IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
[2020] EWHC 478 (Admin)

No. CO/3012/2019

Royal Courts of Justice

Thursday, 6 February 2020

Before:

MR JUSTICE HOLMAN

B E T W E E N :

CHELMSFORD CARS AND COMMERCIALS LIMITED — Appellants

- and -

NORTH ESSEX JUSTICES — Respondents

- and -

BRAINTREE DISTRICT COUNCIL — Interested party

MR W BEGLAN (instructed by Holmes & Hills Solicitors) appeared on behalf of the appellants.

MR T GOSLING (instructed by Greenhalgh Kerr Solicitors) appeared on behalf of the interested party.

THE RESPONDENTS were not present and were not represented.

J U D G M E N T
(A s a p p r o v e d b y t h e j u d g e)

MR JUSTICE HOLMAN:

1 The context of this case is the collection of business rates but the subject matter is procedural justice. This is an appeal by case stated from a decision and order of the North Essex Justices on 11 April 2019 when they refused the appellant ratepayers' application for an adjournment and made substantive business rates liability orders against them.

2 That the case should have reached the stage of this fully contested substantive appeal shows how parties, in what is an entirely financial matter, can lose all sense of proportion. The amount of rates in dispute is, in round figures, £24,929. The appellants have incurred costs on this appeal, inclusive of VAT, of £21,192. The respondent local rating authority have incurred costs of £8,550 upon which, being a local authority, they are not liable to VAT. So between them, the parties have incurred an estimated £29,742 just at this appeal stage, arguing in relation to a disputed amount of £24,929.

3 The appellants own a site in Hatfield Peverel, which appears to be subdivided into four separate garage or workshop premises. The local authority served business rate assessments and demands in respect of the various premises and covering several periods. The appellants contended (and, as I understand it, do still contend) that in all or parts of the material periods they were not in rateable occupation of all or parts of the premises, which, they said, were tenanted. The original demands totalled, in round figures, £43,821. After negotiation, the local authority revised and amended their demands to a total of £31,913. The appellants agreed that they owed £6,984 (which they have paid), leaving in dispute now the amount of £24,929 to which I have referred.

4 Whilst the whole amount was still unpaid, the local authority laid a complaint for liability orders in the appropriate magistrates' court, being the North Essex Magistrates' Court sitting at Colchester. The appellants were summoned to attend that court on 21 February 2019 and

did so by their solicitor, Mr David Sodimu, a solicitor employed by the local firm of Holmes & Hill. The local authority were represented by their Recovery & Revenues Manager, Miss Nicola Ridgewell. On that occasion, the in-court appearance was extremely brief. Miss Ridgewell asked the court to adjourn the matter and it did so. The court's subsequent "Notice of new date of hearing" merely recorded that the matter had been adjourned "because ... the prosecution [sic] has requested an adjournment".

5 It appears to be agreed that within the courtroom on 21 February, Mr Sodimu, although present as the advocate on behalf of the now appellants, did not say anything at all. The magistrates apparently said very little, and Miss Ridgewell merely asked for the adjournment. There is no formal record of what transpired within or outside the courtroom at that first hearing on 21 February 2019. The later case stated in relation to the hearing on 11 April 2019 merely records at paragraph 3 that:

> "3. On 21 February 2019, the 'First Hearing', the applicant company was represented by Mr Sodimu and the Interested Party by Miss Ridgewell. The parties jointly applied for the proceedings to be adjourned to afford the applicant the opportunity to provide information to support their contention that tenants were in rateable occupation of the Four Premises for the periods in question."

6 The justices who heard the case on 11 April 2019 and signed the later case stated were not the same justices who had heard the case on 21 February 2019, although the trainee legal advisor, Mr Daniel Bellows, who appears to have drafted the case stated and who was in court this morning, has told me that he was the legal advisor in court at both the 21 February and 11 April 2019 hearings.

7 In these circumstances, it seems to me entirely permissible to look outside the case stated to a statement made by Mr Sodimu dated 24 July 2019 to give context to the events on

21 February 2019 and the adjournment which was granted that day. He says at paragraphs 11 to 13 of that statement:

> "11. Before the first hearing took place, outside the court room, I discussed the disputed periods with Ms Ridgewell in which I advised her that some of the tenancies dated back some years so it may take some time for the applicant to locate some of them. I suggested that directions should be agreed for disclosure to take place within 28 days followed by inspection of the documents within 14 days, exchange of witness statements 28 days after, following which a trial should take place. Ms Ridgewell stated that [Braintree District Council] would prefer not to take this route in light of the previous proceedings between the parties which also related to liability for business rates.
>
> 12. She stated that she was happy to agree an adjournment to allow the applicant to obtain further evidence. I advised Ms Ridgewell that I would take instructions on a possible adjournment of the matter and that if it could not be resolved in the period of adjournment then directions could be set at the second hearing for relevant evidence to be exchanged. Ms Ridgewell raised no objection to this suggestion.
>
> 13. When the matter was heard at the first hearing, Ms Ridgewell informed the court that [Braintree District Council] sought an adjournment as the parties required further time to try and resolve the dispute outside of court proceedings. The court therefore granted the adjournment of the matter to 11 April 2019."

8 Between the hearings on 21 February and 11 April 2019 there was some desultory communication between Mr Sodimu and Miss Ridgewell. On 13 March 2019, Miss Ridgewell sent an obviously chasing email to Mr Sodimu containing a certain amount of detail and concluding, "It would be appreciated if you could address these issues and reply to our outstanding queries in the next 14 days." The email made reference to the adjourned hearing date of 11 April 2019.

9 Regrettably, it was only by a letter dated 10 April 2019, and sent by email to Miss Ridgewell that day, that Holmes & Hill (I assume the writer was Mr Sodimu) made any substantive and detailed reply. That did show that many of the demands were disputed on the basis, in summary, that various parts of the premises were occupied, or had in the material periods been occupied, by tenants, a number of whom are named in the letter. The letter concluded:

> "Conclusions
>
> If [Braintree District Council] wishes to proceed with the applications for liability orders, as the matters are contested directions will need to be set for the management of the cases. Although issued in the magistrates court, an application for a Liability Order is Civil in nature (not Criminal), I therefore propose the following directions:
>
> 1. Disclosure by list (within 28 days)
>
> 2. Inspection (14 days thereafter)
>
> 3. Exchange of witness statements of fact (28 days thereafter)
>
> 4. The matter be set for trial with a time estimate of half a day."

10 So the stage was set for the hearing the next day, 11 April 2019. Although Mr Sodimu takes issue with some of it, I am prepared to take the material account of that hearing from the case stated itself. So far as is material to the issues on this appeal, that reads as follows:

> "The parties' representations on an adjournment
>
> 7. Mr Sodimu, on behalf of the applicant, submitted that the hearing of 11 April 2019, the 'Second Hearing', was listed to consider case management and set directions and a timetable for a third hearing.
>
> 8. Moreover, it was the applicant's position that it would not be in the interests of justice to hear the complaint at the second hearing as: i) insufficient time had been allowed to prepare the case; ii) there had been no opportunity for the applicant to warn witnesses; and iii) although legally represented, there was no individual representative of the applicant company at court.
>
> 9. Mr Sodimu indicated that witness statements could be obtained from the directors of the applicant, and other witnesses in due course, to prove its assertion that oral tenancy agreements existed to cover the periods that remained in dispute.
>
> 10. Mr Sodimu was unable to indicate what steps had been taken to trace or contact witnesses. Beyond the directors of the applicant, Mr Sodimu was unable to identify what witnesses would be relied upon at any future hearing.

