EMPLOYMENT TRIBUNALS

Claimant: Ms L Cameron-Peck

Respondents: 1. Ethical Social Group Limited
2. Mr Graham Pullan
3. Ms Galina Ratcliffe
4. Mr Philip O'Doherty

JUDGMENT

1. The applications of the second and third respondents for reconsideration of the judgment sent to the parties on 26 January 2024 are refused.

2. The applications of the second and third respondents to set aside the unless order made on 12 June 2023 are refused.

REASONS

1. The second and third respondents made applications for reconsideration of the judgment sent to the parties on 26 January 2024 by emails dated 26 January 2024.

2. By a further joint application dated 9 February 2024, drafted by counsel, the second and third respondents applied for reconsideration of the decision to strike out their responses, resulting from failure to comply with an unless order. Although the application refers to rule 70, such an application is, in effect, an application to set aside the unless order, which should be properly made under rule 38(2) of the Employment Tribunals Rules of Procedure 2013. I will, therefore, consider this application as being one made under rule 38(2) for the unless order to be set aside on the basis that it is in the interests of justice to do so (sometimes described as an application for relief from sanction).

3. The application to set aside the unless order was drafted by counsel. The application does not include a request for a hearing so I may decide the application on the basis of written representations. I have decided it is appropriate to decide it on the basis of the written application, taking this as the respondents' written representations. The application was copied to the claimant. No comments have been provided by the claimant. Given my reasons for rejecting the application, I have not felt it necessary to issue an express invitation to the claimant to provide written representations.

4. I have undertaken a preliminary consideration of the second and third respondents' application for reconsideration. I have decided to deal this preliminary consideration and the application to set aside the unless order in the same judgment, since the applications are closely related, with success or failure in either application having implications for the other. For clarity, I will refer to the applications made on 26 January 2026 as the reconsideration applications and the application made on 9 February 2024 as the relief from sanction application.

The Law

5. Reference to rules is to the Employment Tribunals Rules of Procedure 2013.

6. An application for reconsideration is an exception to the general principle that (subject to appeal on a point of law) a decision of an Employment Tribunal is final. The test is whether it is necessary in the interests of justice to reconsider the judgment (rule 70).

7. Rule 71 provides that an application for reconsideration must, unless made at the hearing, be made within 14 days of the written reasons being sent to the parties and must set out why reconsideration of the original decision is necessary.

8. Rule 72(1) allows me to refuse the application based on a preliminary consideration if there is no reasonable prospect of the original decision being varied or revoked.

9. Rule 38(2) provides that a party whose claim or response has been dismissed, in whole or in part, as a result of an unless order may apply to the Tribunal to have the order set aside on the basis that it is in the interests of justice to do so. The application must be made within 14 days of the notice dismissing the claim or response being sent to the parties (subject to the Tribunal's discretion under rule 5 to extend time). Unless the application includes a request for a hearing, the Tribunal may determine the application on the basis of written representations.

10. In the case of **Minnoch and others v Interservefm Ltd and others [2023] EAT 35**, HHJ Tayler gave guidance, amongst other things, on dealing with an application for relief from sanction. He wrote, at paragraphs 33.13 to 33.16, that this involved a broad assessment of what was in the interests of justice. He wrote that factors which may be material to that assessment will vary considerably according to the circumstances of the case but generally include: the reason for the default (in particular whether it was deliberate); the seriousness of the default; prejudice to the other party; and whether a fair trial remains possible. He wrote that each case will depend on its own facts.

11. In common with all powers under the 2013 Rules, preliminary consideration under rule 72(1) and consideration of an application under rule 38(2) to have an unless order set aside, must be conducted in accordance with the overriding objective which appears in rule 2, namely, to deal with cases fairly and justly. This includes dealing with cases in ways which are proportionate to the complexity and

importance of the issues and avoiding delay. Achieving finality in litigation is part of a fair and just adjudication.

