EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100587/2020 (V)

Rule 20 Hearing held remotely at Glasgow on 14 September 2020 (by Cloud Video Platform)

Employment Judge: Ian McPherson

Ms Karen Stewart	**Claimant** **Represented by:** **Mr W McParland** **Solicitor**
Ballantrae Rural Initiative Care in The Community Ltd	**Respondents** **Represented by:** **Mrs A Stevenson** **Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

(1) Having heard from the respondents' representative at this listed Remedy Hearing, with her seeking to participate in the Hearing, and with an oral application from her, on behalf of the respondents, intimated at this Hearing, for an extension of time under **Rule 20 of the Employment Tribunals Rules of Procedure 2013** to present a late ET3 response defending the claim, and for revocation of the liability only Default Judgment issued against the respondents on 20 May 2020, the Tribunal, having heard also from the claimant's representative, allowed the respondents' representative to participate, and considered it appropriate to determine the **Rule 20** application

at this Hearing, given both parties' representatives were in attendance, and able to address the Tribunal at this Hearing.

(2) Having thereafter heard oral submissions from the respondents' representative, and the claimant's representative in opposition to the respondents' application for an extension of time to present a late ET3 response, and for revocation of the Default Judgment issued on 20 May 2020, the Tribunal, after private deliberation in chambers, during the adjournment, gave an oral ruling that it had decided that it is in the interests of justice to **grant** the respondents' opposed application to accept the ET3 response previously submitted on 25 June 2020, and to vacate this listed Remedy Hearing. Written reasons for the Tribunal's oral ruling having been reserved, they are given now in writing, as per **Rule 62 of the Employment Tribunals Rules of Procedure 2013**.

(3) Further, the Tribunal instructs the clerk to the Tribunal to arrange for an early Case Management Preliminary Hearing by telephone conference call to determine further procedure and listing for a Final Hearing in early course, ordering the claimant's representative to complete and return to the Tribunal, **within 21 days (from date of issue of this Judgment),** a completed claimant's Preliminary Hearing ("PH") Agenda for a PIDA (whistleblowing) complaint, and the respondents' representative to thereafter submit a completed respondents' PH Agenda, for consideration by an Employment Judge at that telephone conference call Case Management Preliminary Hearing, on a date and at a time to be hereinafter assigned by the Tribunal, and intimated to both parties' representatives.

(4) Having given that oral ruling, it is noted and recorded that the Tribunal at the same time reserved to the claimant's representative the usual liberty to apply for an order for costs / expenses incurred by the claimant as a result of the vacation of this Remedy Hearing, and for that matter to be determined on the basis of written representations from both parties, unless an oral Hearing is requested.

(5) If the claimant intends to make an application for expenses, or wasted costs, against the respondents, then her representative should do so, **as soon as possible**, in terms of **Rules 74 to 84**, by making written application to the Tribunal, by e-mail, with copy sent at the same time to the respondents' representative, for comment or objection **within 7 days of intimation of any such application**, and, in that event, the respondents' representative shall advise whether, in addition to a reasonable opportunity to make written representations, an Expenses Hearing is sought before the Tribunal.

(6) In these circumstances, the extension of time having been granted to the respondents, the Default Judgment issued by the Tribunal on 20 May 2020 in terms of **Rule 20** is, as per this Judgment, **set aside** in terms of **Rule 20(4) of the Employment Tribunals Rules of Procedure 2013,** and so it no longer has any legal effect.

(7) Further, the clerk to the Tribunal is instructed to accept the ET3 response previously submitted on 25 June 2020, and the case to proceed as defended by the respondents, on both liability and remedy, and for the clerk to copy the accepted response to the claimant's representative and ACAS, and issue both parties' representatives with the appropriate PIDA PH Agendas for completion and return to the Tribunal, with copy sent at the same time to the other party's representative, as per the case management orders made by the Judge, and issued to both parties' representatives, under separate cover, along with this Judgment.

REASONS

Introduction

1 This case called before me on the morning of Monday, 14 September 2020, at 10:00am, for a Remedy Hearing, to take place by video call using Cloud Video Platform ("CVP"), further to a Notice of Hearing issued by the Tribunal to both parties by email on 3 September 2020.

2 Following ACAS early conciliation between 17 December 2019, and 1 January 2020, the claimant, acting though her solicitor, Mr William McParland

of Thompsons Solicitors, Glasgow, presented an ET1 claim form to the Employment Tribunal, on 31 January 2020, against the respondents, complaining of unfair dismissal, and seeking an award of compensation against the respondents.

3 Although section 5.1 of that ET1 claim form indicated that employment was continuing, the tick against that box was read by the Tribunal as having been made in error, the detailed, 44 paragraph paper apart making it clear that the claimant had been dismissed by the respondents on 15 November 2019, and that dismissal upheld by the respondents, on 2 December 2019, following an unsuccessful internal appeal by the claimant against her dismissal.

4 The claim was accepted by the Tribunal on 4 February 2020, and a copy of the claim was served on the respondents, at their business address, on that date, by Notice of Claim requiring them to lodge an ET3 response at the Glasgow Tribunal office by no later than 3 March 2020, and advising them that the case was listed for a Preliminary Hearing before the Tribunal on 18 June 2020. A Preliminary Hearing Agenda was sent to both parties by the Tribunal, the claimant's Agenda to be returned by 28 May 2020. Parties were advised that it was proposed to list the case for a Final Hearing in August to October 2020.

5 In that Notice of Claim sent to the respondents, it was explained to them that if their response was not received by that due date of 3 March 2020, and no extension of time had been agreed by an Employment Judge before that date, then they would not be entitled to defend the claim. It was further explained that, where no response was received or accepted, an Employment Judge might issue a Judgment against them without a Hearing, and they would only be allowed to participate in any Hearing to the extent permitted by an Employment Judge.

Default Judgment

6 No ET3 response form having been received, by the due date of 3 March 2020, or at all, the case file was referred to Employment Judge Laura Doherty,

for further direction. On 10 March 2020, she decided, on the basis of the available material, and in terms of **Rule 21 of the Employment Tribunals Rules of Procedure 2013,** that while it was possible to issue a Judgment without the need for a Hearing, there being no acceptable response received from the respondents, she considered that there was insufficient information to issue a Judgment at that stage and therefore she requested the claimant's representative to provide further information within 14 days, giving full details as to the remedy sought by the claimant in respect of each head of claim, together with details of how that sum was made up.