11. Miss Ridgewell responded on behalf of the Interested Party. It was submitted that substantial sums remained outstanding and the court ought to hear the complaint at the Second Hearing.

12. It was accepted that the parties had been in contact for nine months by the time of the Second Hearing. Miss Ridgewell advised that it had always been the interested party's position to seek liability orders at the second hearing.

13. It was not challenged that communication had gone unanswered by the applicant on several occasions. Since the first hearing, the interested party had sent a further reminder email on 13 March 2019. Whilst an acknowledgement email was received on the same day, the first response which addressed the issues in dispute after the first hearing was the email mentioned in paragraph 5, above.

Our findings on the application to adjourn

14. We found it was in the interests of justice to proceed to hear the complaint. Whilst we recognised that some progress had been made, in the context of the amounts owing, the parties were still not in agreement over substantial sums. At the first hearing, the matter had been adjourned for seven weeks to allow for resolution of all outstanding issues following contact between the parties in the months prior to the matter reaching court.

15. We found no evidence to support the applicant's contention that the hearing had been set down for a case management/directions hearing.

16. In any event, the applicant's contention was somewhat undermined by the failure to attend with information relevant to case management, namely details of any other witnesses (apart from the directors of the applicant), the nature of the evidence they could provide and the anticipated length of that evidence, to enable the court to identify the issues and set aside an appropriate period of time to determine the matter at any subsequent hearing.

17. Whilst this was a civil matter being heard by a Magistrates' Court, we considered by analogy the Criminal Practice Directions, specifically paragraphs 24C.5 to 24C.22.

18. We found that it was incumbent on all parties to actively manage the case, or seek assistance from the court if necessary. We were mindful that delay should be avoided and issues resolved as swiftly as possible.

19. The purpose of the adjournment advanced on behalf of the applicant was to afford more time to obtain the witness statements of its directors and others that it may possibly rely on.

20. Mr Sodimu offered no explanation why the applicant had failed to obtain and serve the witness statements of its directors on the interested party in the previous nine months, or the seven weeks since the first hearing. The importance placed on these witnesses to prove that oral tenancies existed and that tenants were in occupation of the Four Premises was outlined to us in the applicant's application to adjourn.

21. Given this, it was expected that the applicant take a more active approach between the first hearing and second hearing, than had been

outlined by Mr Sodimu, to attempt to narrow the issues in dispute by providing those witness statements to the interested party to consider in advance of the second hearing.

22. We considered the impact on the applicant's ability to present its case if we decided to hear the complaints forthwith. When having regard to the full history of this matter, as per *R (on the application of Augustine Housing Trust) v Bolton Magistrates' Court* [2013] EWHC 4399 (Admin), we considered that any hindrance caused to the applicant by our decision was a direct, just and foreseeable consequence of the applicant's significant failure to assist the court in actively managing the case.

23. There were instances where the applicant had failed to respond to communications sent by the interested party prior to the matter reaching the courts. Once the matter had become subject to court proceedings, the applicant only provided information to the interested party at 2pm on the day before the second hearing.

24. Whilst the applicant had provided some evidence, it did not cover all the periods of liability in dispute. To illustrate this point, no evidence was provided by the applicant between the first hearing and second hearing for the periods of disputed liability for the Workshop.

25. By comparison, over and above the legal requirements to send the relevant notices, the interested party had facilitated engagement by sending reminders to the applicant and considered any additional evidence provided to them which might narrow the issues in dispute, at short notice and in close proximity to the second hearing.

26. We did not accept that the applicant was not present. As their legal representative was in attendance, they were deemed present by virtue of s.122(2) Magistrates' Courts Act 1980.

27. We were advised that were we to adjourn the matter, pending witness availability, the earliest date for a third hearing would be in September 2019, some five months from the second hearing and seven months from the first hearing. We considered this to be a lengthy delay.

28. We were aware of the need for expedition in the Magistrates' Courts. We found no good reason to support a further delay, let alone one consisting of several months, in hearing the complaint and therefore refused the application to adjourn.

29. We put the matter back for approximately three hours to enable the parties to consider any information each proposed to rely on and/or present to the court.

30. Mr Sodimu made a further application to adjourn prior to the resumed hearing. We found the application was identical to the one previously made with no new information presented. We refused that application on the same grounds outlined above.

...

35. Mr Sodimu did not dispute the evidence of Miss Ridgewell and made no representations disputing liability or costs. Mr Sodimu submitted for the reasons earlier advanced for an adjournment, that he was not able to present the case for the applicant."

11 The case stated then deals in some detail with the evidence that Miss Ridgewell presented, and the conclusion of the court on the basis of that evidence, having heard no evidence or submissions from, or on behalf of, the appellants, that the liability had been proved, and they made liability orders accordingly.

12 The appellants promptly requested the justices to state a case and appealed by way of case stated to this court. The only live issue on this appeal is whether the justices were wrong to refuse the adjournment on 11 April 2019. Their question has been formulated in the case stated as follows:

> "If we had jurisdiction to determine the matter on 11 April 2019, was our refusal to further adjourn proceedings reasonable in all the circumstances as set out above[?]"

13 That is not, however, the relevant question on an appeal of this kind. The question is not whether their decision was reasonable, nor even whether it was arguably wrong or whether another court might reasonably have made a different decision. The sole question is whether the justices on 11 April 2019 were wrong not to adjourn this case.

14 In my view, the justices were wrong and they reached a result which is unjust for the following reasons, which I base on the account in, and language of, the case stated. The reasons are cumulative, but I do not state them in any particular order of hierarchy or priority.

15 First, the justices state at paragraph 15 of the case stated that:

> "We found no evidence to support the applicant's contention that the hearing had been set down for a case management/directions hearing."

This, as I understand it, is a reference to the absence in any records of the court that the hearing had been set down for a case management or directions hearing. But unless (which they do not say) the magistrates disbelieved Mr Sodimu, his own assertion to them was, as recorded at paragraph 7 of the case stated, that that was the purpose for which the hearing had been listed. At best here, there had been a misunderstanding between Mr Sodimu and Miss Ridgewell and the court in and/or outside the courtroom on 21 February as to the purpose of the adjournment and the purpose of the next hearing. If one compares paragraphs 7 and 12 of the case stated, one clearly sees that Mr Sodimu was submitting to the court that the hearing on 11 April had been listed to consider case management and set directions and a timetable for a third hearing. Miss Ridgewell was saying to the court that it had always been her client's position to seek liability orders at the second hearing. Thus, it clearly emerges that there was misunderstanding between Mr Sodimu on the one hand and Miss Ridgewell on the other hand as to the intended purpose of the hearing on 11 April 2019.

16 Second, at paragraph 22 of the case stated, the justices considered that any hindrance to the appellant was a "direct, just and foreseeable consequence of the appellant's significant failure to assist the court in actively managing the case". This is curious. Rule 3A (3) of the Magistrates' Courts Rules 1981 does indeed put each party under a duty to "actively assist the court in managing the case without, or if necessary with, a direction" and to "apply for a direction if needed to assist with the management of the case". But the primary duty to actively manage the case lies, by rule 3A(1), upon the court itself. The court had not discharged that duty at all at the first hearing on 21 February 2019. They had merely adjourned the proceedings. At the second hearing on 11 April 2019, Mr Sodimu was asking them to do just that, namely actively to manage the case, and they refused to do so.

