THE INDUSTRIAL TRIBUNALS

CASE REF: 10710/19

CLAIMANT: **Jacqui Blain**

RESPONDENT: **Robert G Sinclair & Company Solicitors**

PRE-HEARING REVIEW DECISION

The decision of the tribunal is that the application to present a late response to these proceedings is hereby refused.

CONSTITUTION OF TRIBUNAL

Employment Judge (sitting alone): **Employment Judge Ó Murray**

APPEARANCES:

The claimant was represented by Ms R Best, Barrister-at-Law, instructed by Ms Fitzgerald-Gunn of Worthingtons Solicitors.

The respondent firm was represented by Mr P McNeill, Solicitor of Robert G Sinclair & Company Solicitors.

THE APPLICATION

1. This claim is a claim for discrimination and victimisation in relation to the outcome of the appeal against the claimant's dismissal. The claims of discrimination are sex discrimination, disability discrimination and age discrimination. The claim form was presented on 13 June 2019.

2. The respondent's application was for permission to present a late response to this the claimant's third claim. By letter of 8 July 2019 the response form was served upon the respondent and the deadline for a response form to be lodged was clearly stated in that correspondence to be 5 August 2019.

3. During the Case Management process for the claimant's two defended cases (case references 17012/18 and 6067/19) it was agreed by the parties that the undefended claim should travel with the claimant's two other claims as it appears that the intention of the parties was that ultimately all three claims might be consolidated ie listed and heard together. No formal Order was ever made in that regard however.

4. The claimant's three claims arise out of a factual matrix which related partly to her claims of discrimination and failure to provide equal pay in the period before her dismissal (the first claim) but also related to the disciplinary process and the dismissal decision which the claimant alleges were acts of discrimination, victimisation and amounted to unfair dismissal (the second claim). The third claim therefore could, on the facts, be an adjunct to the second claim in particular and might have been apt for consolidation with that claim. However this third claim contains a free-standing claim of victimisation as regards the appeal against dismissal and thus does not depend on the success or otherwise of either the second claim or the first claim.

5. The application for a late response was listed for the same date as an application for relief from sanction following two Unless Orders as, at all points it was evident (and indeed agreed by the parties) that there was a measure of overlap between the two applications. The factual reasons underpinning the application for a late response and the application for relief from sanction related primarily to the actions or inactions of Mr James Anderson, Barrister-at-Law and those of the respondent firm of solicitors.

6. In considering the application for a late response however I have specifically not taken account of the decision in the application for relief from the sanction contained in the Unless Orders. In other words that decision has had no bearing on my decision in this application as the currently undefended proceedings are freestanding and this application must be considered on its own merits.

THE LAW

7. In the Industrial Tribunals (Constitution and Rules of Procedures) Regulations Northern Ireland 2005, (as amended) (referred to as the Rules) are the Rules applicable to this application. The overriding objective is set out at Regulation 3 and provides that that objective is to deal with the cases justly. Regulation 3(2) provides as follows:

> *"3-(2) Dealing with a case justly includes, so far as practicable –*
>
> *(a) ensuring that the parties are on an equal footing;*
>
> *(b) dealing with the case in ways which are proportionate to the complexity or importance of the issues;*
>
> *(c) ensuring that it is dealt with expeditiously and fairly; and*
>
> *(d) saving expense."*

8. The Rules in relation to responding a claim are set out at Rule 4 the relevant provisions of which state as follows:

> *"4(5B) If the application under paragraph (5) is presented to the Office of the Tribunals more than 28 days after the date on which the respondent was sent a copy of the claim, it must explain why the respondent did not comply with the time limit and be accompanied*

by a completed response which includes all the required information specified in paragraph (4).

(5C) The chairman shall only extend the time limit within which a response must be presented if he is satisfied that it is just and equitable to do so."

9. The tribunal therefore has a discretion to extend the time limit for a response to be presented if the Employment Judge is satisfied that it is just and equitable to do so. The tribunal must balance all relevant factors and discount irrelevant factors in reaching a decision on whether to exercise its discretion.

10. The EAT decision of ***Kwik Safe Stores Limited v Swain and Others [1997] ICR 49*** remains the prevailing authority in relation to the exercise of that discretion, as regards a late response.

