Neutral Citation Number: [2024] EWHC 409 (SCCO)
Case No: SC-2024-BTP-000011

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building, Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/02/2024

Before:

COSTS JUDGE LEONARD

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Between:

Michael Geoffrey Willis	**Applicant**
- and -	
(1) GWB Harthills LLP	
(2) Miss Hester Russell	
(3) Mrs Elizabeth Lord	**Respondents**

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The **Applicant in Person**
Andrew Jago (**Penningtons Manches Cooper LLP**) for the **Respondents**

Hearing date: 22 January 2024

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Approved Judgment

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COSTS JUDGE LEONARD

Costs Judge Leonard:

1. This is an application by Mr Willis, the paying party under the terms of a costs award made by the Employment Tribunal on 16 December 2022, to set aside a default costs certificate issued, on the application of the receiving parties, in the Senior Courts Costs Office ("SCCO") on 18 December 2023.

2. For reasons I shall explain, it is also framed as an application to set aside a Notice of Commencement of detailed assessment proceedings served by the receiving parties on 20 October 2023.

Tribunal Costs Awards and Detailed Assessment

3. The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 empower the Employment Tribunal to order one party to pay another's costs, the amount to be paid to be determined by way of detailed assessment in the County Court in accordance with the Civil Procedure Rules 1998.

4. Part 47 of the Civil Procedure Rules, and the accompanying Practice Direction 47, govern detailed assessment proceedings between parties, both in the County Court and the High Court. CPR 47.4 provides that all applications and requests in detailed assessment proceedings must be made to or filed at the appropriate office, but also (at CPR 47.4(2)) that the court may direct that the appropriate office is to be the SCCO. Practice Direction 47, at paragraph 4.3, provides that such an order may be made on the court's own initiative.

5. Practice Direction 47 at paragraph 4.1 provides that the appropriate office, where a tribunal makes an order for the detailed assessment of costs, is a County Court hearing centre, but that is subject to paragraph 4.2, which provides that (to abbreviate the detailed provisions) where the county court hearing centre would be in Greater London, the appropriate office is the SCCO.

6. Because SCCO Costs Judges regularly hear detailed assessments and applications from the County Court, we are also, by virtue of section 5 of the County Courts Act 1984, judges of the County Court.

7. As I have mentioned, the default costs certificate in this case relates to a costs award made by the Employment Tribunal on 16 December 2022. In the course of preparing this judgment (and although this was not a point raised by either party), I noted that paragraph 4.2 of Practice Direction 47 does not extend to the issue of default costs certificates or applications to set them aside (Practice Direction 47, paragraph 4.2(b)). It would follow that in any case where an award of costs has been made by the Employment Tribunal, the appropriate office for the issue of default costs certificates and applications to set them aside would be the County Court.

8. By virtue of CPR 3.10 however, the issue of a default costs certificate in a court that is not the appropriate office, as defined by Practice Direction 47, does not invalidate it. It is for the court to make an order either invalidating the certificate on procedural grounds, or remedying it.

9. In practice, applications for County Court default costs certificates and applications to set them aside are frequently referred to the SCCO. Having heard this application and bearing in mind the overriding objective, in particular the need to deal with cases justly, expeditiously and at proportionate cost, the obvious step for me to take is to direct under CPR 47.4(2) that the appropriate office for the application for this default costs certificate, and the application to set aside, is this the SCCO. On circulating this judgment in draft form, I gave the parties (in accordance with CPR 3.3(2)) an opportunity to make any submissions they wished to make upon that. Having received none, I will make the order.

The Application to Set Aside: Relevant Rules and Principles

10. The following provisions of the Civil Procedure Rules ("CPR") are pertinent to this application.

11. CPR 47.2 provides that a detailed assessment is not stayed pending an appeal unless the court so orders. Practice Direction 47, paragraph 2 provides that an application to stay the detailed assessment of costs pending an appeal may be made to the court whose order is being appealed or to the court which will hear the appeal.

12. CPR 47.6 provides that detailed assessment proceedings are commenced by the receiving party serving upon the paying party a Notice of Commencement and a copy of the bill of costs. CPR 47.7 provides that detailed assessment proceedings must be commenced within three months of the relevant judgment, direction, order, award or other determination.