The Applications

12. The applications for reconsideration of the judgment sent to the parties on 26 January 2024 are contained in emails dated 26 January 2024. The applications are brief and I reproduce them in full.

13. The part of the second respondent's email setting out the application reads as follows:

> "The email address you have been using to contact myself (graham.pullan@fluttrmail.com) ceased to exist more than 12 months ago by order of the official receiver, and I have received nothing in the post from the tribunal concerning this case, and after contacting Galina, she has confirmed that she hasn't received anything in the post either. Also, Galina hasn't received any of the email correspondence, as the email that the Employment Tribunal have been using for Galina is also not her correct email address.
>
> "Also, the mailing address on the documentation is Ethical Social Group Limited, 1 Mereside, Alderley Park, Macclesfield, SK10 4TG. We have not used this address since March 2022, which probably explains why we have not received any further documentation in the post.
>
> "Therefore, both Galina and myself would like to make Judge Slater and the Employment Tribunal aware of these facts, and as such, would like to ask Judge Slater to reconsider the judgment, and apply for a reconsideration of the case and an appeal."

14. The email was sent from an outlook email address, not previously used by the second respondent in correspondence with the Tribunal and which the second respondent had not given to the Tribunal to use for correspondence.

15. The second respondent wrote that the Tribunal's email (i.e. the email attaching the judgment) had just been forwarded to him, without identifying who forwarded the judgment. The second and third respondents' application to set aside the unless order asserted that the judgment had been forwarded to them, without comment, by the fourth respondent.

16. The part of the third respondent's email setting out the application reads as follows:

> "I have just read the email from Graham Pullan reference case 2415271.
>
> "I was not aware of any communication from the Employment Tribunal as all communication was sent to the company address, which I have not worked for since February 2022, and the email address that the

> Employment Tribunal used for correspondence was linked to the mac book and during my divorce, my ex husband took the laptop back in 2022.
>
> "I would like to log an appeal and request that all correspondence and the paperwork related to this case be sent to this email address."

17. The email was sent from a gmail email address. This had been used before by the third respondent in correspondence with the Tribunal (in January 2023), but in an email which the second respondent copied to herself using the mac.com email address which was the email address given to the Tribunal for correspondence with the third respondent. The third respondent had not informed the Tribunal that it should use the gmail address or any email address other than the mac.com email address for correspondence with her.

18. Appeals are not matters for the employment tribunal. Any appeal against an employment tribunal's decision must be made directly to the Employment Appeal Tribunal, complying with their rules on lodging an appeal. This judgment, therefore, deals only with the application for reconsideration of my judgment and with the application to set aside the unless order.

19. The application dated 9 February 2024 sets out the basis of the application to set aside the unless order in the "Discussion" section, which reads as follows:

> "23. R2 and R3, therefore, apply to reconsider the decision to strike out their responses. R2 had properly updated the ET as to his email address and the ET wrongly sent out the June 2022 [presumably this is an error and was intended to refer to the June 2023 hearing] Notice of Hearing and all subsequent correspondence, including the unless order, to the wrong email address. The unless order was not properly served on R2 and so it cannot be right, as a matter of law, that his response was struck out. In the circumstances, the interests of justice require that the ET reconsider and revoke the decision to strike out R2's response. R2 has not applied any earlier because he only found out about the strikeout following the final hearing. The first and that [sic] R2 and R3 heard of the decision was when it was forwarded to them, without comment, by R4. Both R2 and R3 have, therefore, made this application as soon as they reasonably could from having discovered that their response had been struck out and a hearing had gone ahead in their absence.
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> 24. Whilst it is assumed that the unless order was properly served on R3 (because it was sent to the email address on file), it is averred that it is in the interest of justice to reconsider and revoke the decision to strike out her response. Whilst R3 owes a degree of responsibility for failing to update the ET as to her new email address, it is averred that, in the circumstances (as set out above), it was not unreasonable for her to rely upon R2 to update her as to the status of the litigation and what, if anything, the ET required of the parties. That was a reasonable course for her to take, which unravelled because of the ET administration's failure to update its system as to R2's contact details.

