EMPLOYMENT TRIBUNALS

Claimant: Mr D Taheri

Respondent: Aprite (GB) Limited t/a West Way Nissan

Held at: Burnley Combined Court **On:** 4 August 2023

Appearances:

Claimant: In Person

Respondent: Mr G Mahmood, Counsel

RESERVED JUDGMENT ON COSTS ASSESSMENT

Employment Tribunals Rules of Procedure 2013
Rule 78(1)

It is the Order of the Tribunal that:

The costs payable by the claimant to the respondent pursuant to the judgment of the Tribunal of 12 September 2019, sent to the parties on 14 October 2019, are assessed in the total sum of £20,000.00.

REASONS

1. By a judgment sent to the parties on 14 October 2019, following a hearing on 11 and 12 September 2019 , the claimant's claims of disability and age discrimination were dismissed, and he was ordered to pay the respondent's costs incurred by its solicitors and by counsel, after 8 February 2019, such sum to be assessed by an Employment Judge pursuant to rule78(1)(b) of the 2013 rules of procedure. Case Management orders were made for the determination of the costs payable.

2. The claimant sought reconsideration of the judgment, which was refused on 12 November 2019, and sent to the parties on 13 November 2019. The claimant also appealed to the Employment Appeal Tribunal.

3. The respondent then submitted its schedule of costs, and the claimant his objections to it. On 3 December 2019, the assessment of costs having been

allocated to this Employment Judge, the Tribunal wrote to the parties, pointing out that the respondent's schedule sought costs in the total sum of £22,592.52, of which £3,765.42 was VAT. As the respondent was likely to be VAT registered, the Employment Judge pointed out that if this element was to be removed, the costs sought would be under £20,000, and hence would not require a full detailed assessment.

4. On 4 December 2019 the respondent replied, agreeing to limit its claim to £20,000. This enabled a summary assessment to take place, but the claimant objected to this, misunderstanding that he was only being asked if he agreed to the form of the assessment, not to the award of costs. Once this was clarified, attempts were made to decide whether a hearing was necessary, and if so, when, where, and how it could be held

5. The claimant preferred a hearing at Burnley Combined Court, as he has prostate cancer, and travelling any distance is problematic for him. After the claimant made application to have the assessment struck out, which was refused, the Tribunal tried to list the costs assessment. The claimant's appeal was dismissed by the EAT on 4 May 2020. The country was, however, then in the grip of the COVID – 19 pandemic.

6. A paper hearing was then suggested, and further case management orders were made and sent to the parties on 27 July 2020. There ensued more correspondence, and issues arose as to listing the hearing in Manchester . To cut matters short, little, if anything , happened during 2021, mainly due to COVID, and the limited availability of any hearing rooms in Burnley, and in February 2022 attempts were resumed to list the assessment, possibly by CVP. That resulted in a listing at Burnley on 1 July 2022. Further case management orders were made and sent to the parties on 13 May 2022.

7. The claimant , however, applied for a postponement of that hearing, which the Tribunal granted by its letter of 16 June 2022. There had also been a suggestion that the respondent was seeking to recover more than £20,000 , contrary to the Tribunal's understanding of its agreement to limit its application to that sum. The Tribunal granted the claimant's application for a postponement. Further case management orders were made.

8. Further attempts to re-list the hearing were made, and the date of 4 August 2023 , at Burnley, was finally obtained. Despite the claimant indicating that he would not be available for this hearing due to a holiday, he did in fact attend, and participated fully in the hearing. He appeared well, and sought no breaks (there was one of twenty minutes or so) or any other adjustments. He addressed the Tribunal courteously, and cogently. He had submitted documents , relating to his means, to the respondent, and these were included in the costs bundle.

9. Mr Mahmood of counsel appeared for the respondent. Whilst Jeffrey Middleton, a partner in the respondent's solicitors, had made a witness statement dated 28 June 2022, he did not attend to give live evidence, so no cross - examination or Tribunal questioning was possible.