13. CPR 47.8 sets out sanctions for delay in commencing detailed assessment proceedings. Where the receiving party fails to commence detailed assessment proceedings within the period specified in rule 47.7 or any direction of the court, the paying party may apply for an order requiring the receiving party to commence detailed assessment proceedings within such time as the court may specify. On such application the court may direct that, unless the receiving party commences detailed assessment proceedings within the time specified by the court, all or part of the costs to which the receiving party would otherwise be entitled will be disallowed.

14. If no such application is made, the court may disallow all or part of the statutory interest otherwise payable to the receiving party on the outstanding balance of the costs as assessed, but will not impose any other sanction except in accordance with rule 44.11 (powers in relation to misconduct).

15. CPR 47.9 provides that the paying party may dispute any item in the bill of costs by serving points of dispute. The period for serving points of dispute is 21 days after the date of service of the Notice of Commencement. The receiving party may file a request for a default costs certificate if the period for serving points of dispute has expired and the receiving party has not been served with any points of dispute. That will terminate the detailed assessment proceedings on the basis that the receiving party's costs are awarded in full. If however points of dispute are served before the issue of a default costs certificate, the court may not issue it.

16. CPR 47.12 provides that the court will set aside a default costs certificate if the receiving party was not entitled to it and that in any other case, the court may set aside

or vary a default costs certificate if it appears to the court that there is some good reason why the detailed assessment proceedings should continue.

17. CPR 47.12 cross-refers to Practice Direction 47, which at paragraphs 11.2 and 11.3 contains further details about the procedure for setting aside a default costs certificate and the matters which the court must consider. These include the following.

18. In deciding whether to set aside or vary a default costs certificate, the court must have regard to whether the party seeking the order made the application promptly. As a general rule, a default costs certificate will be set aside only if the applicant shows a good reason for the court to do so and if the applicant files with the application a copy of the receiving party's bill, a copy of the default costs certificate and a draft of the points of dispute the applicant proposes to serve if the application is granted.

19. Paragraph 11.3 of Practice Direction 47 cross-refers to CPR 3.1(3), which enables the court, when making an order, to make it subject to conditions; and to CPR 44.2(8), which enables the court to order a party whom it has ordered to pay costs, to pay an amount on account before the costs are assessed. A Costs Judge, the Practice Direction confirms, may exercise the power of the court to make an order under rule 44.2(8) although they did not make the order about costs which led to the issue of the default costs certificate.

20. I must also refer to CPR 3.9, which governs applications for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order. CPR 3.9 provides that the court will consider all the circumstances of the case, so as to enable it to deal justly with the application, including (at CPR 3.9(1)(a) and (b)) the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders.

21. It is necessary to refer to CPR 3.9 because the Court of Appeal has confirmed (in *FXF v English Karate Federation Ltd* [2023] EWCA Civ 891) that where a step is taken in consequence of non-compliance, such as the entry of a default judgment or a default costs certificate, then the application to set aside the default judgment or default costs certificate is subject to the principles applicable to applications for relief from sanction.

22. It follows that, on determining this application, I must have regard to the guidance given by the Court of Appeal in *Denton v TH White Ltd* [2014] EWCA Civ 906. I must first consider whether the non-compliance was serious or significant; second, whether there was good reason for it; and third, all the circumstances of the case, in particular the matters referred to at CPR 3.9(1)(a) and (b).

The Tribunal Proceedings

23. The Applicant brought two claims against the Respondents in the Employment Tribunal. Both related to his former partnership/membership in the first Respondent, from which he retired on 8 March 2021. The first claim, 1802068/2020, based on the period between October 2019 and April 2020 and made on 16 April 2020, is referred to in the Tribunal's judgments as "Claim 1". The second, 1803135/2021, based on the period from April 2020 to June 2021 and made almost a year after Claim 1, is referred to in the Tribunal's judgment as "Claim 2". I shall adopt the same terminology.

24. Liability on some of the heads of claim comprising Claim 1 was established by agreement, but the Applicant's claims for compensation were either withdrawn or dismissed. The heads of claim comprising Claim 2 were, likewise, either withdrawn or dismissed.

25. Costs awards have been made against the Applicant in both Claim 1 and Claim 2. On 16 December 2022, a Tribunal chaired by Employment Judge Rogerson awarded to the Respondents their costs of Claim 2, acknowledged at in excess of £277,000 but capped at £210,000, to be assessed on the standard basis in the County Court if not agreed. On identifying the capped figure, the Tribunal, in accordance with its rules of procedure, took into account the Respondent's means to pay.