25. If none of the parties had attended the 23 June 2023, prudence would have dictated that the parties were written to at their home postal address which had been provided to the ET.

26. Furthermore, and particularly importantly, if the ET were to revoke the decision to strike out R2's response but not R3's response, R2 and the ET hearing the claim for the second time may find themselves in an impossible situation of being bound by the findings of the earlier ET decision, which would be unfair on R2 (and vitiate the effect of the reconsideration) given that he was entirely innocent in relation to the strikeout of his response."

20. Before I deal with the separate applications, it may assist to give a history of the principal events in the case.

The background to the final hearing

21. The claim was served on the four respondents by letter dated 12 January 2022, being received by them at the latest by 17 January 2022, being the date when the third respondent, on behalf of all the respondents, applied for an extension of time to present their response.

22. It is asserted on behalf of the second and third respondents in the application for relief from sanction, paragraph 5, that the second respondent emailed the Tribunal on 11 January 2022 updating the Tribunal with his personal email address and providing a new company postal address in Sheffield for the first respondent. The case file does not contain such an email and it is difficult to see why this would have been sent prior to service of the claim. Even if it was sent, it is irrelevant to what follows, since responses were presented on behalf of all four respondents by a professional representative, giving the Macclesfield address for the first respondent and the professional representative's email address for all the respondents.

23. On 14 February 2022, responses were presented by a representative, Hannah Haywood of Bhayani HR & Employment Law, on behalf of all the respondents. The same grounds of resistance were presented on behalf of all four respondents.

24. I note from Companies House records, that the first respondent's registered office changed to the Sheffield address on 22 March 2022 i.e. after the responses were presented.

25. On 23 June 2022, all four respondents were represented by counsel at a private preliminary hearing for the purposes of case management. At that hearing, the case was listed for a final hearing on 14-20 December 2023 and case management orders made for the preparation of the case for a final hearing.

26. I find that the second and third respondents were aware, from 23 June 2022 or shortly afterwards, that this case was listed for its final hearing beginning on 14

December 2023. Although the final hearing was subsequently shortened, the hearing date of 14 December 2023 never changed. I also find that the second and third respondents were aware of the dates for compliance with case management orders. I make these findings on the basis that this is what I would expect a professional representative to have informed their clients about.

27. On 17 August 2022, the respondents' representative came off the record for all the respondents and gave email contact details for each respondent. The email address for the second respondent was the fluttr email address.

28. The email address given for the third respondent was the mac.com address. The third respondent never subsequently informed the Tribunal that a different email address should be used for her. This is accepted in the application for relief from sanction. The third respondent asserted in her application for reconsideration that the mac.com email address was linked to her mac book and, during her divorce, her laptop was taken back in 2022. The application for relief from sanction asserts, in paragraph 10, that the third respondent realised in early October 2022 that she could not access the account and describes unsuccessful attempts to access her account. The implication is that she had no access to the mac.com account from early October 2022. As noted below, although she started sending emails to the Tribunal from a gmail address, she and the second respondent continued to copy emails relating to these proceedings to the mac.com account. This seems to be a strange practice if the third respondent had no access to this account. An email trail of 6 January 2023 also might suggest that the third respondent still had access to her mac.com account at that time (see paragraph 41). I will assume, however, (without deciding), in the third respondent's favour, in dealing with the applications, that the third respondent did not receive any emails directly which were sent to the mac.com address after October 2022.