11. The importance of time limits is referred to in the following dicta of Mummery J:

*"**The Importance of time limits***

We agree with the regional chairman that time limits are laid down as a matter of law, not by the tribunals themselves, and that "they are there for good reason because of the nature of industrial tribunal hearings." This is an important factor in the exercise of the discretion to grant an extension of time under rule 15(1) of the Industrial Tribunals Rules of Procedure 1993. As Sir Thomas Bingham M.R. said in Costello v Somerset County Council [1993] 1 W.L.R. 256, 263:

> *"The first principle is that the rules of court and the associated rules of practice, devised in the public interest to promote the expeditious despatch of litigation, must be observed. The prescribed time limits are not targets to be aimed at or expressions of pious hope but requirements to be met."*

Those observations, made in the context of ordinary civil litigation, apply with even greater force in the case of the procedure in industrial tribunals, which were established to provide a quick, cheap and effective means of resolving employment disputes. Failure to comply with the rules causes inconvenience, results in delay and increases costs. It is also indicative of an unacceptable attitude on the part of the defaulter not only to the rights conferred and asserted, but also to the industrial tribunal system itself." (paragraph 54)

12. Mummery J identified key elements relevant to the exercise of the discretion as follows:

(i) The explanation given by the respondent for failure to comply within the time limit. The following dictum from the decision is apposite in this case:

> *"In general, the more serious the delay, the more important it is for an applicant for an extension of time to provide a satisfactory explanation which is full, as well as honest." (Paragraph 55)*

(ii) The balance of prejudice. The following dictum refers to the exercise to be conducted by the Employment Judge:

> *"The process of exercising a discretion involves taking into account all relevant factors, weighing and balancing them one against the other and reaching a conclusion which is objectively justified on the grounds of reason and justice. An important part of exercising this discretion is to ask these questions: what prejudice will the applicant for an extension of time suffer if the extension is refused? What prejudice will the other party suffer if the extension is granted? If the likely prejudice to the applicant for an extension outweighs the likely prejudice to the other party, then that is a factor in favour of granting the extension of time, but is not always decisive." (Paragraph 55)*

(iii) The merits of the defence. The following dictum outlines the importance of assessing this:

> *"It is well established that another factor to be taken into account in deciding whether to grant an extension of time is what may be called the merits factor identified by Sir Thomas Bingham M.R. in Costello v Somerset County Council [1993] 1 W.L.R. 256, 263:*
>
> > *"a plaintiff should not in the ordinary way be denied an adjudication of his claim on its merits because of procedural default, unless the default causes prejudice to his opponent for which an award of costs cannot compensate." (Paragraph 55)*

Mummery J goes on to cite the decision in ***Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Co Inc [1986] 2 Lloyd's Rep. 221*** and stated:

> *"In that case the Court of Appeal decided that the defendants had not shown that they had a reasonable prospect of success. The court was therefore entitled to refuse the exercise of discretion …." (Paragraph 56)*

13. Other factors relevant in this case are the respondents' knowledge of time limits and the possibility of applying for an extension of time; whether the respondent acted promptly in relation to filing a response and requesting any extension of time; and the interests of justice generally.

14. Mr McNeill relied solely on the content of Rule 4 and specifically declined to refer to any authorities or to comment on the ***Kwik Save*** decision. He also specifically declined to provide any submissions in answer to Ms Best's submissions on the legal authorities.

15. Ms Best referred to the following:

(i) The case of ***British Coal Corporation v Keeble [1997] IRLR 636 EAT*** which relates to the extension of time limits generally and the factors set out in the Limitation Act 1980 the Northern Ireland equivalent of which is the Limitation (NI) Order 1989.

(ii) The decision in ***Hutchinson v Westward TV [1997] EAT*** in relation to just and equitable extensions generally.

(iii) ***DPP v Marshall*** as cited in ***Harvey*** at Div P1 practice and procedure on just and equitable extensions in relation to a claim.

THE EVIDENCE

16. I have been shown emails in the period 10 July 2019 to 29 August 2019 between Ms O'Neill, (a solicitor with the firm who left on 15 August 2019), Mr McNeill, (the solicitor currently dealing with this case) and Mr James Anderson, Barrister-at-Law who was the respondent's named representative at various points. The respondent waived privilege in respect of those emails and relied upon them in this application. I also had before me some emails to and from Worthingtons, solicitors for the claimant.