26. As to timing, the Tribunal said this (at paragraph 66 of its judgment):

> "We have decided a reasonable and proportionate sum to cap the respondents' costs is £210,000. The costs should be assessed on the standard basis by way of a detailed assessment in the County Court. The costs are not immediately payable as there may be some delay while the unpaid profit costs value is decided, and we suggest no earlier than March 2023 which will hopefully give enough time after the LLP accounts for 2020/2021 to be approved in January 2023. The claimant also has alternative means that will not involve the sale of his home given his equity share in his home whether he does so by way of equity release or a charge on the property."

27. The underlying point, as I understand it, was that the finalisation of the LLP accounts for 2020/2021 would identify any remaining profit share due to the Applicant.

28. The second costs award was made on 13 January 2024, following a hearing on 1 November 2023. Regional Employment Judge Robertson awarded to the Respondents some of the costs of Claim 1. The award was limited to counsel's fees incurred by the Respondents for the remedy hearing on Claim 1, to be assessed by an Employment Judge.

29. Judge Robertson's judgment was sent to the parties on 19 January 2024. It includes, at paragraph 120, a reference to an accrued and as yet unpaid profit share due to the Applicant which might amount to over £400,000, albeit potentially extinguished by other liabilities.

30. Both costs awards were based upon findings to the effect that the Claimant had acted unreasonably. It is not necessary, for present purposes, to descend into any detail about those findings.

The Detailed Assessment Proceedings

31. The proceedings before me arise from the Claim 2 costs award made on 16 December 2022. On 19 October 2023 the Respondents served upon the Claimant a Notice of Commencement in form N252. The enclosed bill of costs, which came to £294,143.85, represented an uncapped figure for the Respondents' Claim 2 costs, as

awarded on 16 December 2022. The Notice confirmed that the amount of the enclosed bill was £294,143.85 and, in standard fashion, that if points of dispute were not received by 14 November 2023, the Respondents would ask the court to issue a default costs certificate for £210,151 (representing the Respondents' costs as capped by the Tribunal along with fixed costs and court fees).

32. In an email dated 13 November 2023, the Applicant confirmed that he had received the Respondents' Notice of Commencement and enclosures on 20 October 2023. His email included these words:

> "I draw your attention to the fact that the N252 Notice of Commencement of Assessment of Bill of Costs has been served out of time, by a period of eight months. The time limit of three months for service of this Notice expired on/around the 22nd March 2023.
>
> I have brought these matters to the attention of the Employment Tribunal and this matter will be looked into. There is no N252 process for me to respond to.
>
> At the Claim 1 Costs Hearing on the 1st November 2023, Employment Judge Robertson raised his serious concerns about the costs being "double accounted" in Costs Claim 1 and 2.
>
> In addition, the Respondents have refused to comply with a direction from the Employment Tribunal for the preparation of 2020/2021 Termination accounts directly associated with these matters."

33. The Respondents' solicitors replied by email the following day:

> "As you will be aware from the covering letter and email serving these documents, Points of Dispute are due by 14 November 2023, which is today.
>
> We put you on notice that if the Points of Dispute are not received by 5:00pm today we will apply for a Default Costs Certificate."

34. The Applicant replied on the same date:

> "… none of the issues raised by me has been addressed by you. I have now applied to the Judge for the N252 Notice to be set aside due to it being eight months out of time and to link it with other concerns about the information provided to the Tribunal.
>
> Until the Tribunal has ruled on these matters it would be inappropriate for a Certificate to be applied for at this stage.
>
> All the papers will be placed before the ET Judge this week."

35. On the same date, the Applicant sent an email to the Tribunal purporting to be an application under CPR 47 for an order setting aside the Notice of Commencement as out of time. On 27 November the Tribunal replied on behalf of Employment Judge Robertson explaining that the assessment of costs was now a matter for the County Court. The letter refers to communications from the Claimant dated 6 and 24 November 2023 which I do not believe I have seen, but it appears in any event to be a response to the Claimant's attempted email application.