29. The second respondent asserts in the application for relief from sanction that he had informed the Tribunal on 17 December 2022 that the Tribunal should use a gmail address for him. If this email was sent and received, there is no record of it on the Tribunal file. Since administrative errors are not unknown, I will assume, in the second respondent's favour, that he did send such an email which was received but not acted on by the Tribunal. As noted below, the second respondent continued to send emails from the fluttr email address to the Tribunal up to and including 11 April 2023. The statement in the second respondent's application for reconsideration dated 26 January 2024 that the fluttr email address "ceased to exist more than 12 months ago by order of the official receiver" is untrue in that the second respondent was sending and receiving emails using the fluttr email address for months after the application for reconsideration asserts it ceased to exist. The application for relief from sanction asserts, at paragraph 16, that "shortly after 11 April 2023, R2 ceased to use this email address and could not receive its emails", without any explanation as to why it was that the second respondent could no longer receive emails sent to the fluttr email address. It does not repeat the assertion that the official receiver ordered the cessation of use of the fluttr email address. Companies House records do not demonstrate any involvement of the official receiver with the first respondent company although, as noted below (see paragraph 61) an official receiver became liquidator of the subsidiary company,

Fluttr Limited, by operation of a court order made on 30 January 2023. A named liquidator was not appointed until 17 July 2023.

30. If the second respondent had notified the Tribunal of a change of email address, he did not correct the Tribunal when it continued to use the fluttr email address in emails which were received by him.

31. Correspondence from the Tribunal was sent, from 17 August 2022 onwards, to the second and third respondents using the email addresses supplied by their former representative. This includes the judgment sent to the second and third respondents on 26 January 2024, which prompted the reconsideration application. The second and third respondents assert, in their application for relief from sanction, that the judgment was forwarded to them by the fourth respondent.

32. The dates set for disclosure of documents in September 2022 and the date for completion by the respondents of the final hearing bundle on 27 October 2022 passed without any of the respondents taking any steps to comply with the orders.

33. Companies House records show that, on 29 November 2022, there was a First Gazette notice about a proposal for compulsory strike off of the first respondent company from the Register. This proposal was later suspended, following an objection received.

34. The date for sending witness statements was 30 November 2022. The respondents did not send witness statements.

35. The claimant wrote to the Tribunal on 30 November 2022, copied to the second, third and fourth respondents. The claimant used the third respondent's mac.com address but she wrote to the second respondent at his gmail address. The claimant wrote that the respondents had failed to comply with any of the case management orders made at the preliminary hearing on 23 June 2022. The claimant explained that she had sent her list of documents in compliance with the case management orders but had not sent her statements to the respondents because the respondents had not provided a document list or hearing bundle. At the preliminary hearing on 12 June 2023, the claimant further explained that she had not sent her witness statements because she wanted to exchange statements simultaneously in order to maintain a level playing field between the parties. In her letter of 30 November 2022, the claimant asked the Tribunal to strike out the respondents' grounds of resistance and bar their participation in the proceedings.

36. In none of the applications do the second and third respondents explain their failure to comply with case management orders.

37. On 14 December 2022, the Tribunal sent an email to the claimant and the second respondent (it appears, in error, that the email was not sent to the other respondents). The email to the second respondent was sent to the fluttr email address. There is no doubt that the second respondent received this email since he replied, from the fluttr email address, directly to that email, as can be seen from the email trail on the Tribunal's file. The letter from the Tribunal stated that a judge had ordered that the Tribunal would consider any application from the claimant to

strike out the respondent's case at the start of the final hearing on 14 December 2023.

38. The second respondent's reply of 14 December 2022 to the Tribunal, from the fluttr email address, asserted that the claimant had not provided them with any evidence, although acknowledged that the claimant had sent them a list of documents. The second respondent did not explain why the respondents had not complied with case management orders. The second respondent also asserted that the first respondent was going through creditors' voluntary liquidation and would be liquidated in the next few weeks. This never happened and the first respondent remains an active company according to Companies House records, subject to the suspended proposal to strike off.