10. The respondent had prepared and provided a bundle for this hearing ("the costs bundle"), along with a copy of the bundle for the final hearing held on 11 and

12 September 2019 (the hearing bundle). Unless otherwise stated any references to page numbers in this judgment are to the costs bundle.

The respondent's application.

11. The bundle contained the following documents which are of primary relevance to the assessment :

The Schedule of Costs (dated 1 June 2022)– pages 1 to 2

The first engagement letter (16 January 2019) – pages 3 to 6

The second engagement letter (2 October 2019) – pages 7 to 10

Breakdown of time incurred – pages 11 to 29

Costs invoices to the respondent – pages 30 to 98

Counsels' fee notes – pages 99 to 101

The claimant's first response and application to strike out – 6 August 2020 – page 129

The claimant's further objections – 18 June 2022 - pages 190 to 191

Financial documents attached to the claimant's emails – pages 197 to 199 , 205 to 211 , and 219 to 242

Respondent's response to the claimant's points of dispute/means – pages 243 to 245

Witness statement of Jeffrey Middleton 28 June 2022 – pages 246 to 249

Claimant's email of 24 July 2023 and further attachments – pages 254 to 268

12. Mr Mahmood started by referring the Tribunal to the engagement letters, and the hourly rates set out therein. The schedule of costs was erroneous, in that it states that the hourly rates for Mr Middleton and Mr Mills that were being claimed up to 30 April 2020 were £340 and £220 respectively, thereafter increasing up until 30 April 2021 to £350 and £230. This was not so, the rates claimed are set out in the Breakdown document, and in the narratives sent with the Bills submitted to the respondent.

13. The Employment Judge had noted that in the Breakdown document, the higher rates , on some occasions, had been claimed for work done in 2019. Mr Mahmood referred to the engagement letters, and the increases in the hourly rates between January 2019 and October 2019. It is indeed correct that the higher rates of £350 and £230 were charged to the respondent from 2 October 2019.

14. The Employment Judge did raise with Mr Mahmood the published Guideline Rates which are to be used in the assessment of costs. Whilst between 2010 and 2021 those rates were not increased, the applicable hourly rates as from 1 October 2021 for a Grade A fee earners (which it is assumed, but not stated, Mr Middleton is) was £261, and for a Grade B (which is assumed, but not stated, Mr Mills is) was

£218. Mr Mahmood accepted the point, but did observe that the guideline rates are precisely that, only guidelines. The Tribunal should consider the complexity and importance of the case, which was one of discrimination. The value of the claim was £60,000, from the claimant's schedule of loss.

15. In terms of distribution of the work, whilst Mr Middleton, as a partner, had a role, and it was right that he should have, most of the work was done by Mr Mills.

16. Turning to the work done, and any challenge by the claimant to any items of work in the Breakdown, he had not specified any items where he was alleging duplication of work, or that unnecessary work was done. The burden was upon the claimant to identify any such issues, and he had not done so.

17. The respondent was abiding by the agreement to limit costs to £20,000.00, and no VAT was being charged. There was some amendment to the schedule, in that the anticipated counsel's fee for this hearing had been £3,500, but was now £2,000.

18. Turning to counsels' fees for the other hearings, he submitted that the fee charged for Ms Barry of £1,000 for the preliminary hearing was perfectly reasonable, as was the final hearing fee (abated, as the hearing went short by a day) of £4,500 for Mr Grundy. The claimant had suggested £2,000 for both hearings.

19. Finally, he turned to the claimant's ability to pay. The Employment Judge had raised at the outset whether this was an issue which it was open to him to consider. The discretion (which is not, it is to be noted, a requirement) to have regard to the paying party's ability to pay is contained in rule 84 of the 2013 rules of procedure. In the judgment of the Tribunal in September 2019, at paras. 106 to 113 , 130, and 133 to 134, this issue is addressed. It is arguable, therefore , that this issue has already been considered, and it is not open to this Tribunal to consider it again. Further, the Employment Judge queried whether this was a matter which can be considered upon the assessment of the amount of costs payable at all. The rules are silent upon this point, and Mr Mahmood considered it best to address these issues in the alternative, as an abundance of caution.