17 Third, the magistrates refer in the case stated at paragraph 17 to an analogy with the Criminal Practice Direction paragraphs 24C.5 to 24C.22, and at paragraph 22 to the

authority of *Augustine Housing Trust v Bolton Magistrates' Court.* It is agreed that these sources were not mentioned in court at all at the hearing by, or to, either advocate. I cannot, and do not, enquire as to what passed between the magistrates and their legal advisor during the period (which I have been told was of some length) when he retired with them; but either these sources have been produced as *ex post facto* reasoning in the case stated, or they were drawn privately to the attention of the magistrates by their advisor at the time. If the latter, there was a material irregularity in that the magistrates were given legal directions by reference to sources upon which the advocates were given no opportunity to comment.

18 Insofar as the Criminal Practice Direction is concerned, the analogy is a dangerous one. The long passage in that direction relied upon by the justices begins at paragraph 24C.5 as follows:

> "The court is entitled to expect that trials will start on time with all case management issues dealt with in advance of the trial date."

That contemplates that proper and necessary case management directions have been given at an earlier hearing. That was not done in the present case. Insofar as *Augustine Housing Trust v Bolton Magistrates' Court* is relied upon, it deals with the entirely different situation of the test on a later application to a court to set aside an order it has already made. Insofar as the test of "direct, just and foreseeable consequence" is one devised by these magistrates themselves, it overlooks their own duty (or that of their predecessors on 21 February 2019) actively to manage the case.

19 Finally, a significant part of the reasoning of the magistrates appears from paragraphs 27 and 28 of the case stated to be the delay of five months before, apparently, the court could hear the matter again. It is lamentable if the magistrates' courts are so under-resourced that a delay of five months really was the minimum unavoidable period in this case. But the case had no actual urgency and, save in situations of urgency, it is unjust to deny to a party

an otherwise justifiable adjournment simply because of the court's own lack of an earlier further hearing date.

20 In my view, no one comes out of this case well. Mr Sodimu, Miss Ridgewell and Mr Bellows (who chose voluntarily to attend this hearing this morning, and whom I was very glad to see and to welcome here) are the three key players and all three have been present today. Mr Sodimu and Miss Ridgewell failed to establish with clarity between themselves and with the court why they were requesting and agreeing the adjournment on 21 February 2019. The court, advised by Mr Bellows, failed on 21 February 2019 to establish and clarify the purpose of the adjournment and the agenda for the next hearing. Despite its duty under rule 3A of the Magistrates' Courts Rules, the court failed to give any consideration at all to case management at the hearing on 21 February 2019. If indeed the hearing on 11 April 2019 was intended to be the final hearing, then clear directions and a timetable for the exchange of evidence between the two hearings was clearly required. Further, Mr Sodimu was extremely slow in marshalling his evidence, and his letter dated 10 April 2019 was sent far too late. One can sympathise with the impatience behind paragraphs 9, 10 and 11 of the case stated, but in the end the task of the magistrates was to do justice and, in my view, on this occasion they failed to do so.

21 I will accordingly allow this appeal and direct that the complaints of the Braintree District Council must be reheard before a differently constituted bench of the North Essex Justices.

22 The case stated concluded with four questions, which I now answer as follows:

Question 1: "Did we have jurisdiction to determine whether liability orders should be granted/refused on 11 April 2019, seven weeks after the first listing of the case[?]"

Answer: Yes. The magistrates' court does and did have the statutory jurisdiction to determine the complaint and to decide whether or not liability orders should be made. It cannot be said that they were acting outside their jurisdiction.

Question 2: “If we had jurisdiction to determine the matter on 11 April 2019, was our refusal to further adjourn proceedings reasonable in all the circumstances as set out above[?]”

Answer: No. It was not reasonable and indeed it was wrong for the reasons I have given.

Question 3: “Were we entitled on the evidence before us to grant the liability orders in the sums set out [above][?]”

Answer: Yes. If it was permissible to proceed with the hearing, then such evidence as was adduced to the magistrates did support the making of the liability orders, but the magistrates should not have proceeded with the substantive hearing.

Question 4: “If yes to 1-3 above, were we correct in ordering costs in the sum of £95, for each of [the named premises in question][?]”

Answer: Not applicable, since the answer to question (2) above is no.

23 That concludes my judgment.

MR JUSTICE HOLMAN: Mr Beglan and Mr Gosling, will you be able to draft up a suitable form of words in the form of an order to give effect to all of this----

MR BEGLAN: My Lord, of course.

MR JUSTICE HOLMAN: -- and lodge it with today’s associate, and I will then have a look at it. Please recite that of course I have heard each of you by name -- I like to put the names of counsel on an order -- on behalf of your respective clients, and could you please recite: “And after the voluntary attendance at this hearing of Mr Daniel Bellows, the trainee legal advisor who drafted the case stated...” so that it is clear on the face of the order that Mr Bellows was here.

MR BEGLAN: Yes.

MR JUSTICE HOLMAN: What matters now arise?

MR BEGLAN: Well, my Lord, in the light of my Lord's judgment, I have an application for my costs.

MR JUSTICE HOLMAN: I think you've got a very uphill struggle----

MR BEGLAN: Well----

MR JUSTICE HOLMAN: -- if you listened to the judgment carefully. You're applying for your costs.

What do you say, Mr Gosling? Do you make any applications for your costs?

MR GOSLING: No. No order as to costs is my first invitation. If you're against me on that, then in principle I say it should be costs in the case effectively, and I can develop that if need be.

MR JUSTICE HOLMAN: I don't think I can do that. I have thought about that.

MR GOSLING: Yes.

MR JUSTICE HOLMAN: I can't say costs in the case. I can't really hive off to magistrates a decision about the costs of this appeal, and, anyway, even if in the end you're successful in getting your liability orders, that doesn't really tell us where the costs should fall of this appeal. So I'm not going to say costs in the case, I'm not going to say costs reserved. You're at its highest saying there should be no order as to costs.

So, Mr Beglan, the problem is I'm afraid a lot of the responsibility here lies on the shoulders of Mr Sodimu.

MR BEGLAN: Well, my Lord, if I develop my submissions briefly, bearing in mind the time of day----

MR JUSTICE HOLMAN: Yes.

MR BEGLAN: -- these are appeals that are dealt with under CPR part 52, so the ordinary rules that my Lord will be well familiar apply.

MR JUSTICE HOLMAN: Successful party gets their costs.

MR BEGLAN: That is the starting point.

MR JUSTICE HOLMAN: Yes.

MR BEGLAN: Of course one can consider elements of proportionality, but that goes to the amount of the award rather than whether or not an award should be made. My Lord plainly has in mind the conduct of my instructing solicitor and has considered the conduct of other parties who were engaged in this case as well.

So on those issues, first of all our grounds and draft skeleton argument have been available to the other side for some period of time now. The basis of the case----

MR JUSTICE HOLMAN: Your grounds have been there from July.

MR BEGLAN: Yes, indeed, and a draft of the skeleton went across before the New Year.

In terms of conduct, one needs to look first of all to conduct that is blameworthy normally, and to conduct that has incurred costs within the proceedings that we are concerned with. It would be an unusual exercise of discretion----

MR JUSTICE HOLMAN: Are you saying that there's anything that they have done, the other side, within the course of this appeal that have made your costs larger than they otherwise would be, except that they have opposed the appeal?

MR BEGLAN: No, but I'm not -- equally what I'm saying is that there's nothing that Mr Sodimu has done within the course of these proceedings which has caused those costs to go up. And that is the----

MR JUSTICE HOLMAN: No, but we're only here because of earlier failings. I'm not suggesting Mr Sodimu has done anything wrong in the course of these appeal proceedings.