39. On 19 December 2022, the claimant again wrote to the Tribunal, copying the second respondent at both his gmail and fluttr email addresses and the third respondent at her mac.com address. She wrote that the second respondent had, since September 2022, repeatedly asserted that the first respondent company would be liquidated in a matter of weeks, despite there being no statutory notice on either Companies House or the Gazette. She wrote that she had asked the second respondent to disclose the name and contact details of the Insolvency Practitioner but he refused to do so in the absence of an order from the Tribunal to do so. She requested an order from the Tribunal for disclosure by the respondents of various documents and information relating to the asserted creditors voluntary liquidation. A judge refused the application for the order and requested information about the claimant's compliance with case management orders. The claimant, on 6 January 2023, by an email copied to the second respondent at his gmail and fluttr email addresses and to the third respondent at her mac.com email address, provided confirmation of her compliance with case management orders and again stated that the respondents had failed to comply with the orders to provide a list of documents and had not requested any documents from her list.

40. On 6 January 2023, the third respondent emailed the Tribunal using a gmail address but copying the email to her mac.com address and to the second respondent using the fluttr email address. The third respondent wrote:

> "On 1 September 2022 I received an email from Laura Cameron-Peck stating that she included relevant to the case documents [sic]. I responded to her email the same day stating that apart from the document, please see attached, there were no further documents and requested to provide them. To this date, I did not receive a response from the Claimant.
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> "I would be very grateful if the Claimant can provide them in full."

41. This email appears in an email trail which includes the claimant's email of 6 January 2023 and the Tribunal's email of 6 January 2023, both sent to the third respondent's mac.com email address. This might suggest that the third respondent was still receiving emails sent to her mac.com address. However, as indicated above, I will proceed on the basis, in the third respondent's favour, that she did not receive emails directly to her mac.com address after October 2022.

42. The document attached to the third respondent's email of 6 January 2023 appears to be the claimant's list of documents, not a document disclosed by the third respondent. The third respondent did not state that she, or any of the other respondents, had complied with the order to provide their lists of documents to the claimant.

43. On 28 February 2023, according to Companies House records, the second respondent signed a declaration, together with another director of the first respondent, applying for the first respondent company to be struck off and dissolved.

44. The Tribunal notified the parties by email dated 3 March 2023 of a preliminary hearing by telephone on 12 June 2023 to confirm the current position of the claim and, if required, to make further case management orders. The notice of hearing gave the details required to join the conference call. The email to the second respondent was sent to the fluttr email address and the email to the third respondent was sent to the mac.com address.

45. In reply to the covering email for the notice of hearing, the second respondent wrote to the Tribunal from his fluttr email address, copied to the third respondent at her mac.com email address, writing that the first respondent was an insolvent company that had ceased trading on 28 February 2022. At paragraph 18 of the application for relief from sanction, it is asserted that the second respondent did not receive the notice of hearing for the June 2023 preliminary hearing (although it incorrectly gives the date of that hearing as 23, rather than 12, June 2023). This assertion, no doubt made by counsel on the instructions of the second respondent, is untrue. The second respondent's email appears in an email trail with the Tribunal's email of 3 March 2023 which states: "Please see attached notice of hearing." If the assertion in paragraph 18 of the application for relief from sanction that the third respondent did not receive the notice of hearing because she did not have access to the mac.com address and it was not sent to her home address is correct, I find that the second respondent made her aware of the hearing. Paragraph 14 of the application for relief from sanction informs me that the second respondent was taking the central role in the litigation and keeping the third respondent abreast of developments.

46. I find that the second and third respondents were aware of the preliminary hearing listed for 12 June 2023.

47. By a letter from the Tribunal dated 6 April 2023, the parties were informed that there did not appear to be a record at Companies House of formal insolvency proceedings in relation to the first respondent company. The letter stated that, if there were such insolvency proceedings, the respondents must send details and documentation relating to those proceedings to the Tribunal and the claimant. In the meantime, the case would continue. The judge noted that there was an active proposal to strike out the first respondent which was currently suspended. The email was sent to the second respondent at the fluttr email address and the third respondent at the mac.com address. The email was received by the second respondent since he replied, from the fluttr email address, with the Tribunal's covering email in the email trail. The second respondent wrote, on 11 April 2023,

that, on an unspecified date, 3 out of over 60 shareholders voted at an AGM against using insolvency practitioners to take the company through a creditors' voluntary liquidation, so the motion could not be carried. The second respondent gave the name and address of the insolvency practitioners he said were involved. He asserted that the company had ceased trading over 12 months previously, had "zero funds and is factually insolvent."

