EMPLOYMENT TRIBUNALS

Claimant: Ms Julie Rimmington

Respondent: (1) Sarah Kinsley
(2) The Blindz Store Limited

Heard at: Manchester **On:** 7 February 2019

Before: Employment Judge Holmes

REPRESENTATION:

Claimant: Mr Warnes, Consultant
Respondent: Mr J Demeza – Wlikinson, Consultant

RESERVED JUDGMENT ON PRELIMINARY HEARING

It is the judgment of the Tribunal that:

1. The respondents are granted an extension of time for presentation of the response to 6 February 2019.

2. The respondent The Blindz Store Limited is joined as a respondent to the claims, and the existing respondent Sara Kinsley remains a respondent.

3. The response filed on 6 February 2019 is accepted as the response of both respondents.

CASE MANAGEMENT ORDERS

4. The Tribunal makes the following Case Management Orders for the purposes of determining the claims:

Disability

(i) The claimant do by **3 May 2019** provide to the Tribunal and the respondent further particulars of her indirect disability discrimination, failure to make reasonable

adjustment and victimisation claims, identifying, in particular, in relation to the first two, the PCP(s) relied upon, and in respect of the third, the protected act or acts relied upon.

(ii) The claimant must by **13 May 2019** serve on the respondent copies of any medical notes, reports, occupational health assessments and other evidence in the claimant's possession and/or control relevant to the issue of whether the claimant was at all relevant times a disabled person ("disability issue"). For the purposes of this paragraph: documentation already in existence that can be obtained by the claimant by requesting it from a GP or other treating healthcare provider or is deemed to be within the claimant's possession.

(iii) The claimant must by **13 May 2019** provide the respondent with a witness statement (or statements): identifying what "*physical or mental impairment*"(s), in accordance with EQA section 6, is relied on in relation to the disability issue; stating, in relation to each impairment relied on, between which dates it is alleged the claimant was a disabled person because of that impairment; explaining the effect of the impairment(s) on the ability of the claimant to carry out normal day to day activities. If medication is being taken the statement must indicate what that effect would be without medication. The claimant is referred to the documents in the Further Guidance section above for more information.

(iv) The respondents must by **3 June 2019** inform the Tribunal and the claimant of the extent to which the disability issue is conceded, and if it is not conceded in full, the reasons why. A concession that the claimant was a disabled person is not a concession that the respondent knew or ought to have known this at the material time. If either party considers that a preliminary hearing to determine the issue of disability is required they are to inform the Tribunal by **10 June 2019** .

(v) If disability remains in dispute and either side considers that expert medical evidence would assist the Tribunal to determine that issue, an application for the appropriate case management orders should be made.

Documents

(vi) By 4.00pm on **28 May 2019** each party must have provided to the other a list of all the documents in its possession or control relevant to the issues in the case. This includes documents that are relevant to remedy only. A document must be included whether it supports or hinders a party's case. A party must make a reasonable search for documents not immediately to hand. Copies of documents required from the other party's list must be requested promptly, and any copies so requested must be supplied by 4.00pm on **4 June 2019.** Fur**t**her information can be found in Guidance Note 2 attached to the Presidential Guidance on General Case Management.

Final hearing bundle

(vii) By 4.00pm on **18 June 2019** the claimant must have provided to the respondent a draft index to the bundle of documents for the final hearing. That bundle must be agreed, and one copy supplied by the claimant to the respondent by 4.00pm on **25 June 2019**.

a) The bundle should only include documents relevant to any disputed issue in the case and should only include the following documents:

- the Claim Form, the Response Form, any amendments to the grounds of complaint or response, any additional / further information and/or further particulars of the claim or of the response, this written record of a preliminary hearing and any other case management orders that are relevant. These must be put at the start of the bundle, in chronological order, with all the other documents after them;

- documents that will be referred to at the final hearing and/or that the Tribunal will be asked to take into account.

In preparing the bundle the following rules must be observed:

- unless there is good reason to do so (e.g. there are different versions of one document in existence and the difference is relevant to the case or authenticity is disputed) only one copy of each document (including documents in email streams) is to be included in the bundle

- the documents in the bundle must follow a logical sequence which should normally be simple chronological order

- handwritten documents which are not easily legible (such as notes of meetings) should be transcribed into typed format by the party producing the document, and an agreed typed version included in the bundle. Only if the parties are unable to agree the accuracy of the typed version should the handwritten version be included too.