36. On 18 December 2023, on an application of the Respondents dated 15 November 2023, the Senior Courts Costs Office ("SCCO") issued a default costs certificate in the sum of £210,151. The Applicant appears to have attempted to file his application to set that certificate aside on about 21 December, but to have encountered some difficulties. The court file shows successful filing on 5 January 2024.

Submissions

37. The Appellant's stated grounds for setting aside the default costs certificate may be summarised as follows (I exclude, for the sake of brevity, some submissions which appear to me to be irrelevant).

38. The Notice of Commencement was served outside the three months provided for under CPR 47.7 and should, accordingly, be struck out. The Defendants were informed in writing on 14 November 2023 that the Applicant wished to dispute the assessment of costs within the applicable time limit. The Respondents failed to respond to that letter and therefore the Applicant, who suffers from physical and cognitive disabilities and vulnerabilities was awaiting the Respondents' response, was not in a position to respond to the Notice of Commencement and is not in default. The Respondents had taken advantage of the Applicant's vulnerabilities and disabilities as a litigant in person, for example in applying for a default costs certificate just before Christmas. The service of their bill of costs shortly before the Claim 1 costs hearing of 1 November 2023 also put the Applicant at a disadvantage.

39. The format of the bill is not acceptable, and Employment Judge Robertson expressed some concerns about "double accounting" by the Respondents between Claim 1 and Claim 2. Employment Judge Robertson's judgment on the Claim 1 costs was still awaited when the default costs certificate was issued and it would be unfair to allow it to stand in those circumstances.

40. The Respondents have not complied with the direction of the Tribunal for the preparation of 2020/2021 Accounts by the Respondents by January 2023 to assess the Applicant's profit share and capital entitlement, which makes it impossible to assess his means prior to any assessment of costs and which means that payment of the default costs certificate would necessitate sale of his home, in the face of his serious illness.

41. The Claim 2 costs judgment is the subject of an appeal to the Employment Appeal Tribunal, which the Applicant says has a real prospect of success. He has said much about the merits of his proposed appeal which, for reasons I shall give, I do not need to set out here.

42. Before me, the Applicant indicated that he was not relying so much upon his appeal against the Claim 2 costs judgment as upon a prospective application for reconsideration of the underlying Claim 2 judgment in the light of new evidence.

43. This would appear to be a second application for reconsideration of the underlying Claim 2 judgment, previous applications for the reconsideration of both Claim 2 judgments and the Claim 1 remedy judgment having been refused in August 2023. An application for an extension of time to appeal from the underlying Claim 2 judgment has also been withdrawn.

44. It is not necessary for me to go into the detail of the submissions made on behalf of the Respondents, which in so far as necessary are addressed in my conclusions. Briefly, their position is that the default costs certificate was properly obtained and should not be set aside. If it is set aside, then it should be set aside only on condition that the Applicant pay a sum on account of the Respondents' costs, which the Respondents put at £166,000, and that the Applicant file points of dispute within 21 days. The Respondents also claim the costs of this application.

The Hearing of the Application and Subsequent Correspondence

45. Before explaining my conclusions, I need to mention that with his application, the Applicant offered a hearing time estimate of three hours. He also filed materials indicating that he has serious health problems and disabilities which required accommodation, including that he could not manage a hearing of more than 45 minutes without a break.

46. On listing the application, I asked my clerk to give notice to the parties that I considered the three-hour time estimate to be too long and that with the Applicant's needs in mind I had listed the application for 45 minutes. Because in his application the Applicant had also referred not only to CPR 47 but to other rules governing the setting aside of default judgments, I also asked my clerk to refer the parties to the fact that applications to set aside default costs certificate are governed by CPR 47.12 and Practice Direction 47 Part 11. According to the court file, the Applicant received that information on 10 January 2024.

47. On the hearing of his application on Monday 22 January 2024, the Applicant indicated again that the Claim 1 costs judgment, which had been sent to the parties the previous Friday, had a bearing on this application. The Respondents had no objection to my reviewing that judgment after the hearing, and it was agreed that I would do so, with the Respondents having an opportunity to offer any observations on it (in the event, they had none).

48. Having heard the parties' submissions, in order to save hearing time and to accommodate the Applicant's needs I concluded the hearing on the basis that I would give a decision in writing, including on the principle and (if appropriate) the quantification of the costs of the application, as sought by the Respondents.