MR BEGLAN: Yes.

MR JUSTICE HOLMAN: At the moment, and Mr Gosling may or may not say that you have done things wrong in the course of these proceedings, the appeal proceedings, but I'm not suggesting that at all for the moment. But it just seems to me that we have to look earlier in time.

MR BEGLAN: Yes. My submission is that the rules on conduct are primarily designed to assess blameworthy conduct which has caused costs to be incurred within the proceedings in which we are dealing with. I accept that there is a broader jurisdiction to look wider, but that should be a secondary consideration, in my submission.

Even when one treats it as a secondary consideration, as my Lord has very fairly outlined in the course of judgment and indeed during the discussion earlier, blame can be attributed in fact to each of the three main actors here, and my Lord and I may have had an earlier----

MR JUSTICE HOLMAN: Did I use the word "blame"? I hope I didn't. Responsibility----

MR BEGLAN: Yes.

MR JUSTICE HOLMAN: Did I say "blame"? If I did----

MR BEGLAN: I'm not sure that my Lord did. It's my shorthand.

MR JUSTICE HOLMAN: In the course of an essentially ex tempore judgment -- I said no one comes out of case well. I hope I didn't use the word "blame", because I don't really like using the word "blame".

MR BEGLAN: Responsibility.

MR JUSTICE HOLMAN: Responsibility.

MR BEGLAN: In terms of the responsibility----

MR JUSTICE HOLMAN: Or rather, I do use the word "blame", but only when it should properly be used.

MR BEGLAN: In terms of responsibility, my Lord identified the three main actors, all of whom had a measure of responsibility for what had happened previously. My Lord and I had a disagreement earlier in the day perhaps about the extent of rule 3A and what it requires of the magistrates, but in my Lord's judgment my Lord was clear that it is for the court to actively case manage and for the parties to assist in that exercise of case management.

So a few matters on that. First of all, in terms of the -- both the first and the second hearing, it's important to bear this in mind, Mr Sodimu was seeking directions. It was his position,

as clearly set out in the witness statement -- if my Lord wants the references again they're paragraphs 11 and 12 -- but he was looking for directions to be made on both occasions, but he was content with an adjournment being made on the first occasion.

In those circumstances, at every time that this matter was before the court and Mr Sodimu was assisting the appellant, he was endeavouring to do what my Lord has said in terms clearly----

MR JUSTICE HOLMAN: Yes, but what he didn't do----

MR BEGLAN: -- ought to have been done by the court.

MR JUSTICE HOLMAN: -- was establish with clarity, both with Miss Ridgewell and then with the court in the courtroom, that that was what was going to be done. Now, if he'd got up in court on 21 February and said, "I want to make clear with the court that as far as I'm concerned the purpose of this adjournment is for directions," Miss Ridgewell might have said, "No, I don't agree that," and then it could have been thrashed out in court. Or the court might have said, "No, no, we're not going to agree that." But his mistake was he has a discussion with Miss Ridgewell outside the courtroom, they don't reduce any of that to writing, as far as I'm aware----

MR BEGLAN: Yes, so that's both of them. Either of them could have done that.

MR JUSTICE HOLMAN: I know, I've said both of them have responsibility. They're professional people. She is doing this work all the time. I don't know if he does other rating cases, I don't know how much they know each other, but they allow a situation to arise where there's apparently misunderstanding between them, and he's got to take his share of responsibility for that, and then he sits in the courtroom and doesn't say to the court, "Now, Miss Ridgewell is asking for this adjournment; this is what it's for".

MR BEGLAN: Yes, but----

MR JUSTICE HOLMAN: And so all this problem arises.

MR BEGLAN: In my submission, my Lord's criticism in that respect, or the asking of Mr Sodimu to take responsibility, is a harsh one in circumstances where the two advocates had agreed between themselves a joint position and one of them was to speak, in a busy list on a day in the magistrates' court. It is not something, in my submission, that should now reflect heavily in costs that one of those individuals didn't pipe up afterwards and say, "And, by the way, there's a further reason why we're inviting this course of action to be adopted, and it's so that we can make directions at the second hearing." There was nothing that Mr Sodimu did that was inconsistent with that being his position, and so my submission is that----

MR JUSTICE HOLMAN: All right, there's that, but then the other point is 10 April.

MR BEGLAN: Yes. Just before we get there, in terms of the starting point that we have, I say that if one is trying to look at the conduct of the parties and my Lord reaches a broad view that the three main actors all have their share of responsibility in this, then that should not be enough to move my Lord away from what is the clear starting point under the rules. It would be a perfectly fair observation if, as it were, all of the conduct was on one side and that was essentially the cause of the lost money, one could see the argument very easily. But that's not the situation that my Lord has found to be.

So I say, and my submission is, unless there's clear evidence that the balance of the misconduct, or the conduct for which one has to take responsibility which has caused loss, occurs in one party or the other, then the normal rule ought to prevail.

Going on to second hearing, first of all in relation to that, Mr Sodimu was, from start to finish at the hearing, literally from start to finish of the hearing, attempting to agree what my Lord has now said clearly ought to have been done and that it was unreasonable of the magistrates to reach the conclusion that they----

MR JUSTICE HOLMAN: Well, I've said it's wrong.

MR BEGLAN: Yes.

MR JUSTICE HOLMAN: No doubt it follows it's unreasonable, but----

MR BEGLAN: Wrong.

MR JUSTICE HOLMAN: Must be unreasonable for a court to do something that's wrong.

MR BEGLAN: Yes, and that was the course that the District Council were advocating. So the course, in terms of taking responsibility for what happened at that hearing----

MR JUSTICE HOLMAN: Well, that is true.

MR BEGLAN: It's two-nil here.

MR JUSTICE HOLMAN: What do you mean "it's two-nil"?

MR BEGLAN: Well, because Mr----

MR JUSTICE HOLMAN: I'm not a footballer.

MR BEGLAN: Mr Sodimu was conducting exactly the exercise that my Lord has now said clearly was the correct approach to take.

MR JUSTICE HOLMAN: If what you're saying is Mr Sodimu gets up and says, "I understood this was going to be a directions hearing and will you make directions?" Miss Ridgewell could have said, "Well, there's been a misunderstanding between us, but if that's what he understood I will accept and we'll have timetable," but she didn't----

MR BEGLAN: No.

MR JUSTICE HOLMAN: -- she encouraged them to carry on.

MR BEGLAN: Yes.

MR JUSTICE HOLMAN: I see that there is a point there that -- I'm afraid she and her clients, or her employers, have to take responsibility that they, as it were, encouraged the magistrates to do what in fact was wrong.

MR BEGLAN: Yes, and this is at the absolutely critical point, because this is where the decision-making goes off the rails, and it goes off the rails at the point where my Lord says what Mr Sodimu is suggesting to the court, plainly right; now, on the basis of my Lord's findings, what the District Council are suggesting plainly wrong, and the magistrates plainly wrong to go along with it, and that is how the cost of this litigation is incurred.

But there's a further level to that, because again Mr Sodimu said at two separate places in his witness statement, paragraphs 39 and 45, he told the court, so alive was he to what appeared to be a serious procedural mishap that was taking place under his nose, that there would----

MR JUSTICE HOLMAN: Sorry, what paragraph are you on?

MR BEGLAN: Paragraphs 39 and 45.