48. By a letter from the Tribunal dated 21 April 2023, the parties were informed that, in the absence of the company being in formal insolvency proceedings, the claim would continue against the first respondent and the individuals named as the second, third and fourth respondents. Unfortunately, the Tribunal file does not appear to contain the covering email, so it is not possible to identify the email addresses to which that letter was sent.

49. The claimant attended the preliminary hearing on 12 June 2023. None of the respondents attended. As noted in the record of that hearing, the respondents did not notify the Tribunal that they would not be in attendance. At that hearing, the judge made orders including that the respondents must explain, by 3 July 2023, their non-attendance at the preliminary hearing. Revised case management orders for the preparation of the case for final hearing were made. The case remained listed for final hearing 14-20 December 2023.

50. The judge made an unless order that, unless by 14 July 2023, each respondent provided to the claimant and the Tribunal a list of all the documents it already had or could reasonably obtain relevant to the issues in the case, the ET3/Grounds of Resistance of the respondent(s) in breach would stand dismissed without further order. This order was sent to each respondent by email on 13 June 2023. We know this was received by the fourth respondent since he replied to the email on 3 July 2023. The order was sent to the second respondent using the fluttr email address and to the third respondent using the mac.com address.

51. Given the incorrect assertion made that the second respondent did not receive the notice of hearing for the preliminary hearing on 12 June 2023, and the fact that the second respondent was using the fluttr email address until at least 11 April 2023, I have considerable doubt that the second and third respondents are telling the truth when they say they were not aware of the unless order. However, I will proceed with dealing with the applications on the basis (without deciding this) that the second and third respondents did not receive the unless orders.

52. At the least, the second and third respondents showed no interest in what happened at the preliminary hearing, since they made no enquiry about this, after the date when they knew this was taking place. The Tribunal's email of 6 April 2023, which the second respondent had received, had informed the parties that the case was continuing at that stage. The second and third respondents must have understood that the case was continuing, unless they were informed to the contrary, which they were not.

53. The Tribunal wrote to the claimant on 19 September 2023, copied to the respondents (using the fluttr email address for the second respondent and the mac.com email address for the third respondent), asking the claimant if the

respondent had provided their lists of documents. The claimant replied on 24 September 2023 writing that she had not had any communication from the respondents.

54. By an email dated 31 October 2023 (using the fluttr email address for the second respondent and the mac.com email address for the third respondent), the Tribunal informed the respondents that their responses were dismissed for failure to comply with the unless order. The email included a statement that "The respondent may apply in writing within 14 days of the date of this notice to have the Unless Order set aside on the basis that it is in the interests of justice to do so."

55. None of the respondents applied to the Tribunal to have the Unless Order set aside within the 14 day period.

56. Further correspondence between the claimant and the Tribunal prior to the final hearing was copied to the respondents, using the fluttr email address for the second respondent and the mac.com email address for the third respondent.

57. By an email dated 12 December 2023, the fourth respondent requested a postponement of the final hearing. The Tribunal replied on 13 December 2023 with an email which was sent, amongst others, to the second respondent at the fluttr email address and the third respondent at the mac.com email address, notifying the parties that a judge had refused the postponement request.

58. The second and third respondents, if they did not receive any correspondence after 11 April 2023, made no enquiry of the Tribunal as to whether the case was continuing. I find that they knew it was continuing to a final hearing, but chose not to engage with the proceedings, as they had not done in any meaningful way since August 2022 when they ceased to be professionally represented.