17. At hearings prior to this PHR, on 25 November 2019 and 11 December 2019, I made clear to the respondent's representatives (ie Mr Anderson and Mr McNeill) that applications for a late response are normally supported by sworn testimony. Mr McNeill at the hearing on 11 December 2019 (a PHR which had to be adjourned due to the sudden ill-health of Mr Anderson) stated that testimony would be provided by Mr Anderson on behalf of the respondent and for that reason a Witness Order was issued and served by email to Mr Anderson's Bar Library email address next day to ensure the attendance of Mr Anderson at the PHR on 7 January 2020. At the hearing on 11 December 2019 Mr McNeill also indicated that he might require evidence from Ms O'Neill the former solicitor who had some dealings with these matters. Mr McNeill was told during the hearing on 11 December 2019 that a Witness Order would be issued and served on Mr Anderson.

18. On the morning of the PHR on 7 January 2020 there was no attendance by Mr Anderson. Mr McNeill stated that, after the previous hearing, the decision was taken by the respondent not to contact Mr Anderson to seek his attendance nor to alert him to the imminent Witness Order. Time was given to Mr McNeill to make enquiries about the non-attendance of Mr Anderson. The outcome of those enquiries was communicated by Mr McNeill as follows: that Mr Anderson indicated that he would not be in attendance as he had child care arrangements and did not know that a Witness Order had been sent to the Bar Library for him. Mr McNeill did not give any sworn testimony in relation to the emails that were provided but relied on his submissions and the documentation.

19. At this point I wish to record my surprise that Mr Anderson, a Barrister, has (so far) failed to provide a direct explanation to this tribunal for his failure to comply with the Witness Order dated 12 December 2019 which was served on 12 December 2019 on his email address at the Bar Library. It is particularly surprising that Mr Anderson failed to do so despite being contacted by Mr McNeill at the behest of this tribunal on 7 January 2020 and was made aware that the PHR was due to run into a second day on 8 January 2020.

20. At several points during his submissions, Mr McNeill relied on his interpretation of the emails despite the fact that he had no input in several emails and despite the fact that the respondent had chosen not to call either Ms O'Neill or Mr Anderson to

explain any matters. Indeed Mr McNeill stated that he had not spoken at all to Ms O'Neill since she left the firm on 15 August 2019. This was surprising given the specific submissions made about what she knew or believed.

21. This is therefore the respondent's application for the tribunal to exercise its discretion to allow a late response. It was the agreed position that no response form had actually been lodged within the time limit ie on or before 5 August 2019.

22. I considered the submissions, the documents to which I was referred by both sides, together with the claim form and the response form presented on 26 November 2019.

RESPONDENT'S SUBMISSIONS

23. The respondent's application for an extension of time to present a late response is set out in an email of 18 September 2019 from Mr McNeill as follows:

> *"The Respondent hereby makes an application to the tribunal under Schedule 1, section 4(5) for an extension of time in which to present its response to the above-stated third claim by the Claimant on the grounds that there are just and equitable reasons to do so.*
>
> *These reasons are, as outlined to the Employment Judge at CMD dated 11th September 2019, that the Respondent's counsel completed and submitted the Response directly online on 5th August 2019 from holiday in France. Counsel's internet access was not strong and after clicking "save and submit" he asked the Solicitor then with carriage of this case, Ms Noirin O'Neill, to check that the Response had been submitted. Ms O'Neill confirmed that it had.*
>
> *The Tribunal is referred to the above screenshot which shows that the Response was completed on 5th August 2019 and the document is confirmed as "saved". It would appear therefore that the application was completed and saved but was not submitted. The reason it was not submitted is that there appears to have been an issue with counsel's connection which resulted in the document being saved but not submitted. Upon logging in to check that the document had been sent, Ms O'Neill made the assumption that it had been given its status of "saved".*

24. The primary points made by Mr McNeill on behalf of the respondent are set out below:

(i) That an attempt was made by Mr Anderson whilst he was on holiday (1-20 August 2019) in the South of France to lodge a response form on-line with the tribunal. Mistakenly Mr Anderson and the respondent's lawyers believed that the form that had been drafted at that point, had actually gone through to the tribunal.