Witness statements

(vii) By 4.00pm on **22 July 2019** each party must have provided to the other a written statement from every person (including a claimant or an individual respondent) that it is proposed will give evidence at the final hearing. The witness statements must be typed in numbered paragraphs and signed by the witness. They should set out in logical order the facts about which the witness wishes to tell the Tribunal. Where reference is made to a document the page number from the hearing bundle must be included. There is no need to reproduce lengthy passages from documents in the bundle which the Tribunal will read. The claimant's witness statement must address remedy by including a statement of the amount of compensation or damages claimed, together with an explanation of how it has been calculated.

a) Unless the Tribunal hearing the case directs otherwise, the witness statements will be read by the Tribunal and stand as the evidence of each witness before that witness is questioned by the other parties.

b) For the avoidance of doubt this order does not require simultaneous exchange of witness statements, but the parties are free to proceed on that basis if they so wish. However, any witness statements disclosed after this date may not be relied upon at the final hearing without permission from the Tribunal.

c) Further information about witness statements can be found in Guidance Note 3 attached to the Presidential Guidance on General Case Management.

REASONS

1. The Tribunal convened to hear the respondent's application for an extension of time for presentation of the response.

2. The relevant procedural history of the claims is as follows. By a claim form presented to the Tribunal on 31 August 2018 the claimant complains of unfair dismissal, and disability discrimination, and makes claims for notice pay, holiday pay and unlawful deductions from wages . The respondent was named as "Sarah Kinsley", and her address given as 490 – 492 Oldham Road, Ashton – under – Lyne, Greater Manchester OL7 9HQ. Prior to presenting her claim the claimant had obtained an early conciliation certificate on 4 July 2018. In that document the prospective respondent is named as "Blindz", and its address was the same Oldham Road address.

3. The Tribunal accordingly issued a Notice of Claim, dated 11 September 2018, and served the claim upon the respondent by posting it to the address at 490 – 492 Oldham Road. The name of the respondent was "Sarah Kinsley". Nothing on any communication thus sent out by the Tribunal would have the word "Blindz" upon it.

4. The date by which a response was required, as set out in the Notice of Claim , was 9 October 2018.

5. At the same time (though whether in the same envelope is unclear) the Tribunal sent out a Notice of Preliminary hearing, convening a preliminary hearing in this matter for 7 November 2018 at 10.00 a.m.

6. No response was received, but on 7 November 2018 the Tribunal held the preliminary hearing , at which the claimant was represented, and Sarah Kinsley attended, having learned of it via a message. She was unrepresented.

7. As is apparent from the Annex to Employment Judge Franey's Case Management Order, it was pointed out to the respondent that no response had been received, and how she would need to make an application for an extension of time in which to present her response. She was provided with a copy of the claim form to enable her to do so. She claimed not to have received the claim form or any other correspondence.

8. Mr Warnes for the claimant indicated that any such application would be resisted. Whilst Employment Judge Franey did not set a deadline for such an application, as none is specified in rule 21, he made it clear that the longer it was left, the greater the risk that the Tribunal would refuse the application.

9. At that hearing Sarah Kinsley did point out that she was not the correct respondent, and that the claimant was employed by a company, the Blindz Store Limited.

10. Employment Judge Franey listed a further preliminary hearing (this one) to determine any application for an extension of time in which to file a response, and made other orders for further and better particulars of the claims, and listed the final hearing, in the event of the response being admitted, for September 2019.

11. Thereafter the claimant did indeed on 15 November 2018 provide the further and better particulars of her claims that had been ordered, and these were provided at the same time to the respondent, at the email address provided by her.

12. On 2 December 2018 the claimant's lay representative sent an email to the Tribunal, copied to the respondent, pointing out that no response had been received, despite the Tribunal having made it clear to the respondent on 7 November how important of submitting the response immediately. She sought a default judgment.

13. The Tribunal replied, copied to the respondent at the address she had given for correspondence of 1A Dean Terrace on 17 December 2018, expressing surprise that no application for an extension of time had yet been made. The time for consideration of a default judgment, however, was at this preliminary hearing.