59. The application for relief from sanction is not consistent with the second respondent's application for reconsideration in that it asserts that the second respondent ceased to use the fluttr email address shortly after 11 April 2023 and could not receive emails sent to that address from that time, whereas the initial application asserts, on 26 January 2024, that the fluttr email address ceased to exist "more than 12 months ago" i.e. some time before 26 January 2023.

60. I find that the second and third respondents were aware of the date of the final hearing and the preliminary hearing on 12 June 2023, but chose not to attend either hearing, as they had chosen not to engage with the proceedings in any meaningful way after they ceased to be represented, in August 2022.

61. I note from the judgment of Deputy District Judge Walthall given on 30 January 2023 in the High Court of Justice, Business and Property Court, in the case of **Mr Sweeny v Fluttr Limited,** a copy of the transcript of which was provided by the claimant in the hearing bundle for this Tribunal case (p.314), that no one was in attendance at that hearing for Fluttr Limited. Fluttr Limited is a subsidiary of the first respondent company. By 30 January 2023, I note from Companies House records that the second respondent was the only remaining director of Fluttr

Limited. Deputy District Judge Walthall found that misrepresentations were made to Mr Sweeny, a prospective investor, by or on behalf of Fluttr Limited about Fluttr Limited being EIS approved, or having EIS status and having celebrity endorsements which would increase the prospects of its succeeding as a venture. These representations, which the judge found were false, induced Mr Sweeny to acquire shares in Fluttr Limited. The judge rejected the defences put forward in a witness statement by the second respondent. The judge made a winding up order against Fluttr Limited. By virtue of that order, an Official Receiver became liquidator of Fluttr Limited. Companies House records show that a named liquidator was not appointed until 17 July 2023. Given the second respondent had prepared a witness statement for the High Court case, it appears likely that he knew about the hearing but decided not to attend. The second respondent's non-attendance at the High Court hearing is consistent with his non-attendance at the preliminary hearing in June 2023 and the final hearing in December 2023 in these Tribunal proceedings.

The application for relief from sanction

62. As noted above, I am proceeding on the basis, without deciding, that the second and third respondents did not receive the unless order.

63. The time limit for making an application under rule 38(2) is within 14 days of the date the notice was sent. The notice was sent on 31 October 2023. The application was made on 9 February 2024, considerably outside the 14 day time period. However, I exercise my discretion to extend time, on the basis that I am proceeding on the basis (without deciding) that the second and third respondents did not receive the unless order and, therefore, were not aware of it until they received the judgment on 26 January 2024. The application was made within 14 days of 26 January 2024.

64. The unless order should only be set aside if it is in the interests of justice to do so. Normally, non-receipt of the unless order would be a very strong reason to set aside the unless order, and, therefore, the dismissal of the responses. Given the circumstances in this case, which I have described, I do not consider it would be in the interests of justice to set aside the order.

65. As noted above, I have found that the second and third respondents were aware of the date of the preliminary hearing on 12 June 2023, at which the unless order was made. The second and third respondents did not attend that hearing and provided no explanation at the time, or subsequently, for not doing so, apart from an untrue assertion in the application for relief from sanction (paragraph 18) that the second respondent did not receive the notice of hearing. I will accept (without deciding) for the purposes of dealing with this application that the third respondent did not personally receive the notice of hearing. However, as stated in the application for relief from sanction, the third respondent was relying on the second respondent to conduct the litigation on her behalf, so she would have been aware of the hearing by these means.

66. The second and third respondents made no enquiry as to the outcome of the preliminary hearing. This is consistent with their lack of meaningful engagement with the proceedings since August 2022.

67. It is relevant to take into account the conduct of the second and third respondents prior to the preliminary hearing. They were aware of the case management orders made at the preliminary hearing on 23 June 2022, when they were professionally represented, but did not comply with the orders, including the order to disclose documents. They were aware that the claimant had made an application on 30 November 2022 to strike out the responses for failure to comply with case management orders, so, if they were not previously aware that this could be a consequence of non-compliance, the claimant's letter put them on notice that this could be a consequence.