7 On 31 March 2020, in response to Judge Doherty's request for remedy information, and with an apology for the delay in doing so, Ms Elspeth Drysdale, at Thompsons Solicitors, submitted to the Tribunal, a Schedule of Loss for the claimant seeking **£19,318.89** from the respondents. It did not bear to have been intimated to the respondents, so, by letter from the Tribunal dated 30 April 2020, I asked for clarification on that point, to decide whether or not, and if so, in what terms to issue a Default Judgment in the claimant's favour under **Rule 21**. A response was requested by 10 May 2020, but no response was received from the claimant's solicitors by that date.

8 On referral back to me, I decided that it was appropriate, under **Rule 21**, to issue a liability only Default Judgment, finding that the claim succeeded, under **Sections 43B, 47B and 103A of the Employment Rights Act 1996**, and finding the claimant entitled to an award of compensation from the respondents, I ruled that that compensation award be determined at a 2 hour Remedy Hearing on a date to be thereinafter assigned by the Tribunal.

9 That Default Judgment, dated 15 May 2020, was sent to both parties on 20 May 2020. It appears from the casefile, and the Tribunal's letter of 20 May 2020, entitled "***No Response- Judgment issued***", that the case remained listed for 18 June 2020, the date previously set for the Case Management Preliminary Hearing, and it was administratively converted to a Remedy Hearing.

10 The Tribunal's letter of 20 May 2020 to the respondents stated that the Judgment had been issued without a Hearing under **Rule 21**, but that the respondents had the right to apply for a reconsideration of the Judgment, within 14 days, and, if they now wished to defend the claim, they would also to have to apply for an extension of time to submit their response, and that would be considered by an Employment Judge. If they believed the Judgment was wrong in law, they were also informed that they could appeal to the Employment Appeal Tribunal within 42 days.

Respondents' Application for Reconsideration of Default Judgment

11 Thereafter, by letter to the Glasgow Employment Tribunal, dated 1 June 2020, and received on 4 June 2020, Mrs Amelia Stevenson, director with the respondents, wrote as follows:

"We wish to apply for a reconsideration of this judgement or for the matter to be put to arbitration. The lack of a request to do this earlier is an administration oversight on our part, due in part to the strain put on our home care agency by the Covid 19 pandemic.

We consider that we followed the correct procedures in disciplining Karen Stewart and would appreciate a second chance to put our views to the panel or the arbiter.

A copy of this letter has been posted to Karen Stewart today."

12 On 11 June 2020, Mr McParland, the claimant's solicitor, emailed the Tribunal advising that he understood, from correspondence with the claimant, that the respondents had applied for reconsideration, but they had not been copied into any such application, and requesting a copy from the Tribunal, and stating that substantive objections would be prepared on the claimant's behalf.

13 On my direction as Judge, following the case file being referred to me for initial consideration of the respondents' reconsideration application, I decided that it had been received in time, having been submitted within 14 days of the Default Judgment (issued on 20 May 2020) going by the date of Mrs

Stevenson's letter, and so I did not reject it as submitted out of time, nor did I need to consider extending time in accordance with **Rule 5**.

14 In the Tribunal's letter to both parties, dated 15 June 2020, that letter received on 4 June 2020 from Mrs Stevenson was copied to the claimant's solicitor, Mr McParland, for his comments, within 10 days, and the Remedy Hearing listed for 18 June 2020 was postponed, as the respondents had applied for reconsideration.

15 Mrs Stevenson, as the respondents' representative, was advised, as per the Tribunal's letter of 20 May 2020, that she must apply for an extension of time to submit an ET3 response, submit a draft ET3, and state whether she wished a Hearing. The claimant's solicitor was likewise asked to express a view as to whether the reconsideration application could be determined without a Hearing.

16 By email to the Tribunal, on 25 June 2020, copied to Mrs Stevenson for the respondents, Mr McParland replied to the Tribunal's letter of 15 June 2020, and not having had sight of any other correspondence to extend time to submit ET3 and / or copy response form, he advised that the respondents' application was opposed. He suggested that the reconsideration application could be determined without the need for a Hearing.

17 In particular, Mr McParland's opposition stated that:

"***With respect , the explanation that it was "an administration oversight … due in part to the strain put on our home care agency by the Covid 19 pandemic" is inadequate and the Respondent cannot assume that application will be granted for that reason. We do not know why the Respondent has failed to act until now, but they would have received the ET1 claim (received by Tribunal on 31/01/2020) well before the Covid 19 pandemic."***

Late ET3 Response from Respondents

18 Further, and also on 25 June 2020, the Tribunal received, by 1st class post from Mrs Stevenson, for the respondents, a completed ET3 response form, giving her name as the respondents' contact, and defending the claim. It was neither confirmed or denied that there had been early conciliation with ACAS, but it was stated that the respondents were happy to work on conciliation with ACAS, and it was also stated that the claimant had been dismissed for gross misconduct, and all of the respondents' disciplinary procedures were followed, and that all payments due were made to the claimant.

19 Copies of letters and minutes of meetings were attached, from Mrs Stevenson, and copy letter from a Colin McNally, director, dated 15 November 2019, dismissing the claimant, and Cathy Thorburn, director, dated 2 December 2019, upholding that dismissal.

20 The completed ET3 response was not accompanied by any covering letter from Mrs Stevenson, or anybody else on the respondents' behalf, responding to the Tribunal's letter of 15 June 2020, and so there was no statement as to whether or not the respondents were seeking an extension of time, nor whether they sought any Hearing.

21 Further, it was not stated whether or not the ET3 had been copied by the respondents to the claimant and / or her solicitor as her representative, as per the Tribunal's letter dated 20 May 2020. Likewise, the Tribunal did not receive any correspondence from Mrs Stevenson, or anybody else on the respondents' behalf, responding to Mr McParland's objections stated on behalf of the claimant, on 25 June 2020, although he had copied her directly into those objections by email.

Reconsideration of Default Judgment refused by the Tribunal

22 Mr McParland's email of 25 June 2020, objecting to the respondents' reconsideration application of 1 June 2020, was referred to me, on 25 June 2020, for direction. I decided, as per email thereafter sent by the Tribunal on my instructions to both parties on 3 July 2020, that, without the need for a

Hearing, I refused the respondents' application for reconsideration of the Default Judgment issued on 20 May 2020.