14. On 4 December 2018 , it appears, the respondent did reply to the claimant's representative , copied to the Tribunal, though it is not on the Tribunal's file, to the effect that her solicitor was preparing a defence. She claimed that the updated (i.e further particularised) claim was all lies. Due to the "level of deceit" she needed to seek legal advice and have a proper defence drafted. The defence , she said, should be ready two months before the court date of February.

15. Nothing further was heard from the respondent by the claimant or the Tribunal until 6 February 2019, the day before the preliminary hearing. At that juncture , at 14.09 , the respondent's representative ELAS sent an email to the Tribunal and he claimant enclosing the draft Grounds of Resistance, and Response to the Further and Better Particulars of the claims. As that document, however, was not on, and did not include, the prescribed ET3 form, later that day at 16.33 Mr Demeza – Wilkinson sent the Tribunal the relevant ET3 form, duly completed.

16. The first email that day set out the respondent's reasons for requesting an extension of time , as follows:

"The Claimant's original claim form , as a result of the address the Claimant included on her claim form, was sent to a residential house with multiple occupant above a bar. To ensure any mail reaches the Respondent at that address, it has to be specifically addressed to the 'Blindz Porter (sic) *Cabin' or 'Blindz Porter Building'. This is an instruction that is given to anyone that wishes to send correspondence in the post to the Respondent . If that instruction is not followed , the post goes to the residential house which the Respondent does not live in, and there is no mail forwarding function in place at that location. There is, quite simply, no way of the Respondent knowing if any post has been sent to her should it go to the residential house.*

The Respondent submits that the Claimant would have been fully aware of the need to specifically address any post to the 'Blindz Porter Cabin/Building ' as it is an instruction she would have given herself to customers on several occasions as part of her role. The Respondent submits that the Claimant deliberately did not include

the exact address as she was aware what would happen if she didn't and hoped the Respondent would not receive the correspondence. Given the above, the Respondent submits that, despite the Claimant's contentions during the previous preliminary hearing, that she did not become aware of the claim form until a considerable time after the deadline for submission or a response had passed and in fact not until the day before the last preliminary hearing.

Since the preliminary hearing on 7th November 2018 , the Respondent has identified the need to seek legal assistance which she has done. This took some time as she wanted to find a suitable representative.

Further the Respondent currently runs her business 'The Blindz Store ltd' on her own. The business is currently going through a hard time and the Respondent has been under considerable stress during her attempts to keep the business afloat. She has in recent months been working over 80 hours each week and has had to juggle this with looking after two young children. Her business has been struggling financially and the Respondent has had to make the difficult yet reasonable decision to prioritise saving her business , in to which she has made significant personal investments and employs others, and looking after her young children , above all else.

Unfortunately, this has meant that she has not had much time over recent months to focus on this tribunal matters. We submit that given the above, the Respondent's actions have bene far from unreasonable."

17. The email goes on to make submissions as to why it would be in accordance with the overriding objective to grant the extension sought. The factual basis fo the application, however, is containing in the preceding extract from the email of 6 February 2018.

18. In the draft response documents, submitted with the ET3, the primary defence is that the claimant was not employed by the respondent personally, but by the Blindz Store Limited. That is not, however, the only defence pleaded, and the claimant's claims are responded to in some detail, and are denied. In particular, knowledge of any disability is disputed, it is denied that she was dismissed, and denied that there was any failure to make reasonable adjustments.

19. At the hearing on 7 February 2019 the respondent attended (a little late) and was represented. She had not made a witness statement, though there was no direction that she should do so. Permission was sought and granted for her to give evidence, which she duly did.

The respondent's evidence.

20. The respondent's evidence was that the address 490 - 492 Oldham Road was in part a property in multiple occupation in that there were flats above the commercial premises on the ground floor. The respondent had given the registered of the company The Blindz Store Limited as 7, Stamford Square, Ashton – under – Lyne in her evidence in chief, but she accepted this had been changed to the Oldham Road address in November 2017. She agreed that she had not been very clear about this.

21. She produced documents which showed the company trading at Minden Parade in Bury in 2018, until the lease of that property was surrendered on 6 November 2018. She contended that all company correspondence went to and from that address.