49. The Applicant subsequently sent to the court emails including communications to the effect that he would serve points of dispute within seven days, and that he had made an application both for a review of the substantive Claim 2 decision and for a stay of the Claim 2 costs award. I found it necessary to confirm to the parties that (with the

agreed exception of the Claim 1 costs judgment) I would make my decision based upon the materials before me at the hearing, not on materials or submissions offered after the event. I will explain my reasons for saying so.

The Procedural Context

50. As I have mentioned, CPR 47.2 and Practice Direction 47, paragraph 2 make it clear that any application for a stay of detailed assessment proceedings pending an appeal is a matter for the court whose decision is being appealed or the court which will hear the appeal.

51. The underlying principle (one of general application) is that the merits of an order awarding costs, and of any prospective appeal against that order, are not a matter for the court tasked with assessing the amount payable under that order. The assessment will proceed in accordance with CPR 47 unless either the court that made the costs order, or the appeal court, orders a stay.

52. I appreciate that were the Applicant ultimately to succeed in overturning the Claim 2 judgments, any amounts paid by him to the Respondents pursuant to the Claim 2 costs award would have to be repaid. In order to avoid that possibility, it is for the Applicant to persuade the Tribunal (or the EAT, as appropriate) that it should order a stay of the Claim 2 costs award pending his attempts to do so.

53. Consistently with the principle that it is not for the assessing court to consider the merits of the order for the costs being assessed, CPR 47.12(2) provides that the court should exercise its discretion to set aside a default costs certificate if it appears to the court that there is good reason why the detailed assessment proceedings should continue. The question is whether the paying party should be given another opportunity to secure a reduction in the amount of costs claimed. It is not, for example, whether the order awarding costs might be overturned.

54. That is why the merits of any proposed appeal by the Applicant, or of any application to reconsider the Claim 2 judgments, have no bearing upon whether this detailed assessment should continue and are not pertinent to this application.

55. Practice Direction 47, paragraph 11.2 makes it clear that an order to set aside a default costs certificate will only normally be made if the applicant files with the application a draft of the points of dispute upon which the applicant wishes to rely. Otherwise the judge is likely to lack the information needed to determine whether a detailed assessment should continue, or whether the default costs certificate should stand. As Costs Judge Rowley observed in paragraph 39 of his judgment in *National Bank of Kazakhstan & Anor v The Bank of New York Mellon SA/NV, London Branch & Ors* [2021] EWHC B7 (Costs), there would be no benefit in the default costs certificate procedure if the certificate could always be set aside by a party simply saying that they expected to reduce the costs on assessment.

56. It may also be possible, for example, to identify from the draft points of dispute an undisputed minimum figure that the paying party must pay as a condition of setting the default costs certificate aside.

57. The requirement that draft points of dispute should be filed with the application (and not, for example, at any time before it is heard) underlines their importance and ensures that the paying party will, on the application to set aside, have an adequate opportunity to consider and respond to them.

58. It should also be borne in mind that detailed assessment proceedings are not a form of enforcement. Assessment and enforcement are different processes. Whether assessment proceedings should continue or whether the sum assessed should be open to immediate enforcement, are different questions. Some of the Applicant's submissions, in my view, do not recognise the distinction. That is important, because it seems to me that his priority is to avoid, or at least to defer, having to pay anything, rather than to achieve a reduction in the Respondents' claimed costs.

59. I refer in this respect to the Applicant's reliance on the observations of the Tribunal at paragraph 66 of the Claim 2 costs judgment regarding the timing of payment. His argument (which does not sit comfortably with his contention that the Notice of Commencement was served too late to be effective) is that the Tribunal directed that the Respondents prepare 2020/2021 accounts within three months, and that there should be no assessment until that was done.

60. I do not think that any of that can be right. Evidently the Tribunal had it in mind that 2020/2021 accounts could be agreed, and any accrued profit share due to the Applicant identified, within a period of about three months. Hence the Tribunal's suggestion, quoted above, that payment should not be due before that (although the Tribunal was expressly satisfied that the Applicant could if necessary pay his costs liability, without having to sell his house, whether the accounts were agreed or not).

61. Properly read however, the Tribunal's words refer to the timing of payment, not the timing of assessment.

62. I am not in a position to resolve whatever issues have arisen between the Applicant and the Respondents with regard to the finalisation of accounts and the Applicant's claim to a final profit share, but the point is that such matters have no bearing upon whether a detailed assessment should continue. They concern only the timing of payment. They might, for example, support an application for a stay of enforcement, but that is not the application before me.