23 I directed that the case would proceed to a Remedy Hearing at a date to be advised, stating that : "***It is not in the interests of justice to reconsider that judgment given that the respondent has failed to lodge an ET3 and their letter of 1/6/20 is inadequate in explaining their failure to do so."***

24 Unbeknown to me, at that time, the Tribunal had received a late ET3 response on 25 June 2020, by post, but it was only referred to the duty Judge, and not myself, on 30 June 2020 for instructions, as it was late, for it should have been presented before the time limit expired on 3 March 2020, and there was no application for any extension of time.

25 The duty Judge directed that the clerk should proceed with my instructions given on 25 June 2020, and as such the duty Judge gave no direction that the response should not be accepted as it was late, and no application for an extension of time had been made, which would, if instructed by the duty Judge, have led to a standard letter of response rejection being issued by the Tribunal, under **Rule 18,** which would have entitled the respondents to have applied, within 14 days, for reconsideration of that rejection in terms of **Rule 19.**

26 There was thereafter no further correspondence received by the Tribunal from Mrs Stevenson, or anybody else from the respondents, after issue of the Tribunal's email of 3 July 2020, sent to her, confirming that the respondents' application for reconsideration of the Default Judgment had been refused by the Tribunal.

27 After Mr McParland, the claimant's solicitor emailed the Tribunal, with copy to her, on 1 September 2020, enclosing the claimant's Note of Argument, 3 pages, 27 paragraphs, by Mr McParland, the claimant's own 5 page, 60 paragraph witness statement, and an updated, 4 page Schedule of Loss (for **£22,690.19**) with supporting documents, there was no still intimation from the respondents to the Tribunal, or to the claimant's representative, that the

respondents were seeking to defend the claim, and participate in this listed Remedy Hearing.

28 Further, it is appropriate to note and record that nor had there been any enquiry from the respondents, querying the status of their late ET3 response, posted to the Tribunal, given the terms of the Tribunal's email of 3 July 2020, which made no reference to it having been received, and no query from Mrs Stevenson as to whether or not, in fact, it had ever been received by the Tribunal.

Hearing before this Tribunal

29 When the case called before me, remotely by CVP, on the morning of Monday, 14 September 2020, for the listed 2-hour Remedy Hearing, the claimant was in attendance, along with her solicitor, Mr McParland, as her legal representative, they both being in Thompsons Glasgow office, while Mrs Stevenson appeared for the respondents, unaccompanied.

30 This Hearing was a video Hearing ("V") held entirely by video conference call, via CVP, and parties did not object to that format. On account of the ongoing Covid 19 pandemic, and joint Presidential Guidance issued by the President of the Employment Tribunals in Scotland, and England & Wales, and on account of there currently being no In Person Hearings conducted, both parties were notified accordingly that this Hearing would be held by CVP given the implications of the pandemic.

31 I was sitting in my judicial chambers in the Glasgow Tribunal Centre, and my CVP clerk was working remotely from home. Whilst all participating remotely, parties and I had video and audio reception of all that was said at the Hearing, which was recorded.

32 As I had not anticipated the respondents appearing, given the lack of any accepted ET3 response, and the lack of any communication from them after 25 June 2020, and issue of the Tribunal's email of 3 July 2020, and Mr McParland's email of 1 September 2020, with Note of Argument, witness statement, and Schedule of Loss for the claimant, I advised both parties, at

the start of the Hearing, that I wished to clarify with Mrs Stevenson the extent to which she was seeking to participate in this listed Remedy Hearing, given there was no accepted ET3 response from the respondents.

33 Mrs Stevenson advised me that she is the chair of the respondents' board of directors, and she agreed that their ET3 response was late, and it had not been accepted by the Tribunal, and there had been no application for reconsideration of a rejected response, and no application for an extension of time. She apologised, and said she was sorry, if she should have applied for a reconsideration, but she had seen the claimant's submission for this Remedy Hearing, and she stated that it did not square with the respondents' paperwork at the time of the claimant's dismissal. If possible, she wanted to apply late to reconsider rejection of the response, and having seen the claimant's Note of Argument, she wished to argue about both liability and remedy. She added that the claimant was not dismissed for whistleblowing, and that had never been discussed at the time of the respondents' 3 meetings with the claimant.

34 Having heard from Mrs Stevenson, I then invited Mr McParland to reply on behalf of the claimant. He stated that the Tribunal could not re-open the case at this late stage, but he had no issue with Mrs Stevenson participating in the Remedy Hearing, and making submissions about remedy, but she cannot go anywhere near going to the merits of the case. He submitted that his Note of Argument goes to remedy, and it is the headlines from which he would make submissions to the Tribunal to support the claimant's Schedule of Loss, and the remedy sought by her, and Mrs Stevenson has had enough opportunity, on the respondents' behalf, to seek legal advice.

35 In Mr McParland's view, he stated that the time for reconsideration had been and gone, and there would be prejudice to the claimant if the respondents were allowed in to address liability, and it would not be in the interests of justice to entertain such an application from the respondents at this late stage. He added that Mrs Stevenson had been copied into volumes of correspondence, and she had taken no action until this morning, the day of

the listed Remedy Hearing. In his view, the reasons she gives are insufficient and inadequate, as she could have instructed solicitors for the respondents, in circumstances where her ET3 had been rejected, and the time for reconsideration had been and gone, and there were real implications here for costs for the claimant.

36 When I sought to clarify matters with Mrs Stevenson, she accepted that the Tribunal had issued its Default Judgment on 20 May 2020, and she had received that, along with the covering letter from the Tribunal, referring to reconsideration within 14 days, applying for an extension of time, accompanied by a draft ET3 response, and / or appealing to the Employment Appeal Tribunal within 42 days. She confirmed that she had not appealed, but assumed that as it was late, that was the end of it, but she wrote the letter of 1 June 2020 to the Tribunal, to which she received the Tribunal's reply of 15 June 2020. She had then submitted the late ET3 response to the Tribunal, received on 25 June 2020, the same date as Mr McParland had objected, on the claimant's behalf, to the application for reconsideration of the Default Judgment.

37 Further, Mrs Stevenson accepted that she had received the Tribunal's email of 3 July 2020, rejecting her reconsideration application, and that she had submitted no further correspondence for the respondents to the Tribunal in reply. Other than a reference to "***administration oversight"***, in her letter of 1 June 2020, she also accepted that the respondents had not explained in that letter why they had failed to lodge an ET3 response by 3 March 2020, when she confirmed that she had received the Notice of Claim letter issued by the Tribunal on 4 February 2020.