22. The Tribunal was shown photographs of the premises in question, which show that a number of businesses using the name “Blindz” appear to operate, or have operated, from the building, and there is , adjacent to it a form of Portacabin or similar structure from which the business has latterly operated, and to which the respondent post for it should have been posted. These photographs were taken in October 2018.

23. The business had not operated from the main building for some time, but occupied a portacabin to the side of the building (just visible to the left of the building in the photographs). That was where post needed to be delivered, and if it was addressed to “Blindz” it would have been. The letter box at the main building was taped up from the inside , and the post for the tenants was delivered to a separate letterbox.

24. The respondent, after the luncheon adjournment produced examples of post sent to individuals residing , or who had previously resided , in the various flats in question. The property had previously been a public house, the Waterloo Tavern. There had, however, been some form of bar in it whilst the respondent or her company traded from it. The photographs show that in addition to a window blinds business , a Spanish property business and (on Friday and Saturday) a bar also traded from the same building.

25. The respondent was adamant that she had not received the claim form and correspondence from the Tribunal. She had asked the tenants, but none of them had received any documents from the Tribunal addressed to her. The tenants had now left, and the flats had been empty since about Christmas.

26. Having become aware of the hearing on 7 November 2018 by social media (whether on an account that she was in fact likely to see or otherwise) she attended the hearing , and made it clear that she wished to defend the claims.

27. She received the further particulars on or about 15 November 2018, and realised that she needed to obtain appropriate representation. This took some time, she finally instructed ELAS around December 2018.

28. By early December 2018 she expected that the response would be filed soon, but it was not. She accepted that the responsibility for that delay lay with her and not ELAS, but she was under severe financial hardship and stress.

29. She had been struggling to run the business in 2018, and was working long hours, doing three people’s jobs. She has a young family , and it was hard to juggle work and her family commitments.

30. When she said in her email of 4 December 2018 that the defence would be filed within 2 months, she may have meant 2 weeks.

31. She had been contacted by ACAS during the early conciliation process, and believed that the matter had been resolved.

Findings of fact.

23. Whilst sharing some of Mr Warnes' scepticism as to whether the respondent did or did not receive the claim form and accompanying correspondence at the address to which it was sent, and being unimpressed with the respondent's evidence as to the change of registered office of the limited company , and certain other matters, two facts stand out. The first is that the claimant, unfortunately, did not use the word "Blindz" on the claim form , or in the name or address she gave the Tribunal for the respondent. This is particularly unfortunate when one notes that she did when contacting ACAS , as the proposed respondent was stated simply to be "Blindz". That only Sarah Kinsley was referred to at box 2.1 of the ET1 claim form may be a consequence (which the Tribunal sees all too frequently) of the use of the word "person" in the rubric that appears on the form as presented to prospective claimants.

32. Be that as it may, clearly no reference to "Blindz" was made. Whilst Mr Warnes cross – examined the respondent to suggest that she must have received the original claim form, there is no basis upon which the Tribunal can be satisfied on a balance of probabilities that she did, and whatever its suspicions, given the absence of the reference to "Blindz" on the paperwork sent out, the nature of the property 490- 492 Oldham Road, and its postal arrangements , the Tribunal cannot be satisfied that the respondent did in fact receive the original claim form.

33. The Tribunal , however, does not accept for one moment that the claimant was seeking to be in any way devious by this omission, and was seeking to ensure that the respondent did not respond to the claims. That is obvious from the other highly prominent fact, which is that the respondent did attend the preliminary hearing, when she learned of it the previous day. That shows two things. Firstly, whilst the claimant apparently sent a message to a "whatsapp" group which the respondent did not use, the fact is that the respondent did become aware of the preliminary hearing by that means. If the claimant was truly trying to conceal the proceedings from the respondent , it seems inconsistent to send any messages which might lead to her finding out about them, as she of course did. Further, of course, the respondent did then attend the preliminary hearing, and made it clear that she wished to defend the claims. She did not ignore the proceedings at that point. Her conduct once aware of the preliminary hearing is consistent with a party who intended to defend the claims, and , given that the claims are made against her personally, and not any limited company, the Tribunal doubts that she would simply have ignored the claim form had she actually been aware of it.