MR JUSTICE HOLMAN: Mr Gosling doesn't really like your references to your statement, so----

MR BEGLAN: No, but I think on costs I'm probably on firmer ground.

MR JUSTICE HOLMAN: Well, I don't know, but I'll look at it what lawyers quaintly call *de bene esse*. Which paragraph?

MR BEGLAN: 39 and 45, and in the knowledge that for more than seven months it's been open to the authority to serve their own evidence on these points if they wanted to.

MR JUSTICE HOLMAN: "Inform the court that they have no choice but to appeal"?

MR BEGLAN: Yes.

MR JUSTICE HOLMAN: It's that bit?

MR BEGLAN: Yes, and he did it twice.

MR JUSTICE HOLMAN: Oh, twice?

MR BEGLAN: Yes, 45 as well.

MR JUSTICE HOLMAN: What was the earlier paragraph?

MR BEGLAN: 39, my Lord.

MR JUSTICE HOLMAN: Thirty?

MR BEGLAN: 39.

MR JUSTICE HOLMAN: Oh, I looked at the wrong one. 39.

MR BEGLAN: Yes. And so----

MR JUSTICE HOLMAN: Wait a minute, wait a minute. (Pause). Mm-hmm?

MR BEGLAN: And so even when it was made absolutely clear, because of Mr Sodimu's view about the serious nature of the procedural mishap that was happening under his nose, that

the only real recourse would be a statutory challenge, that point being made twice, at that stage the local authority could have, if they wanted to, said "Well, all right, if that's really the approach you're going to take, is that proportionate? Should we try and agree directions as you wanted to earlier?" I'm not suggesting that the magistrates should have necessarily changed course, but it was certainly open to the council at that stage to say, "Well, isn't that going a bit too far? Isn't there a better way of dealing with this? Shall we make directions as you suggested?" But no, they have pursued this matter.

MR JUSTICE HOLMAN: Well, you can -- if Mr Sodimu is right in those paragraphs----

MR BEGLAN: Yes.

MR JUSTICE HOLMAN: -- you can certainly say that, even at the time, he was making clear, of course to the court but also to Miss Ridgewell bouncing it off the court, "There's something going so wrong here that if you persist in this, we will appeal."

MR BEGLAN: Yes: "I only have one recourse, this is what it is, and it doesn't take long for anyone who's got experience."

MR JUSTICE HOLMAN: I understand those points.

So, Mr Gosling, the difficult part for you, I think, is these last two points. I have determined, rightly or wrongly, but I have determined that the magistrates went wrong.

MR GOSLING: Indeed.

MR JUSTICE HOLMAN: And what they did is what Miss Ridgewell asked them to do in the teeth of opposition by Mr Sodimu. If she'd backed down and said, "All right, I agree that we have directions and put it off," it's likely that they would have done.

MR GOSLING: Well----

MR JUSTICE HOLMAN: Of course. Of course it is.

MR GOSLING: Perhaps.

MR JUSTICE HOLMAN: If both parties were to say, "All right, we accept there's -- we know about our case, both sides, we accept there's a need for directions here and exchange of evidence," no court would have said, "Well, I insist you deal with it today."

MR GOSLING: It certainly would have been highly surprising for them to do so.

MR JUSTICE HOLMAN: Well, it would have been wrong.

MR GOSLING: It certainly would have been wrong (inaudible), but----

MR JUSTICE HOLMAN: So, Miss -- I don't want to seem too critical of Miss Ridgewell----

MR GOSLING: No.

MR JUSTICE HOLMAN: -- but the fact is she was the person there.

MR GOSLING: She was the person there.

MR JUSTICE HOLMAN: She encouraged them to carry on, and, if paragraphs 39 and 45 are right, Mr Sodimu, even at the time, not once but twice before that long -- the three hours of adjournment, and again afterwards -- said, "If you carry on like this, I will have to appeal".

MR GOSLING: Well, my Lord, dealing with those perhaps in reverse order, the fact that there is a suggestion of an appeal at that stage before a decision is even made, and so, "If you carry on I will have to appeal before a decision is even made," to suggest that a non-legally trained presenting officer who is there----

MR JUSTICE HOLMAN: Oh, come on. How much time does she spend doing these cases?

MR GOSLING: I would have to take instructions in relation to that, but in relation to contested cases she is there as a witness and a presenting officer, she is not there in a legal capacity and doesn't have the benefit of legal advice in the context of her daily activities.

MR JUSTICE HOLMAN: No, but she----

MR GOSLING: She has experience of presenting the list to the court and giving evidence as to the service of the demands, the reminders, the summonses and where the court makes directions, et cetera, and giving evidence in relation to matters if need be, but in terms of legal authority, legal management, that is not her role----

MR JUSTICE HOLMAN: No, but does she have experience of Braintree getting involved in contested cases, she may at that point instruct somebody such as yourself, but she still is participating in the cases?

MR GOSLING: If you'll excuse my back for one moment?

MR JUSTICE HOLMAN: Yes.

MR GOSLING: (After a pause). In capacity as a witness, yes.

MR JUSTICE HOLMAN: Well, not just a witness. I mean, in effect she's the instructing client, isn't she? She's the person at Braintree who knows about the case, isn't she?

MR GOSLING: Yes, I think along with her----

MR JUSTICE HOLMAN: There's councillors and----

MR GOSLING: Yes.

MR JUSTICE HOLMAN: -- chief executive and all those people above----

MR GOSLING: Yes.

MR JUSTICE HOLMAN: But she's -- this is her job.

MR GOSLING: Yes, in terms of----

MR JUSTICE HOLMAN: Or part of her job.

MR GOSLING: Part of her job, yes.

MR JUSTICE HOLMAN: So there must be cases which are contested.

MR GOSLING: Yes, but----

MR JUSTICE HOLMAN: And when there are contested cases, she is properly driving them forward as the instructing official.

MR GOSLING: Yes, but not as the advocate.

MR JUSTICE HOLMAN: No, no, I understand.

MR GOSLING: Very well. Then yes, by all means, she will provide information and evidence in relation to the progression of that----

MR JUSTICE HOLMAN: She's not coming along here like a litigant in person who's never been in court before.

MR GOSLING: No, no, I don't suggest that, but what I do suggest is in circumstances where your Lordship has already found -- and it goes back to the plague on everyone's house at the first hearing where she was under the understanding that it would be a hearing in the event that evidence was or wasn't provided but the matter didn't resolve; then at the second occasion she records that fact and say words to the effect of, "Well, it's my understanding that it will proceed today. We've not been provided with the evidence but we're here, we're ready to proceed," and the magistrates say, "Well, okay, let's proceed." Now, simply being asked that, the council has to stand by reasonable and honest and intelligent decisions that it must make in the face of what it knew and what it understood at the time, not with the benefit of hindsight now.

MR JUSTICE HOLMAN: Sorry, I don't understand that point. I'm not sure what you're saying.

MR GOSLING: Miss Ridgewell----

MR JUSTICE HOLMAN: She's standing there in the magistrates' court----

MR GOSLING: And says, "My understanding is it would be the hearing of the matter, of the application for liability orders. We haven't been provided with evidence that satisfies us. As far as we're concerned, the matter is to proceed."

MR JUSTICE HOLMAN: And Mr Sodimu is saying -- very loudly protesting----

MR GOSLING: "I want an adjournment."

MR JUSTICE HOLMAN: Not just, "I want an adjournment," but, "I thought this was going to be a directions hearing."

MR GOSLING: Yes, and then the magistrates' court made a decision----

MR JUSTICE HOLMAN: I know, but she asked them to make that decision.

