



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr A Moore

**Respondent:** Cosey Homes Ltd

**Decided on the papers** On: 30 March 2020

**Before:** Employment Judge Brown (sitting alone)

## JUDGMENT

1. The respondent is permitted an extension of time until 18 November 2019 to present its response, and the response presented on 18 November 2018 shall therefore be accepted as presented in time.

## REASONS

1. This is an on-paper determination of the respondent's application for an extension of time in which to present its response to the claimant's claim. Such an application could be considered on the papers before the pandemic, and I am satisfied that both parties have had a sufficient opportunity to make representations about the matter.
2. The claimant presented his claim on 16 September 2019. The respondent responded to the claim on 9 October 2019, but its response was not made on the prescribed form and was rejected by me for that reason under rule 17 of the Employment Tribunals Rules of Procedure on 23 October 2019.
3. Notice of rejection was given dated 16 November 2019.
4. The respondent applied for (in form) reconsideration of the rejection on 18 November 2019. By then the time for presenting a response had passed, and so I treat the application in substance as one for an extension of time in which to present a response under rule 20.
5. The claimant was given opportunities to respond to the application on 8 December 2019 and 19 January 2020, but has not responded.

6. An extension of time is sought because the respondent failed to present its response in the required form. A response was sent was in time and was copied to the claimant, so the claimant knew that the respondent intended to defend the claim and sought to make a counterclaim. It took some time for the ET to communicate the rejection of the response, and the respondent acted quickly (within two days) in then presenting a response in the prescribed form. It ought not to have been difficult to use the prescribed form, but the respondent is not legally represented. In my judgment, the balance of prejudice weighs in favour of allowing the respondent the opportunity to defend the claim out of time, because this will enable the matter to be considered on its merits, the failure is a relatively technical one, and the claimant has been on notice of the respondent's intention to defend the claim since before the expiry of the 28 time limit for the presentation of a response. Having considered the response, I am satisfied that it is properly arguable, although I have formed no view of its particular merits, and I have given this factor little weight. However, I am satisfied that it is not a response that would, if allowed to be presented, then fall to be struck out on other grounds.
7. Therefore, I have concluded that the application for an extension should be granted.

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**Employment Judge Brown**

**30 March 2020**

JUDGMENT SENT TO THE PARTIES ON

.....05.05.2020.....

AND ENTERED IN THE REGISTER

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FOR THE TRIBUNAL OFFICE