25. Thereafter, the respondent must accept, as she in fact did, that there was substantial delay in submitting the draft response. That period should not run until 15 November 2018 , when the Tribunal had indicated it may be appropriate to await claimant had further particularised her claims, but it then took until 6 February 2018 for the draft response to be filed.

Discussion and decision.

34. Had the respondent, shortly after the preliminary hearing, entered a response and made this application , a little over two months after the claims were issued, and little more than one month after the original response was due, the Tribunal would have been likley to grant the application for what would have been a relatively short extension of time.

35. The difficulty for the respondent, which has made the Tribunal hesitate whether to grant the extension sought , is what happened thereafter, or more accurately, what did not. Whilst Employment Judge Franey imposed no deadline, and the rules of procedure do not prescribe any, he also made it clear that the later the application was made, the more difficult it would be to have it granted.

36. Almost one month later, on 2 December 2018 the claimant's representative alerted the respondent and the Tribunal to the continuing absence of a response or the application for an extension. The respondent on 4 December 2018 informed the claimant that the defence was being drafted ,and would be ready "two months" before the court date, i.e the February preliminary hearing. That was, of course, 7 December, but nothing was received then. The Tribunal's letter of 17 December 2018 similarly failed to prompt anything from the respondent , until 6 February 2019.

37. To put that in context, that is almost four months from the date that the original response was due on 9 October 2018, and three months from the last preliminary hearing on 7 November 2018, It is over three times the 28 day time limit prescribed in the rules for a respondent to present a response.

38. Thus, if one discounts completely the initial period of 28 days, and then the period up to 7 November 2018, giving the respondent the benefit of the doubt as to whether the claim was or was not received when originally served, there is still a considerable delay in submission of the ET3 and the application for an extension.

39. This period, it seems, is attributed by the respondent to the legal advisers she engaged, ELAS. In an email to the Tribunal after the hearing, on 8 February 2019, the respondent is critical of them in several respects. She goes so far as to blame them for not putting in the application as soon as she instructed them. She does not give details of when that was. Her email of 4 December 2018 suggests that she had done so by then. In cross examination on this point, however, the respondent expressly said that she was not blaming ELAS, it was her fault, but she went on to say she was in severe financial hardship, and suffering severe stress.

40. There is no doubt that the respondent has not acted wisely in this matter, particularly since the last preliminary hearing 7 November 2018. She was warned of the need to get a response and an application into the Tribunal as soon as possible. She failed to do so for a further three months. Whether that is the fault of herself or her advisers does not , at this juncture, matter. Comment is also made upon the lack of any evidence in support of the matters advanced in the response. That is a point, but not a very strong one. There is clearly an issue as to who the employer was (and the payslips show the name of the limited company) , and other matters at issue , such as knowledge of disability , are unlikely to be capable of documentary demonstration . The draft ET3 and responses disclose arguable defences , as will be discussed when the merits are considered further below.

41. Whilst Mr Warnes strongly submitted that the rules must have force, and would be rendered ineffectual if respondents were granted considerable latitude as to when a response would be accepted, the fact remains that the Tribunal has a discretion as to whether or not to extend time in this matter.

42. The leading case on extension of time in which to present a response is ***Kwik Save Stores Ltd. v Swain [1997] ICR 49*** . This was cited with approval in ***Moroak (t/a Blake Envelopes v Cromie [2005] IRLR 535***.

43. Mr Warnes invited the Tribunal to consider the merits of the response, and highlighted the fact that respondent had not put forward any evidence in support of her response.

39. An important part of the judgment in ***Kwik Save Stores Ltd.*** reads (at para. 55) as follows:

"The discretionary factors

The explanation for the delay which has necessitated the application for an extension is always an important factor in the exercise of the discretion. An applicant for an extension of time should explain why he has not complied with the time limits. The tribunal is entitled to take into account the nature of the explanation and to form a view about it. The tribunal may form the view that it is a case of procedural abuse, questionable tactics, even, in some cases, intentional default. In other cases it may form the view that the delay is the result of a genuine misunderstanding or an accidental or understandable oversight. In each case it is for the tribunal to decide what weight to give to this factor in the exercise of the discretion. 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.

