



JUDICIARY OF
ENGLAND AND WALES

Summary of the Judgment in the case of:

**The Queen (on the application of Adath Yisroel Burial Society
& another)**

-v-

HM Senior Coroner for Inner North London

Friday 27 April 2018

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

1. The High Court has today given judgment in this case. The Court consisted of a panel of two judges known as a Divisional Court: Lord Justice Singh (who is a judge of the Court of Appeal) and Mrs Justice Whipple (who is a High Court judge).
2. In this claim for judicial review the Claimants challenged the lawfulness of a policy, which was adopted by the Defendant, who is the Senior Coroner for Inner North London, on 30 October 2017 to the following effect:

“No death will be prioritised in any way over any other because of the religion of the deceased or family, either by the Coroner’s Officers or Coroners.”

3. The challenge was brought on various grounds. The six issues in the case were addressed by the Court in the following order:

(1) fettering of discretion;

(2) irrationality;

(3) breach of the right to manifest religion in Article 9 of the European Convention on Human Rights, as set out in Sch. 1 to the Human Rights Act 1998;

(4) breach of Article 14, read with Article 9, which guarantees equal treatment in the enjoyment of Convention rights;

(5) indirect discrimination under section 29 of the Equality Act 2010;
and

(6) breach of the Public Sector Equality Duty in section 149 of the Equality Act.

4. After setting out the factual and legal context, the Court addressed each of those six issues from para. 77 of its judgment. It decided the first five issues in favour of the Claimants but rejected the final ground of challenge.

5. The Court pulled together the legal threads of its judgment at para. 160, as follows:

“(1) A Coroner cannot lawfully exclude religious reasons for seeking expedition of decisions by that

Coroner, including the Coroner's decision whether to release a body for burial.

(2) A Coroner is entitled to prioritise cases, for religious or other reasons, even where the consequence of prioritising one or some cases may be that other cases will have to wait longer for a decision. It is not necessary that all cases are treated in the same way or in strictly chronological sequence.

(3) Whether to accord one case priority over another or others is for the Coroner to determine. The following further points apply:

a) It is in principle acceptable for the Coroner to implement a policy to address the circumstances when priority will or may be given, so long as that policy is flexible and enables all relevant considerations to be taken into account.

b) The availability of resources may be a relevant consideration in drawing up that policy or in making the decision in any individual case but limitations on resources do not justify discrimination.

(4) It would be wrong for a Coroner to impose a rule of automatic priority for cases where there are religious reasons for seeking expedition.”

6. The Court added this, at paras. 161-162:

“161. We would add this important rider. Any decision reached by a Coroner in an individual case, assuming that all relevant matters are taken into account, will be subject to a ‘margin of judgement’. ... This means that the Court will not second guess the Coroner just because his or her decision is not to the liking of a particular family or others. Anyone seeking to challenge a decision of the Coroner on grounds that the Coroner has breached Convention rights will have to demonstrate that a Coroner has exceeded the margin of judgement which is afforded to him or her by the law.

162. We hope that, with appropriate advice from others, including the Chief Coroner, and perhaps after consultation with relevant bodies in the community, the Defendant can draft a new policy which meets the needs

of all concerned, including protection of the legal rights of all members of the community. With appropriate good will on all sides and ... 'applied common sense', we are hopeful that a satisfactory solution can be found in this sensitive area."

7. The Court concluded by granting a declaration that the Defendant's current policy is unlawful; and issued a quashing order to set aside the current policy.

-ENDS-