MR GOSLING: Well, no, in fairness----

MR JUSTICE HOLMAN: In any case, Mr Gosling, where one party wins in the court below and the other party appeals, and the one that won in the court below is the unsuccessful party on the appeal, ordinarily it's no defence to costs to say, "Well, that's what the court did," because you asked the court to do it.

MR GOSLING: My Lord. Yes. But what I say is: that has to be judged -- again, this case is all about context -- in the context of everything that has unfolded before that point in time, the magistrates were presented with the parties' respective cases. We were there thinking it was one thing, they were there thinking it was another thing, the magistrates' court were invited to determine what they wanted to do. That was a purely innocent position that was adopted by Miss Ridgewell.

MR JUSTICE HOLMAN: No, I don't----

MR GOSLING: There's no suggestion that she was misleading or anything in relation to her understanding----

MR JUSTICE HOLMAN: No, no, she wasn't misleading-----

MR GOSLING: -- of the situation.

MR JUSTICE HOLMAN: -- but I think where Miss Ridgewell, I'm afraid, went wrong -- I'm not for a second suggesting she was misleading -- she should have said, "All right, there seems to have been a misunderstanding between me and Mr Sodimu. It's not going to do us any great harm to have an adjournment and I'll back off."

MR GOSLING: But, well, with the benefit of hindsight, yes, perhaps that could have been taken, but the situation as existed at the time in the heat of the moment and the court at the time, she genuinely and honestly recounted what her position was in relation to her understanding of the agreement that was reached and against the back of: well, we will be provided with evidence.

MR JUSTICE HOLMAN: Well, that's the heat of the moment, but what about the seven or eight months since notice of appeal was given and the case stated and everything else? That's not "heat of the moment", and Braintree have had months and months and months during which they could have thought, "Hmm, that was in the heat of the moment but it wasn't just, and let's go to the other side and agree that these orders are set aside and we'll..."

MR GOSLING: Well, my Lord, I make three points in relation to that. The first is, in relation to one of the liability orders, obviously that was correctly made in the sense of that's not disputed it's been paid.

MR JUSTICE HOLMAN: Well, all right, but we're still talking about the ones that----

MR GOSLING: Yes, in relation to the disputed ones, obviously the notice of appeal was put in, it was drafted, the case stated. The grounds of appeal don't in fact reflect the case stated. I'm not trying to be a procedural pedant, and I agree that the procedure in respect of case stated is a somewhat archaic one, it strikes me as----

MR JUSTICE HOLMAN: You're telling me.

MR GOSLING: -- and is a difficult one for parties unfamiliar with it to navigate. But what we had in the present case was grounds of appeal that don't correspond with the questions that were raised on the appeal, we have three questions on the appeal which clearly are answered in favour of what the council are contending for. So three out of the four, effectively, were in the council's favour. In fact, we didn't get, despite numerous invitations, a skeleton argument in draft towards the end of December, and in final form until 16 December, and you will have seen the concerns I expressed in my skeleton argument about the direction which that takes us. So it has been something of a mess in the way in which the appeal was presented, and it's certainly not been a clear-cut case from the outset in terms of where exactly this was going. But what I do say, and the one point I would make back in relation to conduct and the proportionality of all of this, and if it's being thrown in this direction that perhaps Miss Ridgewell could on that occasion put her hands up and said there should be an adjournment, the genesis of all of this is the agreement that was reached on 21 February for the provision of information.

MR JUSTICE HOLMAN: That's why I'm going to say you only have to pay half their costs.

MR GOSLING: Well----

MR JUSTICE HOLMAN: That's what I have decided. It is 4.20, I've heard you both quite long enough on costs. That's my decision. I will give my reason very briefly.

So the order as to costs is that the -- I suppose they're the respondents to the appeal -- the respondents must pay one-half of the costs of the appellant of and incidental to this appeal. Of course, no order as to costs of the respondent.

Now, the next question is: are you asking me summarily to assess those costs today or do you have an assessment, a detailed assessment?

MR BEGLAN: (After a pause). Sorry, my Lord.

MR JUSTICE HOLMAN: Not by me.

MR BEGLAN: (After a pause). My Lord has the schedule that has been provided.

MR JUSTICE HOLMAN: No, it's just a straight question at the moment: do you ask me summarily to assess them?

MR BEGLAN: Yes, my Lord.

MR JUSTICE HOLMAN: If so, I shall scrutinise the schedule.

MR BEGLAN: Yes. I'm grateful.

MR JUSTICE HOLMAN: What I shall do, if I summarily assess them -- and before I do that I will hear from Mr Gosling on whether I should, but if I do I will look at your schedule -- I'll take a view about the reasonableness, et cetera, of the charges, arrive at a figure and then I shall divide it by two. But you ask me summarily to assess today?

MR BEGLAN: Yes.

MR JUSTICE HOLMAN: What would you invite me to do?

MR GOSLING: My Lord, if time permits I think it would be in the interests of all parties to try and get all matters resolved. And in fairness----

MR JUSTICE HOLMAN: All right, I'm happy to do that, but only if both of you invite me to. So let's have a look. Let me have a look. Let me just look at the broad make-up of it. (After a pause). So the hours claimed, first of all solicitors' work, top sheet, an hour and a half, plus... It's about -- how many hours? (After a pause). I'm not at the moment understanding how we get to the total at the top of page 3 from the figures----

MR BEGLAN: The total on page 3.

MR JUSTICE HOLMAN: It's £2,705.

MR BEGLAN: Yes, that's the work done on documents which is on the final schedule.

MR JUSTICE HOLMAN: Oh, right.

MR BEGLAN: There is then the total at the bottom. It is----

MR JUSTICE HOLMAN: They're so confusing, these things.

MR BEGLAN: Indeed. And then there's the £4,929, which is the total solicitors' costs. And so the difference between the two are the other attendances that you see on the first three pages. So there's £2,700 work done on documents, and £2,300 or so, or £2,220 in respect of other works.

MR JUSTICE HOLMAN: Well, do you say -- first of all, do you say, Mr Gosling, that the rates of charge are excessive?

MR GOSLING: No. I don't take issue with the rates of charge.

MR JUSTICE HOLMAN: No. Do you take issue -- I'm just thinking about the solicitors at the moment----

MR GOSLING: Yes.

MR JUSTICE HOLMAN: -- with any of the amounts of time they say they've spent on any of these identified things?

MR GOSLING: In relation to attendances on others, the first two pages -- or the first page and a half, forgive me -- seem relatively modest, but attendance on others there's 2.7 hours and 0.7 hours. That seems particularly high. So I do take issue in relation to that.

There's attendance at hearing. Obviously it seems that the court has been greatly assisted by Mr Sodimu's attendance today.

MR JUSTICE HOLMAN: Well, he's perfectly -- his client is definitely entitled to have him here. We had to have him here.

MR GOSLING: Indeed, so I can't reasonably take issue with that.

MR JUSTICE HOLMAN: No.

MR GOSLING: In relation to the schedule of works done on documents, my primary point, first of all in relation to the appeal by way of case stated that's been set out at some length----

MR JUSTICE HOLMAN: What's the difference between A and B?

MR GOSLING: It's the partner and the----

MR JUSTICE HOLMAN: Oh, it's different people.

MR GOSLING: Yes, it's a different fee-earner. So the majority of it is B, that's Mr Sodimu who's done the majority of the work and obviously there's been some supervision or input from a partner, who's A.

MR JUSTICE HOLMAN: I think it's probably permissible for him to have engaged the partner some part of this.