20. He did so , taking the Tribunal through the documents disclosed by the claimant in respect of his means. During the adjournment the claimant also showed Mr Mahmood some "Apps" on his mobile telephone, which revealed more details of the current state of his bank accounts and credit cards.

21. Mr Mahmood pointed out that all these documents raised more questions than answers. Whilst the claimant had disclosed a weekly income of only £77 from benefits, his expenditure considerably exceeds that income. His documents reveal a number of credit cards, and an ISA account . He had been able to reduce his credit card debt, but still maintained his household and car expenses. His current account statements show no payments of the main household expenses. He lives alone in a mortgage - free house. Without income from another source, it cannot be understood how he can manage on his sole income. The Tribunal should not take this picture at face value, and should not reduce any assessment because of the claimant's alleged lack of means, even if it has power to do so.

The claimant's objections.

22. The claimant made his submissions. The Employment Judge assured him that, as he was unrepresented, if there was any matter , particularly any legal issue, of which he was unaware, but which was of potential relevance to the assessment of costs (e.g the Guideline Rates) it was the Judge's job to ensure that full consideration was given to these matters, even if the claimant had not raised them.

23. The claimant's first point was that the respondent had made an unsuccessful application to strike out the claims, and had been refused a second application ,which was "out of time". He contended that 10 hours claimed for researching other cases was excessive (presumably in support of the application to strike out). There had been some delay due to the need to obtain evidence from a witness from ACAS, which resulted in the respondents re-drafting their witness statements.

24. He submitted that the case was hardly a complex one, citing another Employment Tribunal claim by him in which he was ordered to pay costs, against Perry Motors, where the legal costs sought were only £7000.00, for what he considered was a very similar case. He also pointed out that when the respondent made the warning to him that if he did not withdraw his claims , it would seek costs against him, those costs were said to amount to £8000.00.

25. Turning to counsels' fees, he queried the reasonableness of the instruction of Mr Grundy, who sits as a Recorder, and the brief fee of £4500.00 sought for him. He submitted that less senior, and less costly, counsel could and should have been instructed.

26. In general terms he invited the Tribunal to reduce the sums claimed because the respondent had acted unprofessionally, had wasted time and efforts, and generally had incurred unreasonable levels of costs.

27. Turning to his ability to pay, he explained more about the documents he had disclosed during the adjournment, and the further credit cards that had been revealed in this exercise. In short, he explained how he was borrowing on credit cards, getting cash advances and then using those sums to pay off other cards, or for living expenses, robbing Peter to pay Paul, a situation that could not continue. He was adamant that he had no source of income other than his benefits. He last worked some 4 years ago, on a part – time basis. He was now 3 years off retirement age. His home was worth , he guessed, around £100,000, but it was not currently on the market. If he sold it, he would have nowhere to live. He owns a Mercedes E220 motor car, 13 years old, worth around £3500.00 he estimates.

The respondent's response.

28. Mr Mahmood, after the adjournment provided the Tribunal with details of what the claimant had shown him on his mobile phone. He submitted that this again raised more questions than answers, the claimant has , in addition to the credit cards previously disclosed in his statements, other cards with Octopus, Aqua, and American Express. It was impossible to see how he could meet his living expenses from his sole source of income, his state benefits.

29. Mr Mahmood also clarified that the respondent had not included the sum of £507.50 (for preparation/consideration of emails between February 2022 and May 2022) in its schedule of costs claimed. He also pointed out that the figure claimed for preparation/consideration of £6647.50 in the schedule was in error by £10.50, as the

correct figure (as can be seen on page 22 of the bundle) was £6637.00. (The schedule also erroneous, in that it refers to this sum being claimed for "preparation/consideration of emails", when the Breakdown at pages 22 to 25 of the bundle shows that this is not work confined to emails, but relates to preparation and documents generally.