(ii) A screenshot document was provided to the tribunal which Mr McNeill stated was a screenshot taken by Mr Anderson from the tribunal website. Mr McNeill submitted that this document showed that the response form that had been drafted had been saved in the online account for the file. At this

point I wish to record that the screenshot does not, on its face, state the name of this case nor a reference number. Nevertheless in considering this application I have taken as correct that it is a screenshot related to this case. Mr McNeill further submitted that the screenshot document was provided by Mr Anderson at some point between the date of his return from holiday on 20 August 2019 and the date of the CMD on 11 September 2019. Mr McNeill agreed that the icon showing a document on that screenshot meant that that icon could have been clicked so that the document could be revealed. I note that, at no point has that draft document been provided to the claimant nor to the tribunal (despite the Order made on 25 November 2019 to provide it) and no explanation has been proffered for this omission.

(iii) That there was confusion caused by the respondent having been served with a copy of the claim form by the tribunal on 8 July 2019 when Ms Fitzgerald-Gunn had also provided a copy to Mr Anderson by email on 1 July 2019.

(iv) That there were confused lines of communication between the respondent and its representative Mr Anderson.

(v) That Mr Anderson had sole responsibility for drafting and lodging the response form in time or at all.

(vi) When it became apparent that no form had been received by the tribunal Mr McNeill stated that he made enquiries on 26 November 2019 of the tribunal administrators which did not lead to a conclusion. No documents nor evidence were produced in regard to any such discussions. In any event there was acceptance by the respondent that no response form had actually been successfully submitted by the deadline of 5 August 2019. The respondent accepted that any form that may have been drafted was saved on 5 August 2019 on the website rather than submitted.

THE CLAIMANT'S SUBMISSIONS

25. The primary submissions made by Ms Best on behalf of the claimant may be summarised as follows:-

(i) A copy of the claim form was sent by email by Ms Fitzgerald-Gunn to Mr Anderson on 1 July 2019. This was in addition to the copy served on the respondent by the tribunal on 8 July 2019. The respondent knew of the deadline therefore lack of knowledge is not a factor. No extension had been agreed and this was known to the respondent. It was therefore clear to the respondent and Mr Anderson that the date for lodgement of the response form was 5 August 2019.

(ii) Whilst the respondent makes a point in relation to Mr Anderson being out of contact the emails show email and telephone contact in relation to the deadline before that date, on the deadline of 5 August 2019 and thereafter.

(iii) There has been no explanation for the respondent not checking the position and printing off a copy of the completed form from the website.

(iv) On the respondent's best case ie that Mr Anderson did not know that the matter was undefended until Ms Best alerted him to that the night before the CMD on 11 September 2019, no reason has been given by the respondent for not lodging the form until 26 November 2019.

(v) The respondent was warned throughout the relevant time in relation to time limits. No cogent or satisfactory explanation was given for the failure to act promptly.

(vi) All the key players are legally qualified.

(vii) On the balance of prejudice issue Ms Best submitted that to allow the response form to be accepted would cause further delay to the claimant (whose claim was lodged on 13 June 2019) because the interlocutory process would then need to proceed together with the timetabling of statements and documents for the hearing. This would involve further costs on top of the costs and delay already involved due to the conduct of the respondent and its representatives.

FINDINGS AND CONCLUSIONS

26. I have considered the documentation to which I was referred, the submissions by both sides, the legal principles drawn from the key authorities, and have reached the following findings and conclusions. In relation to the legal authorities Ms Best made specific reference to ***Harvey*** and a number of cases. Mr McNeill was given the opportunity to provide submissions on the legal authorities or to answer the submissions on the authorities put forward by Ms Best. Mr McNeill specifically declined the opportunity to refer to any legal authorities relying solely on the content of the relevant Rule.

27. The factors which I must take into account include the explanation or lack of explanation for lateness and the further delay, and the merits of the defence. I must weigh and balance those matters one against the other to reach a conclusion which is objectively justified on the grounds of reason and justice. An important matter for me is to balance the possible prejudice to each party although that is not a determining factor. I must also weigh in the balance the overriding objective to deal with matters justly.