38 Mrs Stevenson also explained that it was receipt of the Default Judgment of 20 May 2020 that had caused her to write to the Tribunal on 1 June 2020, and she further explained that the respondents have volunteers as their directors, so the ET1 claim form, when received with the Notice of Claim issued to the respondents, on 4 February 2020, sat in a file, unattended to, and that, she explained, was the administration oversight. She then stated that she wanted

to bring matters to a close, in whatever way she could, but emphasised that it was very difficult for the respondents to run a home care agency in a situation where they had no Manager, and then the Coronavirus.

39 In a frank and candid admission, Mrs Stevenson stated that she had put the claimant's ET1 claim form in a file, as she could not attend to it at the point it was given to her, and so time went on, until she got the letter of 20 May 2020 sent to the respondents, with the Default Judgment, and that is what caused her to write to the Tribunal on 1 June 2020. Having read the paperwork for the claimant, which she clarified was the Note of Argument emailed by Mr McParland, on 1 September 2020, Mrs Stevenson further stated that what it says is not correct, and not what happened at the time, as the reasons for the respondents dismissing the claimant. She then stated that she did not know that she could seek an extension of time, or ask for reconsideration, and so she would like rejection of the response received by the Tribunal (on 25 June 2020) to be reconsidered at this stage.

40 I pause to note that the respondents had, of course, been clearly and unequivocally advised, in the Notice of Claim issued on 4 February 2020, and in the Judgment letter of 20 May 2020, advised of the right to apply for an extension of time, and what to do. It is also of note that she thought her ET3 response had been rejected by the Tribunal. In fact, it had been neither accepted, nor rejected, although perhaps the Tribunal's email of 3 July 2020 led her to believe it had been rejected, albeit it makes no reference whatsoever to a late ET3 response having been received by the Tribunal.

41 When I asked her if the respondents were not able to defend the claim, what prejudice would they suffer, Mrs Stevenson stated that she would like the matter to be talked about, as the reason for dismissal, given in the claimant's Note of Argument, is not correct, in her view, and the copy letters put in with the respondents' ET3 response do not include whistleblowing, but show the respondents' reasons for dismissing the claimant. When I asked her if she was seeking an extension of time to be allowed to defend the case, she stated that she had very little knowledge of the Tribunal's rules and procedures, she

is not legally represented, and she is an office manager, and the respondents are disputing the reasons for dismissal put forward by the claimant.

42 She apologised that it was her fault that the respondents had not attended to this by lodging an ET3 response in March 2020. She stated that she was always very busy, and apart from being a volunteer director with the respondents, she also has another paid job, and she again apologised to parties and to the respondents for not doing that at the time.

43 As the respondents were not legally represented, and she advised me that they had no knowledge of Employment Tribunal practice or procedure, or the relevant law, I advised Mrs Stevenson that, consistent with my **Rule 2** duty to deal with the case fairly and justly, I was obliged to apply the relevant law, as interpreted by the higher Tribunals and Courts, and that I would do so, and I then précised very briefly that I would be guided in that task by judicial guidance from Mrs Justice Simler, then President of the Employment Appeal Tribunal, in a 2017 case known as **Grant v Asda**.

44 When I asked Mr McParland if he was familiar with that EAT authority, he stated that he was not, but he did appreciate Mrs Stevenson being candid in her submissions to the Tribunal, but he could not understand how she could say that she had had sight of the ET1 claim form, read it, and filed it, but now say that she does not understand the process – in his view, that simply does not add up, when the Tribunal had given clear timescales for the respondents to reply to the claim brought against them.

45 Further, submitted Mr McParland, the claimant had gone through the Tribunal process, and obtained a Default Judgment in her favour, and there would be prejudice to the claimant if the respondents were now allowed to defend the claim, as the claimant and he had not seen the ET3 response received by the Tribunal, on 25 June 202, it was lodged late, and the claimant is entitled to her remedy. At this point, Mrs Stevenson intervened to say that she had posted a copy of the ET3 response to Karen Stewart, the claimant, at the same time as posting it to the Tribunal office.

46 When I asked her if she was sure, as it was her letter of 1 June 2020 to the Tribunal, received on 4 June 2020, which referred to her sending a copy of that letter to the claimant, Mrs Stevenson stated she was sure she had posted a copy of the ET3 response to the claimant. Mr McParland asked permission to take the claimant's instructions, which he did after a very brief pause when he and the claimant went off screen / audibility, he then confirmed that the claimant accepted she had indeed received a copy ET3 posted to herself, but she had not sent it on to Thompsons as her solicitors, and as it was not on their file, Mr McParland stated that it was not available to him in preparing for this Remedy Hearing.

47 Mrs Stevenson stated she had kept a copy of what she sent to the Tribunal with the ET3 response, and so she had it available to her, and I stated that it was in the Tribunal's casefile, as it had not been returned by the Tribunal as rejected, and not copied to Mr McParland, as it had not been accepted, so I would arrange for the Tribunal clerk to scan it, and e-mail it to both parties, so that everybody participating in this Hearing had access to the same papers.

48 I allowed Mrs Stevenson to participate by making a **Rule 20** application to the Tribunal. We adjourned for that purpose just before 11.00am, and resumed the Hearing at 11.40am. In doing so, I posted on the CVP chatroom facility, a hyperlink to the EAT judgment in **Grant v Asda**, and I suggested to Mrs Stevenson and Mr McParland that they both take the opportunity, during the adjournment, when the ET3 would be scanned and emailed out, to look at that EAT judgment, in particular at paragraphs 16 to 18, which I specifically flagged to them as detailing the relevant legal test.

Submissions by Parties

49 When the Hearing resumed, and both parties confirmed that had received the Tribunal's email with a scanned copy of the ET3 response and attachments, and they had both had the opportunity to open the hyperlink, and read the relevant passages in **Grant v Asda**, I started the **Rule 20** Hearing by raising a number of questions of clarification for each of Mrs Stevenson and Mr McParland. To assist me, I stated that I would be ingathering information from

them relevant to the applicable legal test which an Employment Tribunal should take into account in deciding whether or not to allow an extension of time to lodge a late ET3 response, and the factors that I would wish them to address were explanation for the delay in applying; prejudice to each party if extension allowed / refused ; merits of the proposed defence in ET3 ; and the Tribunal's overriding objective.