Discussion and assessment.

30. In overall terms, the Tribunal notes that this claim involved a factual dispute as to what occurred at a recruitment day that the claimant attended on 25 May 2018, and its aftermath. The claimant's witness statement (pages 308 to 309 of the main hearing bundle) ran to two pages, and the respondent had three witnesses, Simon White, Andrew Buswell and Nigel Kingswood. Their statements (at pages 310 to 325 of the main hearing bundle) run to 4, 7 and 5 pages respectively. 16 pages in total. Whilst the hearing main hearing bundle ran to 325 pages, the last 18 of those are the witness statements, and the first 196 pages were prepared for a preliminary hearing on 28 August 2019. There were thus two bundles, and the first 30 pages of the second one duplicate the first one in terms of the pleadings and orders.

31. There was an initial preliminary hearing on 4 January 2019. The respondent was not legally represented at that time, which, of course, pre-dates the date from which the costs payable by the claimant have been ordered. Employment Judge Sherratt declined an application (which could not have been dealt with in a private preliminary hearing in any event) by the respondent to strike out the claims.

32. There was a further preliminary hearing on 28 August 2019. The Bundle for this costs hearing does not contain a copy of the Orders made. They are, however, on the Tribunal's file. That was a hearing held by the then Regional Employment Judge, Judge Parkin. There were a number of applications made and determined in that hearing. They related to the admissibility of various documents, relating to previous proceedings, and the claimant's past. The respondent sought to rely upon some previous judgments of the Employment Tribunal in cases involving the claimant , and newspaper articles about him, and the claimant sought to have admitted another Employment Tribunal judgment from Birmingham. Each party was partially successful in their applications, the Tribunal granting some and refusing others.

33. Thus, this was a preliminary hearing (for which the respondent seeks to recover Counsel's fees, and the costs of other work done in connection with it) which was necessary for the conduct of the claims, but the outcome of which was not wholly in favour of one party or the other.

34. This was not an issue expressly addressed by either party in their submissions, although the claimant objected to the respondent recovering any costs for this hearing. The claimant appeared to suggest that the respondent had made two strike out applications, the first being refused by Employment Judge Sherratt at the first preliminary hearing, but it was unclear when the second was made. There may be some confusion that the second preliminary hearing was a strike out application, but it was not, and the Employment Judge can find no other hearing of any strike out application. Rather, from correspondence on the Tribunal file, it appears that on 20 March 2019 the Tribunal wrote to the parties informing them that Employment Judge Sherratt would not list a second strike out application, for which the respondent had applied.

35. The Employment Judge's view is that as both parties were partially successful in their applications and resistance to the other side's applications, the respondent should only recover 50% of the costs incurred in connection with this hearing.

36. Turning to the work done, the claimant specifically challenged the amount of time spent on witness statements and preparation, but was really not much more specific in challenging items on the Breakdown. He invited the Tribunal to consider that the work done was excessive and unreasonable.

36. The first issue to be addressed is the hourly rates that have been charged. At £350 per hour Mr Middleton's rate exceeds by almost £90 per hour the guideline rate of £261 applicable from October 2021, let alone what it would have been in 2019. Mr Mills' rate(s) of £220 and £230 per hour exceed the applicable guideline rates (again as at October 2021) by only £2, and then by £12 per hour.

37. Assessing the applicable reasonable rate is an art , not a science. Whilst noting that the guidelines are only that, the Tribunal does not consider that the considerably higher rate sought for Mr Middleton is reasonable. It considerably exceeds the applicable guideline rate from 2021. Whilst noting that the this was a discrimination claim, of some value, and importance, the Tribunal agrees that it basically involved a dispute of fact (there is no law cited in the judgment) , and was not particularly complex. That it is was a discrimination case, and of some value, would justify the involvement of a partner, but does not justify the considerably higher rate sought. Doing the best it can, the Tribunal reduces the rate that can be recovered for the work that Mr Middleton did to £255 per hour, rising to £261 per hour from 1 October 2021.