MR GOSLING: Yes, I don't----

MR JUSTICE HOLMAN: I mean, the firm is on the line, to some extent.

MR GOSLING: Yes, I don't take issue with the level of grade A in many respects, which is relatively modest in terms of the partner's input.

In terms of drafting the appeal by way of case stated, that only needs to be the four questions. I don't know why -- and again, this may be an error on the understanding -- but there is a relatively lengthy document which is set out, which is the case -- or the application for a case stated. The procedure is, as is made clear in the Criminal Procedure Rules which do apply in relation to case stated and the manner in which it should be case stated, that all the application needs to state is the questions upon which the court is invited to state, and then it is for the court to develop its case and then it gets drafted. So I'm not sure why it's taken 2.5 hours in relation to that.

Considering the draft case stated again seems particularly lengthy, albeit that there's representations that are made, taken together three and a half hours----

MR JUSTICE HOLMAN: Hang on a minute. This is by now considering what the court has drafted?

MR GOSLING: Yes.

MR JUSTICE HOLMAN: Yes. I mean, you must presumably be able in these situations to see in draft what the court has drafted and make representations.

MR GOSLING: Yes. That is what the procedure sets out, and I don't dispute that that was done in this case, but what I do say is that there seems to be a fairly significant three and a half hours.

MR JUSTICE HOLMAN: Three and a half?

MR GOSLING: Well, it's four in total, isn't it, with the partner's involvement, because there's first one and a half hours considering the draft case stated----

MR JUSTICE HOLMAN: I thought that's their document?

MR GOSLING: No.

MR JUSTICE HOLMAN: Isn't it them drafting their document?

MR GOSLING: No, the drafting appeal by way of case stated is----

MR JUSTICE HOLMAN: Isn't this the document in the bundle at page -- well, tab 3. There's a document----

MR GOSLING: Yes.

MR JUSTICE HOLMAN: -- called "Appeal by way of..." whether necessarily or not, Mr Sodimu and the firm drafted.

MR GOSLING: Yes.

MR JUSTICE HOLMAN: You're saying that they didn't actually need to do that.

MR GOSLING: No, it only needs to be the four questions.

MR JUSTICE HOLMAN: So that's----

MR GOSLING: But in any event, that provides the basis of his witness statement, because effectively that is the framework of his witness statement that he subsequently gives. So whether it goes under one or the other, and I suggest insofar it should go under neither

because in reality there shouldn't have been any witness statement, but even if you are against me on that----

MR JUSTICE HOLMAN: I am against you on that.

MR GOSLING: -- there is a significant amount of hours that are undertaken in relation to that work which seems awfully high for what was in fact required, which is: "Here are the four case -- here are the four questions we want the court to answer," is the application for case stated or what it should have been. There is a long narrative which is entirely unnecessary, so that should be taken out. And then in terms of considering the draft case stated, particularly in light of the fact that that narrative had been undertaken and the response again is informed largely by that, again seems to be a great deal of time taken there as well.

I appreciate it's a summary assessment, not a detailed assessment, but I do say that those elements seem particularly high, as does when one accounts for also the witness statement of Mr Sodimu, which is a further three and a half hours, when in essence----

MR JUSTICE HOLMAN: Well, it was quite long.

MR GOSLING: -- that witness statement has already been drafted.

MR JUSTICE HOLMAN: I don't know about that. It's quite long, actually. You know, he will have had to have gone to attendance notes and all that kind of thing. He will have had to have done it with great care because obviously you've got to be extremely careful about candour in a situation like this. I'm not -- I don't feel that 3.5 hours is excessive for that task.

MR GOSLING: Well, what I say is insofar as 3.5 hours is allowed in respect of that, then certainly in terms of the responses to the case stated which are all based on Mr Sodimu's evidence in any event, there's a significant amount of overlap between those elements and so there should be a reduction.

MR JUSTICE HOLMAN: Can you pay a counsel a lot of money to draft a skeleton and then charge up your own time for reviewing it?

MR GOSLING: Well, it would seem so here.

MR JUSTICE HOLMAN: No, but I'm wondering whether that's justifiable.

MR GOSLING: I think it is, but I wouldn't say for that length of time. It's -- with respect, it's a relatively modest document in terms of dealing with the factual background and the legal arguments are obviously something for counsel to review.

MR JUSTICE HOLMAN: All right. So that's that. You nibble away a little bit at some of the hours.

MR GOSLING: Indeed. As I say----

MR JUSTICE HOLMAN: Do you want to say anything about Mr Beglan's charges? I know it's invidious, but you're entitled to.

MR GOSLING: It is, and I feel obliged to. I'm not one that would ordinarily want to take the point. But, with respect, your Lordship described it at the outset as a storm in a teacup that never should have been here. Perhaps that's the case, and I don't say for one moment that of course the court hasn't been assisted and Mr Beglan wasn't required to attend here.

MR JUSTICE HOLMAN: No, no, he's been enormously helpful.

MR GOSLING: As a matter of proportionality, this is a case that involved an adjournment.

MR JUSTICE HOLMAN: Are you suggesting -- which is the fee that you're attacking: the fee for the hearing or the fee for advice, et cetera, beforehand?

MR GOSLING: Well, in relation -- it's one or the other in some respects. I would say in relation to the entirety of it, I would respectfully suggest that somewhere in the region of a comparable fee to myself of £5,000 in total would be more than adequately sufficient.

MR JUSTICE HOLMAN: Well, I'm not going to draw a line between 5,000 and 6,000.

MR GOSLING: No, well----

MR JUSTICE HOLMAN: But I think you have charged, for preparing your skeleton and being here, one fee.

MR GOSLING: Yes. Yes.

MR JUSTICE HOLMAN: I have to say that £12,250 to me, I mean that's----

MR GOSLING: Half of the amount in dispute.

MR JUSTICE HOLMAN: I was going to say it's about approaching what I get paid for a whole month. Mind you, I get a pension as well. It seems a lot of money for drafting the skeleton in this case and being here for one day.

MR GOSLING: My Lord, significantly so.

MR JUSTICE HOLMAN: I mean, they will have to pay it. They've agreed all this with Mr Beglan, so I'm not suggesting they don't pay him, but whether you should have to reimburse him.

MR GOSLING: No, this is *inter partes* costs obviously that the court is assessing. I contend and would suggest respectfully that whether it's £5,000 or £6,000 that certainly there must be a significant reduction in relation to those fees. Of course, the court must take into account the question of proportionality in relation to all of this, and this is a case where, as your Lordship has already noted, £24,000 in dispute and £21,000 which is spent on the appeal.

I do say obviously in relation to court fees they have been incurred, but they will necessarily be halved in light of your Lordship's (inaudible).

I did ask the question before when this arose, I imagine the answer is yes, but the appellant must be VAT registered, I would imagine, and therefore VAT wouldn't ordinarily, from a limited company, be recoverable. I don't know whether that is or isn't sought, but there's certainly not the relevant certificate that would ordinarily be provided if----

MR JUSTICE HOLMAN: Sorry, say all this again?

MR GOSLING: Where a company is VAT registered, it can obviously offset the output VAT that it spends on its own legal costs, and, as a general rule, unless their VAT position is unusual and that's why a certificate is normally provided, that where a party is VAT registered, such as a company, and I've not heard that it's not registered, they would not recover *inter partes* the VAT element of the----

MR JUSTICE HOLMAN: Are you saying that they are not liable to VAT?