50 Mrs Stevenson, in addressing the Tribunal, stated that she sought an extension of time for the respondents, and to be allowed to defend the case, on the basis set forth in the ET3 response received by the Tribunal on 25 June 2020, and for the case to go to a Final Hearing on the merits, and not proceed with this Remedy Hearing. She stated that she was representing them, as a charity, and explained that she had expected the case to go to ACAS for discussion.

51 She added that she would like it for both sides to have their say, and for a Judge to decide the truth of the matter, and if she had acted improperly, then she was very sorry for the extra time now being taken, but that there were reasons which the respondents had to dismiss the claimant, and these needed to be considered, as she disputed it was an unfair dismissal for whistleblowing.

52 As regards the respondents' explanation for the delay in applying for an extension of time, Mrs Stevenson stated that, as she had mentioned before, in her earlier remarks, it was her fault for not dealing with matters earlier, and she did not appreciate that deadlines were passing. On prejudice to the respondents, if they were not allowed to defend on the merits, she stated that the claimant had given the Tribunal a different reason for her dismissal, but she had not been dismissed for being a whistleblower, and she did not bring that matter up at any of her 3 meetings with the respondents. She referred to the notes of meetings enclosed with the ET3 response.

53 Mrs Stevenson stated that she was concerned that, through her fault, the proper facts of the case will not be considered by the Tribunal, and the Judge in coming to a decision. The respondents are a charity, and an employer, she

stated, and she is chair of the directors as a volunteer, and that is probably why the ET1 claim form sat in a file, and she did not attend to it earlier, in the absence of the respondents having employed a Manager, and the Coronavirus meant staff shortages and extra rules, and she had had a very time consuming job with the respondents these last 10 months, where she was 1 of 12 unpaid directors.

54 To allow the respondents in now to defend the case, Mrs Stevenson stated that she does appreciate that is prolonging the procedure initiated by the claimant, but it is important that the real reasons for the claimant's dismissal are aired before the Tribunal. On the merits of their defence, she stated that the reason for dismissal was as per the notes and letters enclosed with the ET3 response, and that the respondents dispute the claimant's stated reason. She referred me to section 6 of the completed ET3 response, and the attached meeting notes.

55 Finally, looking at the Tribunal's overriding objective to deal with the case fairly and justly, Mrs Stevenson stated that she appreciated the time already spend this morning at this Hearing, and as she did not deal with it at the time, she wanted, if possible, to go back to the beginning of the process, and allow the respondents to defend the case at a Final Hearing, by leading evidence, and so asked that the Default Judgment held by the claimant be revoked by the Tribunal.

56 Having heard Mrs Stevenson's submissions, on behalf of the respondents, I then invited Mr McParland to reply on the claimant's behalf. He submitted that the explanation advanced for the respondents on the delay in applying while candid is inadequate. It was accepted that the ET1 was brought to their attention, and the respondents accepted it being received, so they knew about it, but they chose to do nothing about it at that time. This application to the Tribunal fundamentally undermines the administration of justice, Mr McParland submitted, where a respondent can wilfully ignore the rules. If extension of time were allowed, he stated that it begs the question what needs to be done, as it is difficult to imagine a more extreme situation than the one

here. The claimant's claim had been put in a drawer, for some 9 months, the respondents did nothing, and now want the opportunity to deal with it.

57 In Mr McParland's view, the respondents could and should have made today's application sooner, and not left it until the eleventh hour, on the day of this Hearing, as we might now lose this Hearing, and the claimant is not ready for a merits Hearing, and that goes to the overriding objective point, as there will be further time delay and cost to all parties, if the case is allowed to be defended, when today's application could have been made sooner, as the respondents did engage in some activity in June 2020, between their letter of 1 June 2020, and their ET3 response being received by the Tribunal on 25 June 2020.

58 Having now seen and read the ET3 response submitted by Mrs Stevenson, Mr McParland stated that it is not a strong response, and it lacks specification, and it does not address the detail set out in the ET1 claim form, in a robust and detailed fashion, and that, he submitted, is prejudicial to the claimant, and that prejudice to her outweighs any prejudice to the respondents, and so they should not be allowed in late at this stage. He added that the claimant is entitled to finality of proceedings, and she has been put to costs to prepare for this Remedy Hearing. Further, he added, it is irrelevant that the respondents are a charity.

59 The respondents are, in his submission, liable for the acts and omissions of Mrs Stevenson in not dealing with this matter earlier, and if the claimant loses this Hearing, then costs have been incurred by the claimant to get to this stage, and there will now be further delay and more costs. Mr McParland further stated that if the Tribunal allows the respondents an extension of time, then the matter of costs for the claimant is important, and the claimant will make an application for the costs of this Hearing.

60 He submitted that he and the claimant were present, and ready to proceed to the Remedy Hearing, and he does not have any issue with Mrs Stevenson making representations about remedy, and he accepts she can cross examine the claimant on her remedy witness statement, but she does not

have the right to cross-examine her on the merits of the case. He further stated that the claimant is in a different position, prepared for the Remedy Hearing, and instead she has had to respond, through him, to this application for an extension of time, at the eleventh hour, on the day of the Hearing, and that is unacceptable, when the application could and should have been made at an earlier date, and so he invited the Tribunal to refuse her application, and allow the case to proceed to the listed Remedy Hearing that day.

61 On the matter of prejudice to the claimant, if an extension of time were allowed to the respondents, Mr McParland stated that there would be significant delay if the case were allowed to be defended. He understood there was already a Tribunal backlog, on account of the Covid-19 pandemic, and with the respondents needing to further specify their defence to the claim, he thought that the claimant would not get a Final Hearing this side of 2020, and there would be costs in doing that. Delay is fundamental to prejudice to the parties, he submitted, and it is prejudicial to the claimant, by reason of what will be a significant delay, and Tribunal resourcing will also be at play here, he added, stating it was difficult to see a more extreme case than this one. That is why, he explained, he opposed an extension of time, and opposed revocation of the Default Judgment.

62 Having heard Mr McParland's objections, I asked Mrs Stevenson to make a final reply on behalf of the respondents. She accepted that there had been a delay, but submitted that would have happened had her ET3 response been accepted in June 2020, when she put it in to the Tribunal, and she acknowledged that she should have submitted it earlier. She then added that they had not defended the claim before the Default Judgment was issued on 20 May 2020, but her ET3 response, received by the Tribunal on 25 June 2020, shows the respondents' reasons for dismissal of the claimant, and that they dispute the claim brought against them by her.

