statutory regime for civil legal aid. It is the statute that gives rise to the payment obligation of the Lord Chancellor and governs the enforceability of that payment obligation. In relation to that, the ICC was merely a means of seeking to give effect to a right to interim payment, in the form of a document that, under PD47, paragraph 16.12, "may be enforced as if it were a judgment for the payment of an amount of money". The Final Legal Aid Certificate is certified evidence of the amount due under the statute and not a document enforceable "as if it were a judgment for the payment of an amount of money".
89. Nonetheless, the whole amount due under the Final Legal Aid Certificate is subject to the statutory regime for civil legal aid, and specifically to Regulation 102 of the 1989 Regulations. That necessarily includes the right to an interim payment of part of that amount. The issue of the ICC does not shield the £200,000 in interim legal aid costs stated to be due under the ICC from the effect of Regulation 102 or the rest of the relevant statutory framework.
90. Regarding the point raised by Mr Bagshawe, which I have noted at [68] above, that Master Yoxall's failure to give reasons for his conclusion that Mr Bagshawe was not a judgment creditor was a "failure of process" such that "by law, this Appeal must be allowed in any event", I find that the Master's failure to give reasons (which led to Stewart J granting permission to appeal on the one extant ground of appeal) was not a "serious procedural or other irregularity in the proceedings in the lower court" that rendered the 14 May Order unjust, within the meaning of CPR rule 52.21(3). The 14 May Order was correct as a matter of law. There is therefore no injustice to Mr Bagshawe. Mr Bagshawe was not a judgment creditor "in substance" in respect of the ICC because nothing was due under the ICC as a result of the Panel Decision, for the reasons I have given. There is no basis, therefore, for allowing the appeal on the ground of insufficiency of reasons.
91. In view of the foregoing, I do not need to decide whether a writ of control can be issued against the Lord Chancellor in respect of an amount due by him to a solicitor as interim civil legal aid costs.

Conclusion

92. Mr Bagshawe's appeal against the 14 May Order is dismissed.