



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr D Williams

**Respondent:** Cheshire West and Chester Borough Council

**Heard at:** Liverpool

**On:** 7 October 2019

**Before:** Employment Judge Aspinall (sitting alone)

## REPRESENTATION:

**Claimant:** Mr Mehta, claimant's stepfather, solicitor

**Respondent:** Mr Kenward, counsel

## JUDGMENT AT PRELIMINARY HEARING ON COSTS

The judgment of the Tribunal is that the claimant is ordered to pay, to the respondent by 7 January 2020, £1,803.35 of respondent's costs.

Employment Judge Aspinall

Date: 7 October 2019+

JUDGMENT AND REASONS SENT TO THE PARTIES On  
19 November 2019

FOR THE TRIBUNAL OFFICE

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# REASONS

Oral judgment having been given on 7 October 2019

## Background

1. A costs application was made by the respondent for its costs incurred in respect of a hearing on 5 September 2019 which the claimant did not attend.
2. The claimant had been ordered by Judge Grundy following his non attendance to file and serve a statement explaining the reason for his non attendance and setting out why he should not pay the respondent's costs. The respondent was ordered to file its Schedule of Costs.
3. The claimant's statement was filed dated 2 October 2019. The respondent provided its Schedule of Costs.
4. The costs application was heard on 7 October 2019.

## Facts

5. The claimant gave evidence. He said he had not been aware of the 5 September hearing date.
6. The claimant was notified by a letter entitled Notice of Relisted Hearing dated 30 July 2019 sent to the Claimant at his then home address in Manchester of the hearing on 5 September 2019. The claimant's representative was also notified of the hearing by an email attaching 30 July Notice of Relisted Hearing sent to his email address at DWF solicitors. This was the address provided to the Tribunal by the claimant's representative. Mr Mehta had used this address to correspond with the Tribunal on 7 May 2019. Neither the claimant nor Mr Mehta had given written notification to the Tribunal of any change of address as at 30 July 2019 nor as at 5 September 2019.
7. The claimant gave evidence on his ability to pay. He is employed as a recruitment consultant. He started this role on 2 September 2019 and is in a three month probation period. His annual gross salary was provided to the Tribunal. He does not earn any commission or other income. He lives in his parent's home as he has been saving a deposit to buy his own home. He has a credit card with some debt but significant credit facility remaining. He has applied for a mortgage and will need to pay off the credit card debt promptly to meet the requirements of a mortgage offer. He has monthly outgoings of more than half of his monthly net income which include the cost of car finance and his mobile phone, travel and subsistence costs. He has recently had expense in solicitor's costs on an abortive property purchase and still needs to pay some legal fees and disbursements. He has significant savings which he has saved as a deposit to buy his own home. The actual amounts of income, outgoings, debt, credit facility and savings were provided to the Tribunal. Should either

party require those details to be provided they may apply within 14 days of the date on which these reasons are sent to the parties for those figures to be provided.

## Law

8. Rule 76 of The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 provides that a Tribunal may make a costs order and shall consider whether to do so where it considers that a party has acted unreasonably (rule 76(1)(a)) or where a hearing has been adjourned on the application of a party made less than 7 days before the date on which the relevant hearing begins (rule 76(1)(c))
9. In making its decision on costs the Tribunal has regard to the overriding objective in the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013. A costs order should not act as a disincentive or in any way be punitive of a claimant but the overriding objective requires the case to be dealt with fairly and justly.

## Analysis

10. It was unreasonable of the claimant not to attend the hearing on 5 September 2019. It was unfair that the respondent was put to cost when a hearing, of which the claimant and his representative had been notified, had to be adjourned by reason of the claimant's non attendance.
11. The respondent filed its Schedule of Costs. That schedule sets out counsel's fee and the solicitor's costs incurred and it particularises the VAT on those costs. The total gross amount claimed is £1,803.35. The solicitor's costs amounted to six and a half hours' time charged at £92 per hour with some ancillary travel expense. It was reasonable to instruct Counsel to advise, prepare for and attend a hearing at which the respondent makes an application to strike out the claimant's claims for race and sex discrimination. The matter that was due for determination on 5 September 2019 was an important matter that might have led to the extinguishing of the claimant's claims. Counsel's brief fee is £ 1000 plus vat. The amount of Counsel's fees was reasonable. It is appropriate here to award both solicitors and counsels fees given the issues for determination and the potential of significant saving to the public purse if the applications to strike out were successful. The charging rate for the solicitor here was low and was appropriate taking into account the presence of Counsel. There was no reduction to be applied to those costs.
12. Taking into account the claimant's ability to pay, there are no grounds for reducing the amount which the respondent had claimed. The claimant is able to meet the liability of the respondent's costs properly incurred. The claimant asked, if costs are ordered, for time to pay so as to allow him to clear first his credit card debt and outstanding solicitors costs. The respondent had no objection and suggested that the claimant may wish to pay by instalment provided that the total amount is paid by 7 January 2020.

13. The Claimant is therefore ordered to pay £1,803.35 by way of respondent's costs to the respondent by 7 January 2020.