63 Mrs Stevenson added that the plain facts of what happened were put in the ET3 response that she submitted for the respondents, namely dismissal for gross misconduct, lack of confidentiality, and not performing duties. In her

view, she had put in a full explanation of what had happened, and it appeared the claimant had not told her solicitor, when she received her copy of the ET3, but she (Mrs Stevenson) did not know how many meetings he had had with his client, but she felt herself too much of a novice at this Hearing to know what more to say.

64 In closing, Mrs Stevenson stated that, if her application was refused, then she thought that her questions for the claimant, on matters in her remedy witness statement would not be too long, and she would make submissions on remedy, and on the claimant's calculations of compensation to be paid by the respondents.

65 Mr McParland stated that his best estimate was that he would use the 2 hours allocated for the Remedy Hearing, on the basis he did not anticipate the respondents being here, but if Mrs Stevenson cross-examined the claimant, and if she made submissions, then there would be extra time needed for re-examination of the claimant, and to deal with the respondents' submissions from Mrs Stevenson.

66 Mrs Stevenson indicated that she was happy to continue that afternoon, if the Tribunal could do so, and Mr McParland stated that he would prefer an oral judgment from me on the opposed **Rule 20** application, after an adjournment, rather than me reserving a decision to a later date. If the Hearing was to continue in the afternoon, he also indicated that he would need to make childcare arrangements for his son to be picked up from 3pm.

67 Having heard from both Mrs Stevenson and Mr McParland, I stated that I was going to adjourn, for private consideration in chambers, and in closing the video conference at 12.22pm, I stated that parties should leave the CVP Hearing, and reconnect for a 1.30pm re-start, when I would hope to be in a position to give an oral ruling, and address any necessary, further procedure before the Tribunal.

Extension of Time allowed and Late ET3 Response accepted by the Tribunal

68 When the case called again, on CVP, at 1.30pm, both parties were in attendance, as before, but there was a slight delay before I read out my interlocutory ruling, as the CVP clerk had technical difficulties with the recording equipment. Once these difficulties were resolved, the Hearing was recorded, and I delivered my oral ruling, reading from a handwritten note, which I had prepared, in chambers, during the adjournment.

69 The terms of that oral ruling are set forth above in my Judgment, at paragraphs 2, 3 and 4. Both parties confirmed that they had noted and understood the oral ruling, and I advised that a written document would follow from the Tribunal as soon as possible. My reasons for my oral ruling are now set forth in this document, under Discussion and Disposal . The CVP Hearing then concluded, and I disconnected all participants, bringing the Hearing to a close.

Relevant Law

70 In considering the **Rule 20** extension of time application to lodge a late ET3 response, I took into account the helpful judicial guidance provided in the judgment of Mrs Justice Simler DBE, then President of the Employment Appeal Tribunal, in **Grant v Asda [2017] UKEAT/0231/16/BA,** and reported at **[2017] ICR D17,** which I had drawn to the specific attention of both parties, and provided them with the hyperlink to access and read the EAT judgment before addressing me.

71 For ease of reference, I reproduce here the full text of those paragraphs 16, 17 and 18 from **Grant v Asda**:

> *16. Rule 20 of the **ET Rules** provides as follows:*
>
> ***"(1) An application for an extension of time for presenting a response shall be presented in writing and copied to the claimant. It shall set out the reason why the extension is sought and shall, except where the time limit has not yet expired, be accompanied by a draft of the response which the respondent***

wishes to present or an explanation of why that is not possible and if the respondent wishes to request a hearing this shall be requested in the application.

(2) The claimant may within 7 days of receipt of the application give reasons in writing explaining why the application is opposed.

(3) An Employment Judge may determine the application without a hearing.

(4) If the decision is to refuse an extension, any prior rejection of the response shall stand. If the decision is to allow an extension, any judgment issued under rule 21 shall be set aside."

17. *Again, unlike its predecessor, Rule 20 permits an application for an extension of time after the time limit has expired. Rule 20 is otherwise silent as to how the discretion to extend time for presenting an ET3 is to be exercised. Guidance on the approach to be adopted by tribunals in exercising their discretion was given in* ***Kwik Save Stores Ltd v Swain*** *[1997] ICR 49 EAT, a case concerning a respondent's application for an extension of time under the* ***Employment Tribunal Rules 1993****. Mummery J gave guidance at pages 54 to 55:*

"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 is 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 them to 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 MR in Costellow v Somerset County Council [1993] 1 WLR 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." (Original emphasis)***

18. *The approach set out by Mummery J was subsequently adopted in relation to the* ***2004 Rules*** *in* ***Pendragon plc (t/a CD Bramall Bradford) v Copus*** *[2005] ICR 1671 EAT. In our judgment, it applies with equal force to the* ***2013 Rules****. So, in exercising this discretion, tribunals must take account of all relevant factors, including the explanation or lack of explanation for the delay in presenting a response to the claim, the merits of the respondent's defence, the balance of prejudice each party would suffer should an extension be granted or refused, and must then reach a conclusion that is objectively justified on the grounds of reason and justice and, we add, that is consistent with the overriding objective set out in* ***Rule 2*** *of the* ***ET Rules****.*

Discussion and Disposal

72 Having carefully considered matters, in chambers, over the adjournment, and during my private deliberation after hearing both parties' submissions, I

decided to grant the **Rule 20** application, and allow the extension of time to the respondents to lodge a late ET3 response defending the claim, and so for the case to proceed as defended, it being in the interests of justice to do so.

73 I was satisfied, having regard to the Tribunal's overriding objective, under **Rule 2**, to deal with the case fairly and justly, that this disposal was appropriate and proportionate. The Tribunal has to have regard to the interests of justice, and that includes the interests of both parties, and the wider public interest in the proper administration of justice. The respondents have taken steps to enter the legal process, and state a defence, in particular, that the claimant was fairly dismissed.

74 I recognise, of course, that the claimant disputes that, and asserts that the respondents unfairly dismissed her, and automatically unfairly dismissed her for making a protected disclosure, and I recognise too that as far as the claimant is concerned, she and her solicitor see it that the respondents could have, and should have, defended these proceedings far earlier than this stage.

75 At this Hearing, Mrs Stevenson took personal responsibility for the respondents failing to enter these Tribunal proceedings far earlier. It is of course clear that the respondents, through her inactions, have been dilatory in engaging in this Tribunal claim and that has caused the proceedings to become protracted and delayed, and that is not consistent with the Tribunal's overriding objective. Delay and expense are but some of the factors to be taken into account, but they are not determinative, for the overarching principle is that the Tribunal must seek to deal with any case brought before it in a way which is fair and just.