68. The second respondent received the letter dated 14 December 2022 from the Tribunal which stated that a judge had ordered that the Tribunal would consider any application from the claimant to strike out the respondent's case at the start of the final hearing on 14 December 2023. Even if the second and third respondents did not receive the unless order, they were aware from this letter that their responses could be struck out for failure to comply with case management orders at the final hearing. They did not attend the final hearing.

69. It is also relevant to take into account events after the preliminary hearing. The second and third respondents were aware, from the hearing on 23 June 2022, at which they were professionally represented, that the final hearing was listed for 14-20 December 2023. Although the hearing was subsequently reduced in length, the respondents never had any reason to understand that the final hearing would not go ahead in December 2023. The second and third respondents did not attend the hearing and did not provide any explanation for not doing so.

70. The history of these proceedings shows the second and third respondents, from the time they ceased to be professionally represented in August 2022, failing to engage in any meaningful way with the proceedings. The only engagement was the second respondent repeatedly asserting that the first respondent was insolvent. The first respondent never entered into any form of formal insolvency. The second and third respondents were aware that the claimant's claims were brought against them personally as well as against the first respondent. They had no reason to believe that the case would not proceed to a final hearing as listed. However, they failed to comply with case management orders to prepare for that hearing and did not attend it.

71. Even if there had been no unless order and the responses of the respondents not been dismissed, the conduct of the second and third respondents indicates that they would not have attended the final hearing. As they had been warned, their responses could have been struck out at that hearing for failure to comply with case management orders. I conclude that there is no reasonable prospect of the outcome of the final hearing being other than it was.

72. I consider it would not be in the interests of justice to allow the second and third respondents to have failed to engage in any meaningful way with proceedings from August 2022 until the judgment was sent to them in January 2024 and then to allow them to unpick the outcome which was unfavourable to them by having an

unless order set aside even if, as they assert, they were unaware of the unless order at the time.

73. I consider that it would not be in the interests of justice, in these circumstances, to set aside the unless order and I refuse the application to do so.

The applications for reconsideration

74. The applications for reconsideration, in essence, apply for this on the basis that the second and third respondents were unaware, from an unspecified date, of correspondence from the Tribunal. It is perhaps implied, although not stated explicitly, that these respondents were not aware of the final hearing of the case and that is why they did not attend. They do not deal with the substance of the decision, not putting forward any arguments as to why my decision was wrong and why it might have been different, had they known of the final hearing and attended.

75. For the reasons given above, I have found that the second and third respondents were aware of the dates of the preliminary hearing on 12 June 2023 and the final hearing in December 2023 but failed to attend either hearing, without explanation. As stated above, they failed to engage in any meaningful way with the proceedings since they ceased to be professionally represented in August 2022.

76. Given the responses of the second and third respondents had been dismissed, without the setting aside of the unless order there could be no reasonable prospect of success in the application for reconsideration of the judgment.

77. For the reasons given above, I have refused to set aside the unless order.

78. The second and third respondents have failed to engage in any meaningful way with proceedings from August 2022 until the judgment was sent to them in January 2024. I consider it would not be in the interests of justice to allow them, at this late stage, to try to get a different outcome by seeking reconsideration, or simply to delay the claimant being able to enforce the judgment against them, where there is no good reason put forward for their lack of prior meaningful engagement with the proceedings.

79. I consider there is no reasonable prospect of it being in the interests of justice to vary or revoke the judgment sent to the parties on 26 January 2024. I refuse the application to reconsider the judgment.

Employment Judge Slater

Date: 29 February 2024

JUDGMENT & REASONS SENT TO THE PARTIES ON

12 March 2024

FOR EMPLOYMENT TRIBUNALS

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