In some cases, the explanation, or lack of it, may be a decisive factor in the exercise of the discretion, but it is important to note that it is not the only factor to be considered. 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 in granting the extension of time, but it is not always decisive. There may be countervailing factors. It is this process of judgment that often renders the exercise of a discretion more difficult than the process of finding facts in dispute and applying to them a rule of law not tempered by discretion.

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 ***Costellow 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."

Thus, if a defence is shown to have some merit in it, justice will often favour the granting of an extension of time, since otherwise there will never be a full hearing of the claim on the merits. If no extension of time is granted for entering a notice of appearance, the industrial tribunal will only hear one side of the case. It will decide it without hearing the other side. The result may be that an applicant wins a case and obtains remedies to which he would not be entitled if the other side had been heard. The respondent may be held liable for a wrong which he has not committed. This does not mean that a party has a right to an extension of time on the basis that, if he is not granted one, he will be unjustly denied a hearing. The applicant for an extension has only a reasonable expectation that the discretion relating to extensions of time will be exercised in a fair, reasonable and principled manner. That will involve some consideration of the merits of his case."

40. Applying those factors, the length of the delay is significant, as has been observed. The reasons for it are initially, non – service, but after 7 November 2018, the reasons become more obscure, and relate to the delay in preparing a fully pleaded ET3, responsibility for which lies with the respondent, whatever the role of her advisers. A further factor, however, by analogy with applications for extensions of time to present claims, could be said to be the extent to which the cogency of the evidence is likely to be affected by the delay , has not been advanced on behalf of the claimant. Any delay is likely to affect the cogency of the evidence, but the employment giving rise to these claims ended in May 2018, and the matters that the claimant complains of begin (largely) in February 2018.

41. At the previous preliminary hearing the Tribunal listed the claims for a final hearing commencing on 3 September 2019. No orders were made on 7 November 2018 for disclosure or exchange of witness statements. Had case management orders been made on 7 November 2018 for disclosure (probably with early disclosure in relation to disability) , preparation of the bundle, and exchange of witness statements, it is unlikely that exchange of witness statements would have been ordered before the end of 2018. They can be ordered soon now, and to that extent only some four or five months at most will have been lost.

42. Indeed , it is the fact that he claims have been listed for hearing, which will not be affected by permission to serve a response out of time that is a significant factor in the Tribunal's deliberations. The claimant has, fortunately, lost nothing in terms of a hearing date by reason of the late response. Had the respondent put in her response on, or soon after, 7 November 2018, the final hearing date given at the preliminary hearing would have been the same.

43. It is clear from ***Kwik Save Stores Ltd.*** that a consideration of the merits will be a relevant consideration in applications of this nature. That, however, must have its limitations, for the Tribunal cannot try the claim at this stage. A scant and unparticularised response at this stage, or one which makes unsustainable propositions of law or fact could be one which a Tribunal can legitimately say lacks any merit.

44. In this instance, however, the response eventually submitted, is detailed and responds fully to all the claims made. Further, that is so not only in respect of the claims as originally pleaded, but there is also a response to the claims as further particularised. Indeed, the Tribunal suspects that it was, in part, the desire to plead a full response and to deal with the further particulars, that led to the delay. Further, the response (i.e in the form of both documents) does not merely make bare denials. Positive assertions of fact are made, disputing the claimant's claims. It is to be remembered that the claimant resigned (no longer relevant to an unfair dismissal claim, as there is none) , rather than was actually dismissed, and the claims she makes of disability discrimination and deductions from wages are all highly fact – sensitive. The respondent (whether the individual or the limited company) is a small employer, and much of the interaction between her and the claimant was oral, and by text or social media. This is unlikely to be a document heavy case, and hence neither party will be likely to be able to produce documentary evidence which strongly supports their case, or undermines their opponent's. A further valid point is that the claims themselves are still, the Tribunal agrees, inadequately particularised, and hence it is difficult for the respondent to respond more fully than she currently has done to parts of it.

45. Thus, despite Mr Warnes' submissions, the Tribunal does not consider that the response has no reasonable prospects of success. A crucial issue will be disability, which is not conceded, the burden of proving which lies on the claimant. It is of note that the claimant does not rely upon one single condition, and her claim as originally pleaded , was unclear as to what condition or conditions she relies upon. These were clarified in the further particulars, as Chronic Obstructive Pulmonary Disease, diabetes and a degenerative spinal disease. None of these is a deemed disability, and the claimant will have to establish how , individually or cumulatively, they satisfy the definition of disability. There is no suggestion that the respondent, through occupational health reports or other means, is likely to be in possession of relevant medical evidence from which she or it should be able to form a view on disability, or should even concede it. On this aspect of "the merits" the respondent is presently entitled to make no such concessions, and to require the claimant to prove this critical aspect of her claims.