76 It is most unfortunate that when the ET3 response was submitted by Mrs Stevenson, and she send a copy to the claimant direct (a point accepted by McParland, having taken instructions from his client at this CVP Hearing), that the claimant did not alert her solicitor to that fact, and equally unfortunate that

the Tribunal administration did not deal with the late response as they should have by rejecting it, after its receipt on 25 June 2020, and advising the respondents of their right to apply for a reconsideration.

77 **Rule 18 of the ET Rules of Procedure 2013** provides as follows:

"(1) A response shall be rejected by the Tribunal if it is received outside the time limit in rule 16 (or any extension of that limit granted within the original limit) unless an application for extension has already been made under rule 20 or the response includes or is accompanied by such an application (in which case the response shall not be rejected pending the outcome of the application).
(2) The response shall be returned to the respondent together with a notice of rejection explaining that the response has been presented late. The notice shall explain how the respondent can apply for an extension of time and how to apply for a reconsideration."

78 That did not happen in this case, so the respondents were not advised that their late ET3 response had been rejected. Equally, it was not accepted by the Tribunal, for had it been, Mr McParland would have been advised, and sent a copy. Likewise, the Tribunal did not advise parties that it was treating the late ET3 as an application for an extension of time, although no express application to that effect was made by Mrs Stevenson.

79 In effect, it was left unactioned, because the duty Judge, on being advised of its receipt, instructed that my previous instructions of 25 June 2020 be followed, resulting in the Tribunal's email to parties on 3 July 2020. Mrs Stevenson did not thereafter pursue the matter further, and Mr McParland, for the claimant, prepared for this listed Remedy Hearing on the basis that the claim was undefended, there being no accepted ET3 response.

80 He objected specifically to the manner and timing of the submission of their late application for an extension of time. His client had not, unfortunately,

advised him of the copy ET3 response she had received from Mrs Stevenson. Had she done so, things might have developed differently – likewise, if the Tribunal has formally rejected the late ET3 response. In these circumstances, the late ET3 response having been received at the Tribunal, on 25 June 2020, this is not a case, as sometimes happens, of an ET3 response being submitted only on, or shortly before, the day listed for a Hearing.

81 Through Mrs Stevenson's attendance at, and participation in, this Hearing, the respondents have explained the reasons for them not participating earlier, and I accept those reasons, frank and candid as they are, although I equally accept I can see why the claimant and her solicitor are cynical about the explanation provided.

82 While, on one view, Mrs Stevenson has been very lackadaisical in her approach, she had indicated before this Hearing that the respondents wished to defend the claim, by submitting the completed ET3 response that the Tribunal received on 25 June 2020. It is unfortunate that, thereafter, the duty Judge, on it being referred to him, did not reject it as being late, and equally unfortunate that the claimant, to whom it was copied, did not advise her solicitor, Mr McParland.

83 That said, it is indisputable that the delay in lodging the ET3 on time, by 3 March 2020, and in not seeking an extension of time at any earlier stage, lies with Mrs Stevenson. She was honest and candid in acknowledging that error on her part. Such a casual attitude to legal proceedings is not easy to understand, but from the information she provided at this Hearing, I am prepared to accept that Mrs Stevenson's failure was not wilful, but caused by other things impacting on her life, and thus her ability to deal with the respondents' affairs timeously and properly to defend this claim against them at the Employment Tribunal.

84 The claimant wanted her case disposed of at this Remedy Hearing, and further judgment issued in her favour. The Tribunal's overriding objective, and

the interests of justice, however require that I do justice to the respondents by allowing them to be heard on the merits, they having put forward an arguable case that the claimant was fairly dismissed.

85 While the Tribunal wrote to both parties on 3 July 2020, and Mr McParland intimated the claimant's Note of Argument etc to the Tribunal, with copy to Mrs Stevenson, on 1 September 2020, Mrs Stevenson did not give any indication to the Tribunal, or the claimant's solicitor, that she intended to participate in the listed Remedy Hearing. Her failure to do so is most unfortunate, but I put it down to her lack of knowledge about how the Tribunal process works, a matter which could have been addressed had she arranged for the respondents to take appropriate professional advice when this claim was served upon them.

86 From the terms of the ET3 response, the respondents have stated grounds of resistance which are that they have no liability to the claimant. While she disputes that, the matter will require to be tested by proceeding to a Final Hearing. The truth of the matter will require to be judicially determined, if parties cannot resolve matters between themselves, with perhaps the assistance of ACAS.

87 What is clear, from the ET1 and ET3, is that there is a core of disputed facts, and each party will require to put their case before the Tribunal by leading relevant and necessary witnesses, and producing any supporting documentation.

88 In these circumstances, I have ordered that the defended case proceed, to be listed , in due course, on a date to be hereinafter assigned by the Tribunal, for a Final Hearing, for full disposal, including remedy if appropriate, and I record here that it may be appropriate that it proceed by way of a CVP Final Hearing, so it can be listed at the earliest possible date available to the Tribunal, and convenient to both parties, their representatives, and any witnesses.

89 Further procedure can be discussed with the Judge taking the telephone conference call Case Management Preliminary Hearing, on a date to be fixed, no sooner than 6 weeks from issue of this Judgment, to allow for both parties' completed PH Agendas to be prepared and available for the Judge.

90 At this Hearing, the claimant's solicitor, Mr McParland, robustly opposed the application made by Mrs Stevenson for the respondents, but, in the interests of justice, I have preferred the submissions made by her, and, in terms of the Tribunal's overriding objective, and the interests of justice, that requires that I do justice to both parties involved in this dispute, by allowing them both to be heard.

91 In balancing prejudice as between the claimant and the respondents, I took into account that if I had refused to grant an extension of time and so not let in the late ET3 response, then the respondents would not have been able to defend the claim brought against them, on its merits, and they would only be able to participate in the Remedy Hearing, to the extent permitted by a Judge, as per **Rule 21(3).**

92 Given the terms of the ET3 response, I decided that it far better accords with the interests of justice that both parties participate in a Final Hearing on an equal basis, and that is consistent with the overriding objective to deal with the case fairly and justly, as per **Rule 2**.