28. It was clear from the email correspondence that the respondent has produced that there was email, telephone and text contact in the period from 10 July to 29 August 2019 between Ms O'Neill, Mr McNeill and Mr Anderson. I find from an analysis of the emails the following:

(i) All three lawyers knew in advance that the time limit for presentation of the response was 5 August 2019.

(ii) I find from the following content of the respondent's email dated 23 July 2019 that Ms O'Neill and Mr McNeill were aware, at that point, of problems with contact (for whatever reason) with Mr Anderson. I conclude that it was thus particularly incumbent on them to act promptly and decisively in relation to the deadline of 5 August 2019.

"Mr James Anderson BL is our Legal Representative and usually it is James who serves the documentation.

However, I have been unable to get in contact with James and therefore it is better to be safe than sorry.

You may wish to try to get in contact with James one last time today as he is not responding to texts/emails and may be out of the country."

(iii) All three lawyers were aware of the importance of complying with the time limit and were aware that no extension of time had been agreed. The inference I take from that was that all three knew that an extension of time could have been sought.

(iv) There was some successful email, text and telephone contact between Mr Anderson and the respondent firm during the period that he was abroad.

(v) That Ms O'Neill (from the content of an email of 7 August 2019) erroneously believed that the response form had been filed on 5 August 2019 and directed Mr McNeill to print a copy of the document from the tribunal website taking care not to alter it. No cogent or satisfactory explanation was given to this tribunal for the failure to do this. The email states:

"You might note that due to time pressures, I liaised closely with James Anderson on Monday and the response was filed on the third claim in advance of deadline of 5pm by James. You should print this response off from the Tribunal website, being careful not to edit the document."

(vi) At various points other solicitors in the firm (namely Robert Sinclair, Edmund Sinclair and Nikki Bell) were copied in to correspondence. There was therefore some knowledge of the issues, on the part of a total of five lawyers, four of whom were in the firm and the other was Mr Anderson, Barrister-at-Law.

29. A major point made by Mr McNeill was that the respondent mistakenly believed that the document had been lodged in time. The respondent's point was that the responsibility for lodging the document lay entirely with Mr Anderson and that there were difficulties with his internet coverage and with contacting him at the time he was in France. Mr McNeill stated that Mr Anderson was the person with the log-in credentials and the implication from the following submissions made by him in this PHR was that Mr Anderson was the only person who could access the tribunal portal to check the position about the document. This was a key point made by the respondent in this PHR for the mistaken belief that the document had gone in ie that they relied on Mr Anderson, could not contact him, and could not check the website themselves either to file a holding response or to check and print off the document which they believed had been filed on 5 August 2019.

30. Mr McNeill stated as follows to this tribunal in his submissions in relation to the inability of the respondent to submit a response form itself:

(i) *"Ms O'Neill's and my hands were tied … Mr Anderson had drafted everything."*

(ii) Mr McNeill then stated:

> *"On the inability to submit issue James Anderson has the on-line profile user name and password for all on-line submissions. He had successfully submitted responses for the first two claims on that portal the tribunal website. That was the accepted practice for submission."*

(iii) Later when Mr McNeill was explaining the screenshot which had been presented he stated:

> *"Mr Anderson provided that screenshot …. from his on-line portal that he has had exclusive access to for the duration of these actions."*

31. The submissions made by Mr McNeill were clearly at odds with the content of the email dated 7 August 2019 which is quoted at paragraph 28(v) above.

32. Ms Best in her submissions pointed out the discrepancy and Mr McNeill was given the opportunity to address that discrepancy. Mr McNeill then stated that he had in fact been given the log-in credentials by Ms O'Neill in the third week in July 2019. It was clear therefore that he or someone else in the firm had the capability to go into the tribunal website to file a holding response, to check the document, to print it off and to check if it had been submitted or saved. The respondent could also of course have completed a hard copy of the form and could have delivered it to the tribunal building.

33. Mr McNeill was given several opportunities to explain the disparity in his submissions during the hearing but could not, or would not, provide an explanation. This was most concerning and detracted substantially from a key part of the explanation put forward for failure to comply with the time limit.

