



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs B Chattopadhyay

**Respondent:** Peter Bedford Housing Association

**Heard at:** East London Hearing Centre (by Cloud Video Platform)

**On:** 3 December 2020

**Before:** Employment Judge Reid

## **Representation**

**Claimant:** In person (supported by her husband Mr A Chattopadhyay)

**Respondent:** Mr McDevitt, Counsel (instructed by DWF Law LLP)

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was CVP video (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents I was referred to were those in the Tribunal file including the Claimant's husband's application for a postponement of the final hearing dated 1<sup>st</sup> September 2020, the Respondent's applications dated 22<sup>nd</sup> October 2020 and the further correspondence from the Claimant and from her husband including the medical evidence provided by her.

## **JUDGMENT**

**The Claimant's claims are dismissed under Rule 47 of the Tribunal Rules 2013 for non-attendance at the final hearing on 9<sup>th</sup> September 2020 to 11<sup>th</sup> September 2020.**

**Oral reasons having been given, the Claimant requested written reasons at the hearing.**

## **REASONS**

1. The Respondent made an application for dismissal of the Claimant's claims for non-attendance at the final hearing on 9<sup>th</sup> September 2020, alternatively

for a strike out of her claims. The Respondent provided written submissions dated 22<sup>nd</sup> October 2020. I heard oral submissions on both sides.

2. There was a telephone preliminary hearing on 20th August 2020 to discuss arrangements for the final hearing to start on 9<sup>th</sup> September 2020. Neither party said they had any problems with arrangements for the hearing and said they could do a video hearing (CVP). The Claimant did not raise her mental health as an issue affecting participation although she had had a mental health condition since June 2020 when she first went to her GP about it.
3. At this hearing today the Claimant said the main reason for asking for the postponement on 1<sup>st</sup> September 2020 was because her mental health meant she could not attend the final hearing.
4. On 1<sup>st</sup> September 2020 the Claimant's husband Mr Chattopadhyay asked for a postponement for two reasons (1) the Claimant had chronic depression and (2) COVID 19 (unspecified). He then stated that three of the Claimant's witnesses had COVID 19; he did not merely say they had symptoms and were self-isolating. I find that the Claimant's husband was not saying the Claimant specifically had COVID 19 herself in this application.
5. The Claimant was asked to provide medical evidence for her witnesses by Judge Russell on 1<sup>st</sup> September 2020 including NHS messages confirming positive test results.
6. On 2<sup>nd</sup> September 2020 the Claimant sent the Tribunal a MED 3 certificate dated 2<sup>nd</sup> September 2020 saying she was not fit for work due to depressive disorder and lower back pain but she sent nothing about COVID 19 and her witnesses and no explanation as to why they could not attend by CVP a week later.
7. Judge Taylor refused the postponement application on 8<sup>th</sup> September 2020 noting that the witnesses' COVID 19 evidence had not been supplied as per Judge Russell's order and the MED 3 certificate did not show why she could not attend by reason of the two conditions on the certificate. Judge Taylor noted that the bundle had been supplied to the Claimant on 3<sup>rd</sup> June 2020 and updated on 27<sup>th</sup> August 2020.
8. On 8<sup>th</sup> September 2020 the Claimant's husband emailed the Respondent a text message from her GP surgery said to have been received by the Claimant on 8<sup>th</sup> September 2020, showing that a GP letter had been requested by the 8<sup>th</sup> September. I find that the Claimant did not request the letter until 8<sup>th</sup> September 2020 because the text refers to a request to get the letter that day ie the Claimant had only asked for it on the 8<sup>th</sup> September 2020 and not before. The Claimant subsequently attended an appointment to discuss that letter on 16<sup>th</sup> September 2020 according to the GP entry for

that date. The Claimant said today that she had originally asked for that letter in August 2020 but produced no evidence that she made the request for the letter in August and requesting it in August was inconsistent with the text dated 8<sup>th</sup> September 2020 referring to her wanting the letter that day and not mentioning any problems on 20<sup>th</sup> August 2020.

9. The Claimant's husband then sent in a 12 point letter in response to the postponement refusal, explaining that due to her mental health the Claimant was not speaking to anyone, unable to think properly to take part in a hearing and that her condition was grave.
10. The Claimant did not attend on 9<sup>th</sup> September 2020 for the final hearing. The Respondent was ready to go ahead. Judge Taylor had made it clear to the Claimant the day before that reasonable adjustments could be considered.
11. Judge Lewis made directions taking into account what the Claimant's husband had said in his 12 point letter and he (and not the Claimant) then provided a witness statement and the GP print out and GP letter dated 16<sup>th</sup> September 2020.
12. The GP letter did not say that the Claimant could not attend a hearing due to her mental health. It said that further stress could jeopardise her mental health to a detrimental level and that the proceedings should be adjusted accordingly – it made no reference to not being able to attend hearings either in the past or going forward (consistent with the later 18<sup>th</sup> September 2020 entry – when the Claimant was coherent and able to talk normally).
13. The Claimant said she had been disadvantaged in her hearing preparation by claimed delays by the Respondent in providing the electronic bundle but did not claim today that that was the reason for any inability to attend the final hearing (which even if it were the case, would not explain non-attendance). I find this to be something of a red herring and not relevant to the issue of why she did not attend on 9<sup>th</sup> September 2020. Judge Taylor had in any event already decided that she had received it by 3<sup>rd</sup> June 2020 and it had been updated on 27<sup>th</sup> August 2020.

### **The Tribunal Rules**

14. Tribunal Rule 47 provides that a claim can be dismissed if a claimant does not attend their hearing; alternatively the Tribunal can proceed in a party's absence.
15. In this case the Tribunal on 9<sup>th</sup> September 2020 took account of the Claimant's husband's detailed letter and did not immediately dismiss the claim (or go ahead without the Claimant) but made further directions for her to provide evidence as to why she could not attend.

16. The evidence then provided did not show that she had been unable to attend via CVP on 9<sup>th</sup> September 2020 due to her mental health condition.
17. The Claimant also did not provide any further evidence regarding her witnesses' inability to attend – she said at this hearing that the postponement request was because they had COVID 19 symptoms and not because they definitely had COVID 19, but the application for a postponement specifically said they had COVID 19. There was also no explanation why a week after the postponement application they were unable to attend via videolink. Although the Claimant said she was respecting their privacy she could have given further explanation and information about them.

## **Conclusion**

18. Taking these findings into account and the overriding objective under Rule 2 of the Tribunal Rules 2013, I decide that the Claimant's two linked claims should be dismissed under Rule 47 because she failed to attend the final hearing on 9<sup>th</sup> September 2020 to 11<sup>th</sup> September 2020.
19. I have taken into account the Claimant has a mental health problem which has been treated and is being treated with CBT but she has not provided evidence that she was unable to attend the final hearing on 9<sup>th</sup> September 2020 because of that condition; she had had the condition since June 2020 and there were several opportunities for her to address that issue before the hearing but she did not do so. When she did provide a letter from her GP it ultimately in any event did not support an inability to attend the hearing due to her mental health, which she said was the main reason she did not attend.
20. Her claims are therefore dismissed under Rule 47.
21. The Respondent also made an application for costs which decision was reserved due to the Claimant having to leave for a doctor's appointment. The decision on that application is set out in a separate judgment.

**Employment Judge Reid  
Date: 9 December 2020**