93 Both parties have now put their competing positions in writing, in the ET1 claim form, and ET3 response, and essentially put their respective cards openly on the table. Mr McParland submits there is a lack of specification in the defence. That is a matter that can be addressed by further and better particulars of the defence being sought by him, and provided by the respondents. Proper and fair notice is required of each party's position.

94 In these circumstances, I decided that the prejudice to the respondents outweighs any prejudice to the claimant, and that it is appropriate to let in the

late ET3 response, and the merits, or otherwise, of both parties' respective positions can be adjudicated upon by the Tribunal at a Final Hearing, in due course, after hearing evidence from both parties.

95 It seems to me that prejudice to the claimant will be far less, and all she has lost at this stage is the loss of the windfall of having obtained an undefended Default Judgment on liability only in her favour, at an earlier stage. The delay in this case, now defended, getting to a Final Hearing is part of the bigger picture, and it, like many, many other claims, has been impacted by the ongoing Covid-19 pandemic, and the reduction in in person Hearings. It is also worth bearing in mind, that when Notice of Claim was served, the Tribunal was then proposing listing for a Final Hearing in August to October 2020.

96 While there will inevitably be a delay before any Final Hearing can be held, that is an inevitable consequence of granting the extension of time, but sight should not be lost of the fact that an extension of time is in the interests of justice. Plainly, a failure to lodge a timeous defence to a claim, particularly where, as here, it results in Default Judgment against the respondents, is serious and significant. It is a failure to comply with the Tribunal's process, it delays the progress of the claim, and it takes up the time and resources of the parties and the Tribunal.

97 It is clear to me that in extending time there is some prejudice for the claimant, but that prejudice is essentially a time delay, along with loss of a liability only Default Judgment, but all of that is mitigated by the fact that she still has the opportunity to prove her claim in the same way she would have done if the response had been presented in time.

98 In deciding upon the outcome of this opposed application for an extension of time, I have engaged in an exercise of discretion. I have had to consider the prejudice to both the respondents if the extension is not granted and the Default Judgment not set aside, and the prejudice to the claimant, who has

obtained a Default Judgment in her favour, on liability only, if that judgment is set aside.

99 The claimant certainly suffers a delay of several months that has been occasioned by the late presentation of the response and that is a prejudice of a sort. However, I am satisfied that in this case that delay is not significant prejudice because there is nothing before me to suggest that it has led to any forensic prejudice, that is, making it significantly more difficult for the claimant to present and prove her claim for example because documents are no longer available or because witnesses are no longer available.

100 On the other hand, if I did not grant an extension of time the prejudice to the respondents is far more profound. A judgment against it may damage its corporate reputation, and possibly financially if an award of compensation is made to the claimant, in due course, if her claims are upheld as successful. The sum sued for, in the updated Schedule of Loss, at £22,690.19, is a substantial amount. On the face of it the defence is perfectly arguable, and, all in all, in my view, it is in the interests of justice to grant the respondents' application and extend time for entering a response.

101 Both parties are entitled to a fair Hearing within a reasonable period of time, and it seems to me that use of a CVP Hearing provides an opportunity for the Tribunal to list this defended case for Final Hearing as soon as its listing diary might allow. That is a matter that both parties should address when completing their PH Agendas, and further procedure can then be discussed at the telephone conference call Case Management Preliminary Hearing.

102 I recognise that the claimant will be disappointed by this ruling, for she had hoped to attend at this Hearing, present her remedy evidence, and await the Tribunal's Judgment, on what she understood to be an undefended claim.

103 However, in writing up this Judgment, I take this opportunity to draw to her attention that, even if Mrs Stevenson had not appeared and sought an

extension of time to lodge her ET3, and had I proceeded with the Remedy Hearing, only allowing her to participate to that limited extent, then there is a real risk that the respondents would not consider they had been given a fair opportunity to defend the claim, and it is possible that they would likely thereafter have sought reconsideration of that Remedy Judgment under **Rule 70**, on the basis that the interests of justice so required, and so any Remedy Judgment would then need to have been revisited in any event.

104 That too was a consideration in me deciding that, to avoid delay, and saving expense, this **Rule 20** application was best dealt with at this Hearing, and the merits, or otherwise, of the claimant's case, and the respondents' defence, can be assessed, in due course, a Final Hearing on a date to be hereinafter fixed by the Tribunal.

105 First however, as the ET3 response submitted on 25 June 2020 has now been accepted, the claim and response need to proceed, as with any defended whistleblowing complaint, to a Case Management Preliminary Hearing which is what would have happened, on 18 June 2020, had an ET3 response been submitted on time by 3 March 2020.

106 To that end, the Tribunal clerk will issue PH Agendas in electronic format to both parties representatives, and I have made case management orders for their completion and return, and for the Tribunal administration to set up the necessary Case Management Preliminary Hearing to be conducted by way of telephone conference call.

107 If the claimant requires further and better particulars of the defence, as Mr McParland indicated during delivery of his oral submissions to me at this Hearing, then he should ask the respondents to make voluntary disclosure of those further and better particulars by, at latest, the time they intimate their completed PH Agenda. If he does, and they do not reply, then he can raise the matter at the telephone conference call Hearing, and the Judge presiding

at that Hearing can then decide whether or not any further specification is required and, if so, in what terms.

108 In closing, it is clear to me that the respondents would be assisted by the benefit of some professional, independent legal advice in dealing with this now defended claim to this Tribunal. I have taken into account that they are unrepresented, party litigants, as I am duty bound to do, in terms of the Tribunal's overriding objective under **Rule 2** to deal with the case fairly and justly, including ensuring, so far as practicable, that parties are on an equal footing. It is not, however, for me to act as advocate or representative for either party, for they must each take their own independent advice.

109 While to date the respondents have been acting on their own behalf, through Mrs Stevenson, as chair of their directors, as they are perfectly entitled to do, I encourage her, on their behalf, to urgently seek out independent and objective advice, whether from an employment law solicitor or other professional HR adviser, used to providing advice and assistance to employers involved in Tribunal proceedings.

110 In issuing this Judgment, I also remind both parties that, as per **Rule 3 of the Employment Tribunals Rules of Procedure 2013:**

Alternative dispute resolution

3. A Tribunal shall wherever practicable and appropriate encourage the use by the parties of the services of ACAS, judicial or other mediation, or other means of resolving their disputes by agreement.

Employment Judge: I McPherson
Date of Judgment: 21 September 2020
Entered in register: 24 September 2020
and copied to parties