46. As can be seen, however, the respondent has not simply relied upon a denial of disability, she has, where possible, pleaded in the alternative in the event that the claimant does establish disability.

47. Ultimately, as ever with issues of discretion, the decision comes down to the question of prejudice. Is one party more greatly prejudiced than the other by the grant or refusal of the extension of time sought? These are significant claims, made against the respondent personally. The claimant has submitted (at the last preliminary hearing it seems) a schedule of loss seeking some £20,000 in compensation. If the respondent is not permitted to defend the claims, the claimant gets a windfall. If she is, the claimant will simply have to proceed to a final hearing at a date which was always going to be the date fixed by the Tribunal, with ample time for the parties to complete preparation.

48. For those reasons, whilst the conduct of the respondent since 7 November 2017 has been far from diligent, the Tribunal will grant her an extension of time to file a response, and will accept the response from 6 February 2019.

Case Management.

48. Following on from this decision, it is clear that the response contends that the employer (which alone can be liable for any wrongful dismissal or for unlawful deductions from wages, or for holiday pay) is said to be the limited company The Blindz Store Limited. The Tribunal proposes to add that company as a respondent, and the treat the response as being filed on behalf of both respondents.

49. Some case management issues remain. The Tribunal did not at the previous hearing go on to make orders for disclosure, preparation of the bundle, or exchange of witness statements. The claimant has provided further particulars of her claims, and a schedule of loss. There are aspects of both, however, which require clarification. Further, disability needs addressing.

50. In relation to the Further and Better Particulars of Claim, the claimant is apparently bringing every possible type of disability discrimination claim. She has identified what the "something arising from" is in relation to her s.15 claims, and has identified actual or hypothetical comparators for her direct discrimination claims. What she has not done, however is:

a) To the extent that she makes indirect discrimination claims, she has not identified the relevant PCP relied upon; and

b) To the extent that the claimant makes claims of failure to make reasonable adjustments she has not identified any PCP which put her at a particular disadvantage which reasonable adjustments would have been likely to obviate or reduce; and

c) To the extent that she makes victimisation claims, he has not identified the relevant protected act that she claims she had carried out in response to which she says she was unfavourably treated.

51. Further, disability is not conceded. It has not, of course, thus far been addressed specifically. The claimant has pleaded COPD, diabetes and a degenerative spinal disease as individually or cumulatively amounting to a disability. She now needs to give disclosure relating to those conditions, and, the Tribunal considers, should make and serve a s.6 impact statement to enable the respondent to take a view on whether disability can now be conceded, or whether a preliminary hearing on this issue should be held. Given that a substantial part of the claimant's claim rests upon disability, the Tribunal would be likely to consider that a preliminary hearing on the issue of disability would be in accordance with the overriding objective.

52. Case management orders for these purposes are therefore made above. Given that the respondent is again unrepresented, the Tribunal considers that it is preferable that the claimant has conduct of preparation of the bundle. As, however, neither party has had an opportunity to be heard in relation to these orders, either party may seek to vary or revoke them in accordance with rule 29.

Employment Judge Holmes

Dated : 12 April 2019

JUDGMENT, REASONS AND ORDERS
SENT TO THE PARTIES ON

30 April 2019

FOR THE TRIBUNAL OFFICE

(1) Any person who without reasonable excuse fails to comply with an Order to which section 7(4) of the Employment Tribunals Act 1996 applies shall be liable on summary conviction to a fine of £1,000.00.

(2) Under rule 6, if this Order is not complied with, the Tribunal may take such action as it considers just which may include (a) waiving or varying the requirement; (b) striking out the claim or the response, in whole or in part, in accordance with rule 37; (c) barring or restricting a party's participation in the proceedings; and/or (d) awarding costs in accordance with rule 74-84.

(3) You may apply under rule 29 for this Order to be varied, suspended or set aside.