63. For the same reasons the Claim 1 costs judgment, which as agreed I reviewed after the hearing and which as I have mentioned incorporates (in the context of the Applicant's means to pay) some brief references to an unpaid profit share due to him, has no bearing upon this application.

Conclusions

64. One difficulty with the Applicant's case is that it rests primarily not on the proposition that there is good reason for the detailed assessment proceedings to continue, but rather that the detailed assessment proceedings themselves are invalid, so that he was justified in not producing points of dispute in response to the bill served by the Appellants.

65. Hence, for example, the fact that, on receipt of the Respondents' Notice of Commencement in October 2023, the Applicant's response was not to attempt to agree, or alternatively apply for, an extension of time to serve points of dispute (which could have taken account of his state of health, his disabilities and any need to obtain professional advice), send an email the day before the period for service expired, arguing that due to late service of the Notice of Commencement, the Respondents had forfeited their right to be paid any costs at all.

66. It will be evident, from the rules which I have referred, that this argument is misconceived. The provisions of CPR 47.8 make it clear that late service of a Notice of Commencement can be penalised by the disallowance of any part of the costs claimed only where the paying party has obtained an order requiring the receiving party to commence detailed assessment proceedings and the receiving party does not comply. No such order has been applied for, much less made, in this case.

67. Accordingly, once the Respondents' Notice of Commencement had been served upon him it was incumbent upon the Applicant, in accordance with CPR 47.9, to serve points of dispute if he wanted to avoid the issue of a final costs certificate. He was expressly warned of that at the time of service.

68. For the sake of completeness I should add that there is no evidence before me of any conduct on the part of the Respondents which might properly engage CPR 47.11. Even if there were, it would not simply nullify the detailed assessment proceedings or relieve the Applicant, should he wish to take issue with the amount of the Claimant's costs, of the obligation to serve points of dispute.

69. In the same vein, the Applicant insists that he is not, in fact, in default, because he should not have had to prepare points of dispute until the Respondents had replied to his communication of 14 November 2023. The simple answer to that is that it is not open to him to shift the responsibility for his default to the Respondents. Nor do I accept his complaints that he has been treated unfairly by the Respondents, who have done nothing that they are not entitled to do and who told him clearly what he had to do to avoid a default costs certificate.

70. Much the same applies to the Applicant's reliance upon his prospective appeal and reconsideration application to the Tribunal and/or the EAT. Again, the essence of his case in that respect (which, for the reasons I have given, I cannot accept) is that any determination of the amount due under the Claim 2 costs award should await their outcome, so the Applicant should not have to prepare points of dispute.

71. I turn to the specified criteria for setting aside a default costs certificate. In considering whether there is good reason for a detailed assessment to continue, I bear in mind that the Respondents' claimed costs total £294,143.85. The starting point on a detailed assessment would be that figure.

72. The Tribunal has capped the Applicant's costs liability at £210,000, a decision which takes into account his means to pay. On any assessment of Respondents' costs, the Applicant's means would be irrelevant and he would have to persuade the court that the Respondents' costs should be reduced from £294,143.85 to less than £210,000, a reduction of over 28.5%.

73. I would not say that reductions on that scale are uncommon on detailed assessment. I would say, based on my own experience, that any reduction substantially in excess of that would be fairly exceptional. It is incumbent upon the Applicant, for the purposes of this application, to show that, on assessment, he would have a reasonable expectation of achieving a reduction of at least 28.5% on the total costs shown in the Respondent's bill. He has not.

74. I am aware of four potential objections that the Applicant has raised to the Respondents' claimed costs. First, he says that concerns have been expressed by Tribunal Judge Robertson to the effect that the Respondents might have "double counted" in their claims for the costs of Claim1 and Claim 2. Because the Applicant has not filed draft points of dispute in compliance with paragraph 11.2 of Practice Direction 47, I have no idea in what respect they are alleged to have done that, what the alleged value of such "double counting" might be. The Applicant does not seem to know either.

75. Second, there appears to be some very broad suggestion that the Respondents have not always presented the costs in a consistent way, possibly for example as to their claimed hourly rates. The argument, whatever it might be, is not clear enough for me to tell whether it might have any merit, or if so, what effect it might have on the Respondents' claimed costs.