38. In relation to Mr Mills, the disparity between the rates sought for his work and the guideline rates is less stark. Given that he did the brunt of the work, and the nature of the case that he was dealing with at his rather more junior level was a significant one, the Tribunal can see justification for his rates of £220 and £230 per hour up to 30 April 2021, and will not reduce them. Thereafter, however, as there have been no increases to the Guideline Rates since October 2021, the Tribunal will not allow the higher hourly rates of £245 and £270 claimed thereafter.

39. Turning to the work done, the first observation to make is that the Breakdown Time History document is far from helpful. It is not chronological, jumping around as it does between the years 2019 to 2022, thereby mixing the work done pre- and post – judgment, making it difficult to isolate the work done in relation solely to the costs assessment. Further, it mixes the work done by the two fee earners, and lacks coherence. The narratives, however, provided with each of the Bills delivered are much more coherent, and are chronological.

40. The work done covers two periods. The first is in relation to the claim, up to and including the final hearing, the second is in relation to the period after the final hearing, which falls into two further categories, work done in relation to the claimant's application for reconsideration and his appeal, and work done in relation to the costs assessment.

41. In relation to the former, the work done up to and including the final hearing, the Tribunal notes that there were issues around the admissibility of documents on both sides, which necessitated the preliminary hearing on 28 August 2019. Further,

the claimant made application to postpone the final hearing, which generated further work for the respondent in terms of responding to it.

42. After the judgment, which was given orally , with Reasons being sent to the parties on 14 October 2019, the claimant appealed to the EAT, and sought reconsideration of the Tribunal's judgment. The latter was refused by the Tribunal by a judgment sent to the parties on 13 November 2019. The former was rejected by the EAT under rule 3(7) on 4 May 2020.

43. The relevance of all this is that the respondent's costs continued to be incurred after the judgment, and regardless of its own costs application. The applications for reconsideration and the appeal required further work on the part of the respondent. This alone may distinguish the case from the other claim referred to by the claimant , where the costs sought were only £7000.00, and may also explain in part why the figure for the respondent's costs increased from £8000.00 at the time that the offer to allow the claimant to withdraw without any costs liability was made. It is also likely that the costs at that time did not include counsel's fees , as they would not have been incurred at that stage.

44. Turning to the second aspect of the second period, this work, of course, was then purely in relation to the costs assessment. In relation to this period there has again been considerable correspondence about the form and location of the assessment, and applications by the claimant for postponements. This too has added to the work that the respondent has had to do, and has increased the legal fees it has incurred.

Work done up to and including the final hearing, and counsel's fees.

45. As mentioned above, it has been difficult from the Breakdown document to identify the work done, from 8 February 2019 , up to and including 11 September 2019 when the final hearing commenced, or the work done thereafter in connection with the reconsideration application and the appeal.

46. In broad terms, pages 1 to 5 of the Breakdown cover the work done between 11 February 2019 and 4 July 2019, by both fee earners. Pages 5 to 11, however, then jump (in reverse order) to cover the period from 25 April 2019 to 2 December 2020. This period obviously overlaps with the work done on pages 1 to 5. There does not appear to be any duplication, however.

47. To break down the work done, in broad terms, in this first period, the respondent claims for the following number of hours for the work done in:

Telephone attendances with the client – 1.40 hours

Telephone other – 0.30 hours

Drafting – 8.80 hours

This is split between the two fee earners, with Mr Mills doing the bulk of the work, and doing all the drafting.

48. The next section, however, with the activity code "EM", which relates to preparation and consideration of emails, covers the period from 21 February 2019 to

2 December 2020, albeit in a non – chronological and confusing fashion. Some 27 hours in total is claimed for all this work, which covers work pre – and post judgment, and therefore includes much work which relates solely to the costs assessment. With the exception of two entries where Mr Middleton did the work (23 September 2019 and 10 July 2020) all this work was carried out by Mr Mills.