34. It was the respondent's position that the emails made clear the respondent's difficulties. I do not accept the points made by the respondent on the emails as, on their face, they do not support the key points made on behalf of the respondent. I find in contrast that the emails reveal that all three key lawyers (ie Ms O'Neill, Mr McNeill and Mr Anderson) knew, or ought to have known, that they should check that the response form was being lodged before the time limit expired. I find specifically that the respondent and its lawyers were from July 2019 capable of checking the position by logging in to the tribunal website as this did not depend on contact with Mr Anderson.

35. I therefore do not accept the explanation proffered by the respondents namely: that the responsibility for lodging the response form before 5 August 2019 and checking that it had actually gone through lay entirely with Mr Anderson; that there were unavoidable contact difficulties during the period of his holiday; and that only he could lodge the response form. I have grave doubts about the veracity of that explanation given the disparity between the submissions and the content of the relevant emails.

36. I have also considered carefully the actions of the respondents and their representatives in the period from 5 August 2019 until 26 November 2019 when a response form was finally lodged on behalf of the respondent. That document was dated 26 November 2019, was filed online by Mr Anderson, and was received by the tribunal on 26 November 2019. Surprisingly, the document was nevertheless proffered by Mr McNeill as a copy of the document which was shown as saved on the screenshot which was produced between 20 August 2019 and 11 September 2019. When it was pointed out to Mr McNeill that the dates did not tally, no explanation was provided for this.

37. One key point made by the respondent's representatives for the delay in requesting an extension and filing a late response was that they were unaware that the claim was undefended. Mr Anderson at the CMD on 11 September 2019 stated that he was unaware of this until he was informed by Ms Best on 10 September 2019 ie on the evening before the CMD on 11 September 2019. I do not accept this lack of knowledge point as set out below.

38. On 15 August 2019 a CMD took place and Mr McNeill represented the respondent at that hearing. The following appears in the record of that hearing:

> *"The parties must be in a position to deal with the fact that the third claim has had no response form lodged. The response form was due in the third claim (10710/19) by 5 August 2019. The parties must be in a position to address the tribunal in relation to consolidation of all three sets of proceedings, and in relation to the way the Hearings will run, in view of the fact that one of the claims is currently undefended."*

The record of that CMD hearing was sent to the parties by email on 16 August 2019 and Mr Anderson confirmed at the CMD on 11 September 2019 that he had received that record whilst on holiday (ie before 20 August 2019). I therefore do not accept that it was reasonable for Mr Anderson or for the respondent to believe after 16 August 2019 that the claim was defended.

39. The respondent then sent a letter (one month after the CMD of 15 August 2019) to the tribunal dated 18 September 2019 requesting an extension of time. That letter did not comply with the Rules as no completed response form was attached to it. The tribunal letter of 24 September 2019 sent in response to that letter made clear what the respondent needed to do if it wanted to defend the claim stating as follows:

> *"I acknowledge receipt of your correspondence dated 18 September 2019 in which you apply for an extension of time to present a response in the above matter.*
>
> *An Employment Judge of the tribunals has directed me to inform you that your application for an extension of time to present a response, which has been received outside the time limit set out in Rule 4(5) of Schedule 1 of the Industrial Tribunals Rules of Procedure 2005 (as amended), cannot be considered <u>unless</u> it is accompanied by a completed response as required by Rule 4(5B).*

You should be aware that a respondent who has not presented a response which has been accepted has no right to take any part in these proceedings except as set out in Rule 9."

40. Approximately a further 8 weeks elapsed from the date of the tribunal's letter before the response form was finally presented to the tribunal on 26 November 2019. No explanation was given for that failure to comply with the Rules in a timely way despite the clear indication as to what was required in the letter of 24 September 2019 from the tribunal.

41. The following is recorded in the CMD record of the hearing on 25 November 2019:

> "1. *The claimant has three claims the first two of which have been defended. The third claim is currently undefended and there is an outstanding application by the respondent in the third claim to present a late response.*
>
> *2. Despite reference having been made at previous hearings to the respondent's position in the third claim, no completed response form has been provided to the claimant nor to the tribunal in relation to the application to have a response accepted late under the Rules. I explained to Mr Neill that that application cannot proceed unless a completed response form is provided in relation to it to the tribunal and to the claimant. I therefore ordered that the respondent provide a copy of the response form to the tribunal and to the claimant* ***by 5.00 pm on 26 November 2019*** *in relation to the third claim which bears the reference number 10710/19.*"

The reason for that Order was that the respondent's position appeared at that point to be that there was a draft in existence which had not gone through on the website on 5 August 2019.