76. Third, the Applicant takes issue with the format of the Respondents' bill of costs. It is said by him to be unsatisfactory, but because the Applicant has not, in accordance with Practice Direction 47 paragraph 11.2, filed a copy of the Respondents' bill of costs, I cannot tell whether there is anything in the point. Nor would the issue seem to have any bearing upon the actual recoverable amount of the Respondents' costs.

77. Fourth, on the hearing of the application the Applicant alleged failures by the Respondents to comply with requirements of the Employment Tribunal. Again I have no idea whether there is any substance in that, or what impact it might have on costs.

78. My conclusion, for those reasons, is that the Applicant has not discharged the burden of demonstrating that there is good reason why a detailed assessment should continue.

79. As to whether the application was made promptly, it would appear that the Applicant attempted to file his application to set aside the default costs certificate within days of receiving it. The problem with his application is not that was not promptly made, but that it does not address the right criteria or offer anything of substance to demonstrate that it has merit.

80. Turning to the *Denton* criteria, evidently the Applicant's omission to serve points of dispute within the required period was serious and significant. He did not raise any points of dispute against the Respondents' bill of costs, either within the time provided by CPR 47.9 or with any extended period he might have obtained by agreement or upon application. That entitled the Respondents to obtain a default costs certificate.

81. As for whether there was good reason for the Applicant's default, plainly there was not. As I have observed, the Applicant wrongly took the position that was not incumbent upon him to produce points of dispute. That cannot be a good reason.

82. As to whether the timing of the Notice of Commencement put the Applicant at a disadvantage, I am aware that, as at 20 October, the Claim 1 costs hearing was less than two weeks away, on 1 November. He could however have prepared points of dispute after that hearing. If as he now says he can do so within seven days, he could have done so before 15 November. In fact, he could have protected his position by doing so at any point before the default costs certificate was issued on 18 December. He could also have applied for an extension of time, he needed it, but he did not.

83. In the supporting materials attached to his application, the Applicant has said that he should not be regarded as an experienced solicitor but as a medically retired man who has remained medically unfit to work for some years and who is suffering the additional stress of representing himself as a Litigant in Person.

84. A Litigant in Person is under the same obligation to comply with the rules as a legally represented litigant (*Barton v Wright Hassall LLP* [2018] UKSC 12). That aside, the Applicant is a solicitor. Albeit non-practising and with experience in criminal rather than civil litigation, he is evidently capable of reviewing and complying with the rules that govern his application.

85. I entirely accept that the Applicant's health is poor, and that allowance must be made for that. The real point however, with regard to the reason for noncompliance, is that the Applicant did not fail to serve points of dispute because he could not do so. He did not serve points of dispute because he took the position that he should not have to do so. That, as I have said, was not a viable position to adopt, and cannot be a good reason.

86. Turning to the third test, I need to take into account all of the circumstances of the case and deal with the application justly in accordance with the overriding objective, taking into account the need for litigation to be conducted efficiently and at proportionate cost and to enforce compliance with rules, practice directions and orders.

87. I have mentioned that the Applicant, after the hearing of this application, announced his intention to serve draft points of dispute within seven days. I replied to the parties to the effect that I would be deciding the application on the material put to me at the hearing (with agreed the exception of the Claim 1 costs judgment). I had not extended time for the production of draft Points of Dispute, which insofar as relied on should have been available at the hearing. Nor, pending my decision, would I give consideration to such a new document without the Respondent's express agreement.

88. The main issue before me, on the hearing of this application, was whether the Applicant was justified in saying that it was not incumbent upon him to serve points of dispute. I have explained why it was not, and why it would not be appropriate to set aside the Respondents' default costs certificate on the basis that he could serve points of dispute after the hearing. Much the same logic applies to the proposition (if that is what the Applicant means) that he produce draft points of dispute after the hearing of his application in the hope that it might improve his position. To permit that would also effectively be to excuse his non-compliance with the rules to which I have referred and to allow him to restart his application post-hearing, with the necessary prejudice to the Respondents, delay and additional cost that that would entail, including the likelihood of a further hearing.

89. Taking all of this into account, it seems to me entirely clear that the default costs certificate should not simply be set aside. The remaining question is whether to make an order setting it aside strictly on condition that the Applicant pay to the Respondents the sum of £166,000.