MR GOSLING: No, I'm saying that VAT is not recoverable *inter partes* in circumstances----

MR JUSTICE HOLMAN: Why not?

MR GOSLING: Because----

MR JUSTICE HOLMAN: This is the solicitor's bill.

MR GOSLING: Yes.

MR JUSTICE HOLMAN: The solicitors will have to charge VAT to their client; is that right?

MR GOSLING: Yes.

MR JUSTICE HOLMAN: So this company, Chelmsford Cars, et cetera, is going to have to pay the solicitors £21,000 -- is that right? -- which includes the VAT.

MR GOSLING: £21,000 including VAT, yes.

MR JUSTICE HOLMAN: Now, what's the point you're making?

MR GOSLING: The point I'm making is -- and forgive me, I didn't know this was going to be a contentious point because it is, with respect, very well established in relation to the majority of commercial and civil matters----

MR JUSTICE HOLMAN: You're saying that they can then recover that VAT; is that what you're saying?

MR GOSLING: VAT is not payable *inter partes* where a party is VAT registered, unless their VAT position is unusual such that they don't have sufficient output VAT that they would not then therefore be recoverable, so therefore they would suffer a loss.

MR JUSTICE HOLMAN: Because what you're saying is they will have to pay this bill, they'll have to pay the £3,435----

MR GOSLING: Yes.

MR JUSTICE HOLMAN: -- but then, when they make their VAT returns, they will be able to offset it?

MR GOSLING: Yes, and that's why I'm pretty sure that----

MR JUSTICE HOLMAN: You're a civil practitioner, you see; I'm not.

MR GOSLING: No, and forgive me, I know that there is commentary in relation to it in the **White Book**. I know it is horrendously complex, but it's a fairly basic proposition in terms of the assessment of costs of this nature where a party is VAT registered to the extent that any costs master----

MR JUSTICE HOLMAN: Do you agree this?

MR BEGLAN: (No audible response).

MR JUSTICE HOLMAN: Right, I'm sorry, the answer to this is there will have to be a detailed assessment. I'm not, at 4.30, going to get into issues around VAT liability and all that. I'm sorry, you'll have to go to a costs judge. You can agree it yourselves----

MR GOSLING: Of course.

MR JUSTICE HOLMAN: -- or you go to a costs judge. So the order is that the respondent -- no order as to costs of the respondents of and incidental to this appeal. That deals with their costs. The respondents must pay one-half of the costs of the appellants of and incidental to this appeal, to be the subject of a detailed assessment if not agreed.

MR GOSLING: I think we should simply add in here "on a standard basis".

MR JUSTICE HOLMAN: On a standard basis.

MR GOSLING: Yes. My Lord, yes.

MR JUSTICE HOLMAN: So that can go in the order.

MR GOSLING: Indeed.

MR JUSTICE HOLMAN: So I will just give the reasons why I'm going to order you to pay half the costs.

Ruling on costs

1 The question of costs in this case is not at all easy. Clearly, as between these two parties, the appellants have been the successful party. This appeal has been allowed and the liability orders made by the magistrates set aside.

2 There was a suggestion by Mr Gosling on behalf of the respondents that I might say that the costs of this appeal should be the costs in the final substantive outcome of the restored liability hearing before the magistrates. I do not agree with that suggestion. In the first place, it would involve this court delegating in effect to the magistrates the costs decision and outcome of this appeal from them. Secondly, whatever the final outcome in relation to the rates demands, the costs of this appeal have been incurred and need to be separately and discretely considered.

3 Mr Beglan submits that, having been successful, the appellants should have all of their costs, subject to assessment. Mr Gosling submits that there should be no order as to the costs of the appellant as well as of the respondent.

4 It seems to me that there are, as I have indicated in my judgment, several grounds for criticism of the way in which Mr Sodimu, for whom in this context the appellants have to assume responsibility, conducted this case. He conspicuously failed to establish with clarity with Miss Ridgewell and/or the court his perception that the purpose of the adjournment on 21 February was to enable a case management and directions hearing to take place on 11 April if the parties could not resolve all the matters in issue. Further, he must bear considerable responsibility for the fact that it was only on 10 April, less than 24 hours before the hearing, that he wrote the substantive letter of that date. So it remains my position that a lot of responsibility for all that happened here lies with the appellants and their solicitor.

5 That said, Mr Beglan makes a very strong point that it was Miss Ridgewell who encouraged the magistrates to proceed with the hearing on 11 April despite the clear difficulties and discomfiture of Mr Sodimu. Further, as Mr Beglan rightly stresses, Mr Sodimu twice during that hearing on 11 April made very clear to the court, and therefore also to Miss Ridgewell and the respondents, that if the matter proceeded that way there would be, in his view. no alternative but for the appellants to appeal, as they successfully have done.

6 At paragraph 39 of his statement, Mr Sodimu indicates that at around 12.50 pm that morning he addressed the court further on the issue of adjournment and "informed the court that if an adjournment was not granted then the applicant would have little choice but to appeal the decision". He renewed his application for an adjournment yet again when the court resumed the hearing at 2.15pm, and at paragraph 45 of his statement he says that, "I informed the court that the applicant would have no choice but to appeal the decision if the court decided against the applicant after refusing to grant an adjournment, as the applicant was not given a reasonable opportunity to adduce evidence."

7 So it seems to me that during the course of that hearing and before the die was ultimately cast, Mr Sodimu made very plain, both to the court and to the local authority, that if they proceeded in this way an appeal would ensue. Nevertheless, Miss Ridgewell drove the case on and gave her evidence and obtained the orders, and so did the magistrates. So it seems to me that Mr Sodimu did in fact give clear and fair warning of what would happen if they continued that day.

8 Balancing those considerations against the level of responsibility that I continue to consider Mr Sodimu has for events, my decision is that a fair outcome as to costs is that the respondents must pay one-half of the costs of the appellants of and incidental to this appeal.

9 Both counsel then invited me summarily to assess the costs today. We embarked on that process and in fact I have given quite considerable scrutiny to the appellant's statement of costs. But that process has foundered, because Mr Gosling submitted at the end of his examination of the statement of costs that, because the appellants are apparently VAT registered, the VAT element in the bill should be excluded from any order for costs made against the respondents. Mr Beglan, however, said that he does not agree with and accept that position.

10 Quite frankly, at 4.45pm after this rather long day on a case which was originally estimated for one and a half hours, I am simply not prepared, as a non-expert in this field, to start engaging with the question of how any liability to VAT should be treated.

11 For those reasons, the costs will have to be the subject of a detailed assessment unless, as I earnestly hope they will be, they can subsequently be agreed between the parties.

Anything else?

MR GOSLING: My Lord, no.

MR JUSTICE HOLMAN: Anything else, Mr Beglan?

MR BEGLAN: No, my Lord. I'm very grateful.

MR JUSTICE HOLMAN: There will of course be a transcript because this is a substantive appeal.

(Aside to the court staff)

All right. Is there anything else, Mr Beglan?

MR BEGLAN: No, my Lord.

MR JUSTICE HOLMAN: Anything else, Mr Gosling?

MR GOSLING: No, my Lord.

MR JUSTICE HOLMAN: So I'm very, very grateful to each of you. It's been actually quite an interesting day. I've learnt a lot myself.

Thank you very much, Mr Sodimu. Thank you very much, Miss Ridgewell. I appreciate both of you will be leaving feeling rather bruised, but I'm afraid that's what sometimes happens.

All right. Well, thank you all very much indeed.

CERTIFICATE

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CACD.ACO@opus2.digital

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