49. Claims are made, on page 11, for letters in and out, and then for meetings on 2 April and 19 August 2019, all work carried out by Mr Mills.

50. The next sizeable section of the Breakdown is at pages 12 to 15 (internal numbering) under the heading "preparation/consideration". This section, again unchronologically, sets out work done, by both fee earners, between 12 February 2019, and 27 November 2020. Again, some hours of work were carried out by Mr Mills, and also by Mr Middleton. Again the work straddles the pre- and post-judgment periods. A total of some 27.10 hours of work is recorded, and the costs claimed accordingly. The next section is headed "research" and 1.10 hours are claimed for Mr Mills for the period 2 April 2019 to 4 September 2019.

51. The next two sections are in respect of telephone calls in and out, a total of 2 hours being claimed for the former , and 2.90 hours for the latter, all work being done by Mr Mills, and covering the period (save for a telephone call from ACAS on 1 October 2019) 21 February 2019 to 12 September 2019.

52. The total number of hours claimed over these 17 pages is therefore 72.70.

53. The respondent has provided (pages 28 and 29 of the bundle) two further pages of Breakdown, which show work done solely, of course, in connection with the costs assessment covering the period 10 February 2022 to 1 June 2022, again mostly by Mr Mills, with some 1.10 hours being carried out by Mr Middleton. A total of 5.30 hours is claimed for this work, in the total sum of £1466.00, applying the hourly rates for Mr Middleton of £375.00 , rising to £395.00, and for Mr Mills of £245.00 rising to £270.00.

54. A clearer picture emerges when one considers the narrative documents provided with the Bills delivered to the respondent.

55. Totalling the hours recorded in the 18 pages of "narrative" between pages 43 and 98 of the bundle produces a grand total of 78.00 hours , split as to 58.74 hours up to 27 September 2019 (i.e judgment) , and 19.26 hours post – judgment, relating to reconsideration, appeal and costs.

56. The net amounts billed (leaving out disbursements) are £13,950 up to 27 September 2019, and £5,021.00 thereafter.

37. Thus the total amount of time for which solicitors' costs are claimed (some elements in the Breakdown are not pursued) is 78 hours. Doing a rough breakdown, Mr Middleton has carried out 7 hours, and Mr Mills therefore has carried out 71 hours.

38. As indicated, the Tribunal does not consider that the respondent should recover all its costs in relation to the preliminary hearing of 28 August 2019 in which it was only partially successful and the claimant was also partly successful. Whilst it is hard to attribute a precise number of hours to that work, the entries around August

2019 relate most closely to this hearing. The Tribunal estimates that some 4 hours of research, preparation and other time are attributable to it. The Tribunal will allow the respondent 50% of this time, 2 hours.

39. Thus the total number of hours of work that the Tribunal considers as reasonable for the case as a whole, and this costs assessment is 76 hours , split between Mr Middleton and Mr Mills thus:

Jeff Middleton - 7 hours

Paul Mills - 69 hours

Thus, the Tribunal's assessment is that the costs should be assessed on the basis of 7 hours for Mr Middleton, and 69 hours for Mr Mills. Applying their lowered hourly rates of £255 and £220 to all the work done , discounting 50% of the work for the preliminary hearing, produces solicitors' costs of:

Jeff Middleton – 7 hours @ £255 = £1785.00

Paul Mills – 69 hours @ £220 = £15,180.00

Total solicitors' costs (provisionally assessed as a minimum) : **£16,965.00**

40. Turning now to counsels' fees, the Tribunal does not agree with the claimant that the brief fee of £4,500 for the two day hearing was excessive. The brief fee was £3,250.00, and the refresher for the second day was £1,250.00. The hearing was scheduled for three days. It was to determine liability and, if the claimant was successful, remedy. No separate fee for any Conference with the client has been charged, so that is an inclusive sum. Whilst Mr Grundy is senior and experienced employment counsel, this was a discrimination claim with seriously disputed issues of fact. Further, in addition to the issues on liability and potentially remedy, counsel was also clearly briefed to make, and did make, the application for costs. Had the respondent made a later application, and not dealt with it in the hearing, a further preliminary hearing, and hence further fees, would have been incurred. It was appropriate to brief experienced counsel, and the fees, overall, were reasonable.

41. Turning to the preliminary hearing, the Tribunal considers that the brief fee of £1,000 for Ms Barry was reasonable, but that the respondent should only recover half of this disbursement.

42. In relation to the brief fee for Mr Mahmood for this assessment hearing, the Tribunal considers that £2,000.00 is reasonable and will allow that sum. The amounts allowed therefore will be:

Counsels' Fees

£500.00

£4,500.00

£2,000.00

Sub - Total: **£ 7,000.00**

Solicitors' costs	**£16,965.00**
Total:	**£23,965.00**

43. The respondent has limited the costs claimed to £20,000. That means, after counsels' fees, just £13,000 would be available for solicitors' costs. That is some £4,000 short of the billed time, allowing for the reduction of hours already factored in. At Mr Mills' lowest rate of £220 per hour, that equates to over 18 hours work.

44. Allowing for the claimant's arguments that the totality of the work done on research, witness statements , preparation and generally was excessive, if the Tribunal were conducting a detailed assessment, and forensically were to take a scalpel to each item claimed, the Employment Judge considers that there would be no prospect of the Tribunal excising 18 hours of work from the sums in the Breakdown. Applying the lowest of the rates allowed for the lower grade fee earner (and for some of the time claimed a higher rate would be allowed) that would be the minimum reduction necessary to reduce the solicitors' costs by £3960, equivalent to over 20% of the time that the Tribunal will allow. The Employment Judge can see no basis for such swingeing reductions, and thus there is no prospect of the solicitors' costs being reduced below the £13,000 that the Tribunal will, in effect be allowing by the application of the limit of £20,000.

45. The upshot therefore is that the Tribunal considers, in the round, that the total sums claimed of £13,000 for the solicitors' costs and £7,000 for counsels' fees are reasonable, and the respondent's costs are assessed at £20,000.00.

Ability to pay.

46. Finally, in relation to the claimant's ability to pay, the Tribunal is far from certain that it can reconsider this issue, given that it has already been addressed in the judgment of the Tribunal of September 2019, when the claimant was ordered to pay the whole of the costs, and the issue of his ability to pay was considered then. Quite apart from any issue estoppel that might arise, the fact that one Tribunal has made such a determination should in any event be highly relevant to whether, absent any change in circumstances, it is open to another Tribunal to revisit a previous decision in this way. It is doubtful that rule 84 is even applicable to an assessment of costs at all.

47. As an abundance of caution, however, the Tribunal has considered this matter, and the further information provided to the Tribunal by the claimant for, and in the course of ,this hearing. The position is that nothing has changed. The claimant still only has one source of income, state benefits, and owns a car and his house, which is mortgage free. That was the position before the previous Tribunal, and it remains the position now. The only difference is that the claimant has produced more information which still does not explain how he is able to manage to live on his sole source of income. He may well, as he said, do this by juggling credit cards, and this may not be sustainable in the long term. As the previous Tribunal observed, lack of income is not a reason not to make an award of costs, and the availability of an asset from which any award could be paid is a relevant factor. Thus, if the Tribunal is permitted to take the claimant's ability to pay into account, it would come to the same conclusion as the previous Tribunal, and not reduce the amount payable by the claimant.

48. As the respondent has limited its costs to £20,000, that will be the assessment of the Tribunal.

Employment Judge Holmes

8 August 2023

RESERVED JUDGMENT SENT TO THE PARTIES ON

18 August 2023

FOR THE TRIBUNAL OFFICE