90. In my view such an order is not merited. The Applicant's position is that he should not have to make any payment at all. His objective is to avoid any enforcement proceedings until he has had an opportunity, by whatever means, to overturn the Claim 2 costs judgment and/or to recover whatever profit share he believes he is due on the finalisation of the 2020/21 accounts. This much is evident from his submissions, and is further illustrated by the fact that on the hearing of the application and subsequently, the Applicant has invited me to adjourn these proceedings in their entirety until the Tribunal has ruled on his second application for reconsideration of the underlying Claim 2 judgment.

91. As I have said, I have no good reason to suppose that the Applicant would persuade this court to reduce the amount of costs recoverable by the Respondents to something less than capped figure determined by the Tribunal. It would be wrong to subject the Respondents to the time and cost of a detailed assessment procedure the real point of which would be to allow the Applicant to avoid enforcement whilst he pursues applications elsewhere, or recovers whatever he believes to be due to him by way of a profit share. If the Applicant's aim, as it appears to be, is to stay enforcement, he should make an application to that effect to the appropriate court or tribunal.

92. For all the above reasons, my conclusion is that the application must be dismissed.

The Costs of the Application

93. At the hearing of this application it was agreed that, in order to confine the hearing to 45 minutes in length, I would determine on paper whether either the Applicant or the Respondents should pay the Respondents' costs of this application, and, by way of summary assessment, the amount (if any) to be awarded. On circulating this judgment in draft form I invited submissions on the conclusions I had reached on the award and assessment of the costs of the application, and I have received none.

94. The costs claimed by the Respondents are set out, in standard fashion, in a schedule in form N260. The Applicant has not filed a schedule, but that is of no consequence. The application has been unsuccessful, and the Respondents are, in the usual way, entitled to their costs of resisting it.

95. The total claimed by the Respondents is £3,567.60 including VAT. Bearing in mind that, when assessing costs on the standard basis, I must resolve any element of doubt in favour of the Applicant as the paying party, these are my findings.

96. The Respondents' solicitors are based in central London. The hourly rate claimed for the Grade A fee earner, Mr Syder, is above the 2024 London 2 SCCO guideline hourly rate of £398. Bearing in mind *Samsung Electronics Co. Ltd & Ors v LG Display Co. Ltd & Anor (Costs)* [2022] EWCA Civ 466, I can find no sufficient reason to depart from the guideline rate in this case. Mr Jago's hourly rate seems to me to be reasonable for a qualified Costs Lawyer of his experience and is allowed as claimed.

97. The time claimed for work other than attendance at the hearing of the application and document time, is minimal. The time claimed for attendance at the hearing is evidently accurate. I do have some reservations about the document time, which seems to me to be rather higher, and to incorporate more duplication between Mr Jago and Mr Syder, than can be fully recoverable on a standard basis assessment.

98. Taking those matters into account, the costs payable by the Applicant to the Respondent are summarily assessed at £2,750.

Postscript

99. In the course of preparing this draft judgment I received an email from the Respondents attaching a decision of Employment Judge Robertson dated 8 February 2024. Employment Judge Robertson refused the Applicant's second application, dated 26 January 2024, for reconsideration of the Claim 2 judgments and the Claim 1 remedy judgment, and refusing his application for a stay of the Claim 2 costs judgment.

100. I can understand why, notwithstanding my indication that I would be determining this application on the information before me when it was heard, the Respondents wished to bring Employment Judge Robertson's judgment to my attention. It will however be evident, from what I have said, that his judgment does not bear on any of my conclusions.

101. I have also, between circulating this judgment in draft form and handing it down, received a communication from the Applicant in which he takes issue with some of my conclusions and in which he attempts to offer further submissions and evidence in order to persuade me to change my mind on the dismissal of his application. In the alternative he seeks a stay of execution.

102. As I have indicated, on circulating this judgment in draft form I did invite further submissions on the issues addressed at paragraphs 3-9 and 93-98 above. That was because I had heard no submissions on those issues at the hearing of this application. I did not invite any attempt to persuade me to change my primary conclusions, in respect of which each party had already had a full opportunity to present their case. Nor would it be right for me to entertain such an attempt now.

103. Similarly, it would not be appropriate for me to order any stay of execution absent a formal application on notice, supported by evidence compliant with the requirements of the CPR.