42. No explanation was given to me for the failure to take account in a timely way of the content of the CMD records and tribunal correspondence save the general point made by Mr McNeill that Mr Anderson was the firm's representative, that correspondence at one point went direct to him and that if correspondence went to Mr McNeill he was no more than a post box or conduit leading to confused lines of communication. It is important to note at this stage that the claim form in this the third claim was served in accordance with the Rules, on the respondent firm of solicitors rather than on any representative named in the first two claims.

43. I attach no weight to the confusion point made by the respondents as it weighs heavily with me that the representatives and all the relevant people in the respondent firm are qualified lawyers. I find that they knew (or ought to have known) about the importance of time limits; about the importance of reading carefully records of proceedings; and the importance of noting carefully issues raised and discussed during hearings in the tribunal. It is my assessment having perused the records of proceedings, my notes of relevant hearings, and relevant parts of the recordings of hearings, that the representatives who attended for the respondents at hearings can have been in no doubt from the date of the 15 August 2019 CMD hearing that one set of proceedings was undefended and that

they needed to move expeditiously if they wished to defend those proceedings. They ought to have been capable of presenting an application for an extension of time that complied with the Rules, and they ought to have been able to follow the procedure outlined by the tribunal in the letter of 24 September 2019.

44. I regret to say in summary that I find the explanation as a whole to be neither full nor honest.

45. The response form which was eventually presented provides little more than a general denial of liability. The drafting of the response form was not therefore detailed or technical requiring a lengthy period for drafting. No information other than the content of that response form has been given to me in relation to the defence. The merits of the defence is one of the factors I must consider in weighing up whether to exercise my discretion.

46. I have taken account of the merits of the defence insofar as I have been given details of that and I have decided that the respondent has not shown that it has a reasonable prospect of success in its defence. In the ***Kwik Save*** case there were clear points made by the respondent which raised arguable defences to the relevant claims. That does not seem to be the position in this case insofar as I have been given any detail of the defence.

47. Undoubtedly there will be a prejudice to the respondents if the response form is not accepted in that the claimant's claim will proceed as an undefended matter. I am fully cognisant of the gravity of that position for the respondents.

48. I also bear in mind that time limits have been laid down by law and are there for a good reason. As outlined in ***Kwik Save*** the aim is to promote the expeditious dispatch of litigation. The quotation outlined at paragraph 11 above is apposite in this case. I take account of the increased costs incurred by the claimant in respect of this claim due to the number of times the undefended nature of these proceedings has had to be addressed in writing and in hearings. I also take account of the delay in progressing the claimant's claim and the prejudice she would suffer with further delay if I allow the late response.

49. I bear in mind that the overriding objective applies to everyone in this litigation and in particular that this means that proceedings need to be dealt with proportionately and in an expeditious and efficient manner taking account of the costs and delay occasioned to both sides.

50. I am not satisfied with the accuracy and veracity of the explanation provided by the respondent for the failure to present the response form before the time limit expired. I am further not satisfied with the respondents explanation (such as it is) for the further delay between 5 August 2019 and 29 November 2019.

51. The respondent has chosen to present this application without the benefit of any sworn testimony from any witness. The respondent chose instead to present documentation and I have considered the content of the documents. The documents which have been presented and the submissions which have been presented are at odds with each other. The submissions are also at odds with the records of CMD hearings. It is for the respondent to persuade me to exercise my discretion by presenting evidence and submissions to support their application. In

short, the documentary evidence produced does not support the points being made in key respects as set out above.

52. The task of this tribunal is to decide whether it would be just and equitable to allow a late response to be accepted. Having balanced the above factors and having taken account of the overriding objective, I am not persuaded that I should exercise my discretion to permit the late response to be accepted. The response form is therefore rejected as it was presented out of time and no satisfactory explanation has been given for the late presentation. Any undoubted prejudice to the respondent does not outweigh the other factors all of which I have taken into account and weighed in the balance in deciding whether to exercise my discretion.

53. I therefore refuse the respondent's application for permission to present a late response to these proceedings.

Employment Judge:

Date and place of hearing: 7 and 8 January 2020, Belfast.

Date decision entered in register and issued to parties: