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EMPLOYMENT TRIBUNALS

BETWEEN

Claimant	**AND**	**Respondent**
Mr P H Latham		Ministry of Justice

Heard at: London Central **On**: 10 October 2017

Before: Employment Judge Macmillan

Representations
For the Claimant: In person
For the Respondent: Ms Jennifer Seaman of counsel

RESERVED JUDGMENT

The respondent's application to strike-out the claimant's claim on the grounds and it has no reasonable prospect of success having been commenced after the statutory time had expired succeeds. The claim is accordingly struck-out.

REASONS

Background and Issue

1. Mr Latham is a retired Circuit Judge. On 19 July 2013 he commenced these proceedings under regulation 5 of the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (PTWR) in respect of his exclusion from the judicial pension scheme from 3 July 1992 to 15 November 1997 when he was first a part-time fee paid assistant recorder and then, from 27 January 1995, a fee paid recorder. The claim is therefore one of the large number of claims brought by fee paid members of the judiciary known as the ***O'Brien*** or Judicial Pension Scheme Litigation. The matter is before me today on the application of the respondent to strike-out the claim on the grounds that it has no reasonable prospect of success as it was presented to the Tribunal long after the time limit in regulations 8(2) of the PTWR had expired. Mr Latham invites the Tribunal to consider the claim notwithstanding its lateness on the grounds that it would be just and equitable to do so.

2. Mr Latham has represented himself and I have heard evidence from him. The respondent has been represented by Ms Jennifer Seaman of counsel. It is common ground that if the respondent's application fails Mr Latham's claim does not thereby succeed but must continue to be stayed behind the lead case in the JPS litigation ***O'Brien -v- Ministry of Justice***, the reason being that the entirety of Mr Latham's fee paid service took place before 1 July 2000 when the PTWR came into effect. The Supreme Court has recently referred to the Court of Justice of the European Union the question whether such service should count for the purposes of computing pension entitlement under Council Directive 97/81/EC the so-called Framework Directive, which the UK Government transposed into domestic law as the PTWR. Mr Latham's claim can only succeed if following that reference to the CJEU it is held that service prior to the implementation date does count for that purpose.

The Law

3. Regulation 5 of the PTWR provides that a part-time worker has the right not to be treated by his employer less favourably than "the employer treats a comparable full-time worker (A) as regards the terms of his contract …" Fee paid judicial office holders are workers for this purpose.

4. Regulation 8 provides the mechanism for complaints to be made to Employment Tribunals. The time limit provisions are regulation 8(2) and (3). They provide:

> *"(2) Subject to paragraph (3) an Employment Tribunal shall not consider a complaint under this regulation unless it is presented before the end of the period of three months (….) beginning with the date of the less favourable treatment or detriment to which the complaint relates or, where an act or failure to act is part of a series of similar acts or failures comprising the less favourable treatment or detriment, the last of them.*
>
> *(3) a tribunal may consider any such complaint which is out of time if, in all the circumstances of the case, it considers that it just and equitable to do so."*

5. The date from which time begins to run for the purposes of a complaint of this nature is, like the so-called year 2000 point, the subject of appeal to the Supreme Court but not the subject of a reference by that court to the CJEU. In ***Miller and Others*** [1700853/2007and others, judgment dated 30 December 2013] I held that time runs from the date on which the last fee paid office held by a claimant came to an end. That decision has been upheld both by the Employment Appeal Tribunal and the Court of Appeal. If it is also upheld by the Supreme Court it means that when Mr Latham commenced these proceedings on 19 July 2013 he was a little over 14 years and 7 months out of time. However if the appeal on time limit points in ***Miller and Others*** succeeds time will run against Mr Latham from the end of his judicial service, the 3 June 2008, when he retired as a Circuit Judge. On that basis the claim was 4 years, 10 months and 13 days out of time.

6. Mr Latham seeks to persuade me that it is just and equitable that the Tribunal should consider his complaints even though they have been presented

so significantly out of time. It is common ground that it is for Mr Latham to satisfy me that it is just and equitable that time should be extended. I have previously considered the law on just and equitable extension of time and I repeat what I have said on previous occasions. The starting point is ***Robertson -v- Bexley Community Centre*** [2003] IRLR 434 CA in which Auld LJ who gave the judgment of the Court said this:

> *"24 The Tribunal when considering the exercise of its discretion has a wide ambit within which to reach a decision. If authority is needed for that proposition it is to be found in Daniel -v- Homerton Hospital Trust (unreported 9 July 1999 CA) in the judgment of Gibson LJ at page 3 where he said 'the discretion of the Tribunal … is a wide one. This court will not interfere with the exercise of discretion unless we can see that the Tribunal erred in principle or was otherwise plainly wrong'.*
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> *25 It is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify a failure to exercise the discretion. Quite the reverse. The Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So the exercise of discretion is the exception rather than the rule."*

7. In ***Chief Constable of Lincolnshire Police -v- Caston*** [2009] EWCA Civ 1298 CA at paragraph *25* Sedley LJ said:

> *"There is no principle of law which dictates how generously or sparingly the power to enlarge time is to be exercised. In certain fields … policy has led to a consistently sparing use of the power. That has not happened, and ought not to happen, in relation to the power to enlarge the time for bringing Employment Tribunals proceedings and Auld LJ is not to be read as having said in* ***Robertson*** *that it either had or should. He was drawing attention to the fact that limitation is not at large: there are statutory time limits which will shut out an otherwise valid claim unless the claimant can displace them".*

8. Sedley LJ's judgment was not that of the majority of the Court, the majority's view being expressed by Wall LJ at paragraph 25 where he said that Lord Justice Auld's dictum in ***Robertson****:*

> "*… is, in essence, an elegant repetition of well established principles relating to the exercise of judicial discretion. What the case does, in my judgment, is to emphasise the wide discretion which the ET has … and to articulate the limited basis upon which the EAT and this court can interfere. Similarly,* ***DCA -v- Jones*** *[2008] IRLR 128 approves the* ***Keeble*** *guidelines, but emphasises that they are fact/case specific – see Pill LJ at paragraph 50."*

9. In ***British Coal Corporation -v- Keeble*** [1997] IRLR 336 the Court of Appeal suggested that Employment Tribunals should have regard to the factors set out in section 33 of the Limitation Act 1980 which are:

> *"(a) the length of and reasons for the delay:*
>
> *(b) the extent to which the cogency of the evidence is likely to be affected by the delay;*
> *(c) the extent to which the party sued had co-operated with any requests for information;*
> *(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;*
> *(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action."*

10. In ***Bowden -v- MOJ*** [UKEAT/0018/17/LA] HH Judge Richardson in allowing an appeal by Mr Bowden against a decision of mine refusing to grant an extension of time on just and equitable grounds, held that I had been in error in not considering whether Mr Bowden had not merely been ignorant of the necessary facts giving rise to the possibility of bringing a claim for discrimination in these circumstances but whether he had been ignorant of the possibility of such a claim existing. If he had been ignorant of the possibility of such a claim existing was that ignorance reasonable? If the answer to both questions was 'yes' than that was a factor which ought to have been brought into consideration when determining whether it would be just and equitable to extend time. Judge Richardson drew attention to a passage from the judgment of Brandon LJ in ***Walls Meat Co -v- Khan*** [1979] ICR 52 CA on which Mr Latham places particular reliance. ***Walls Meat Co -v- Khan*** was about the much more stringent test for extending time in unfair dismissal cases where the claimant has to satisfy the Tribunal that it was not reasonably practicable for the proceedings to have been commenced within time.

> *"Where a person is reasonably ignorant of the existence of the right (to bring a claim) he can hardly be found to have acted unreasonably in not making enquiries as to how and within what period, he should exercise it. By contrast if he does know of the existence of the right, it may in many cases at least though not necessarily all, be difficult for him to satisfy an industrial tribunal that he behaved reasonably in not making such enquiries."*

The Facts

11. Mr Latham retired as a Circuit Judge on 3 June 2008. He had never practiced employment law other than in his early days at the bar appearing, he believes, twice in the industrial tribunal, and he had no knowledge of the ***O'Brien*** litigation. Mr O'Brien was a recorder who pioneered the whole of the Judicial Pension Scheme litigation by bringing a claim against the Ministry of Justice for a pension for his years of service as a fee paid recorder. His case did not feature in the law reports until 19 December 2008 and only then in the Industrial Relations Law Report. There is no reason why Mr Latham should have been aware of it before he retired or within three months of having retired

12. He tells me that it was not until a date in April 2013 that he became aware of the possibility of adding to his less than full judicial pension by bringing proceedings in respect of his years as an assistant recorder and a recorder. Mr Latham receives the quarterly newsletter of the Council of Circuit Judges retired section. In April 2013 he received a document on a date which cannot now be more precisely identified which appears to be a supplement to the usual quarterly newsletter. Although Mr O'Brien is certain that he received it through the post, paragraph 3 of the text refers to attaching the respondent's Moratorium (which I will refer to in more detail in a moment) and the newsletter "to this email". The newsletter has a hyperlink to the Supreme Court Judgment in ***O'Brien*** and contains some very guarded advice on time limits.

13. The two paragraphs of the newsletter which are relevant for these proceedings read as follows:

> *"The second area that has been raised by a number of retired colleagues arises from the decision in O'Brien -v- Ministry of Justice and concerns the rights of recorders, sitting as part-time judges, to judicial pensions pro rata to those that would have been received if they had been full-timers. The Supreme Court judgment can be found at … (the hyperlink). It is a decision that deserves careful consideration. The next stage in the process is for Mr O'Brien to return to the Employment Tribunal. The Ministry has agreed a moratorium on other claims for pension rights by recorders and those who have served as recorders and I have attached that to this email with the newsletter. It is not clear whether that covers serving or retired judges who believe they might have a claim. There is an email address for enquiries which is now (hyperlink) and any queries can be sent to that address.*
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> *On the face of it the position in relation to the three months time limit is probably worse for retired judges than for the serving judiciary whose situation is, in any event, far from certain and of course, the retired judges will already have pension rights arising from service that crystallised on retirement. The Council of Circuit Judges has decided that it cannot advise individual serving judges or retired judges and as a result of lack of funds and the differing circumstances of each judge or member, has decided not to obtain advice. It is however, open to retired judges to obtain independent advice if they feel they have a worthwhile claim … all those interested in pursuing this should consider both the judgment and the Moratorium carefully. I understand that the Bar Council have offered some advice to members of the practising bar but I have not been privy to that. I report as fact not as recommendation that Browne Jacobson (Solicitors of Nottingham) are representing the group of recorders driving this forward."*

14. Mr Latham attached to his witness statements four letters from the West Middlesex University Hospital NHS Trust where at around this time his wife had had surgery on her foot which had caused her to be laid up for some period of time. Mr Latham was at that time both principle carer and principle housekeeper. In his witness statement he appeared to rely on this as an impediment to his ability to research his legal rights and as a contributory factor

in the delay in commencing proceedings. However, in his evidence he conceded that in practice the reverse had probably been the case. Because he was no longer able to go out much having to stay at home to look after his wife, he found he had more than usual time on his hands and therefore more than usual time to carry out research on the internet. Very shortly after receiving the 2013 newsletter he accessed the Supreme Court judgment he internet and read it in full. He also read the Ministry's moratorium but found it rather puzzling and unclear. He therefore decided not to place any reliance on it and it played no part in the subsequent continuing delay in commencing proceedings.

15. Mr Latham has accepted very candidly that the reason why he did not issue proceedings immediately after receiving the April 2013 newsletter is that he mistakenly believed that his claim was still in time because he assumed that the normal six year limitation period under the Limitation Act 1980 had applied to Mr O'Brien and therefore also to his claim. This emerges from a letter which he wrote to the respondent on 10 July 2013 in which the following appears:

> *"I am concerned to investigate this issue quickly to avoid any problem under the Limitation Act since it is now just over five years since I retired. I should prefer not to have to issue or serve a protective writ".*

16. It is extremely difficult to understand how Mr Latham can have come to this seriously mistaken conclusion about time limits. The April 2013 newsletter expressly refers to the three months time limit and suggested it would be more problematic for retired judges than serving judges. The Supreme Court judgment, which he says he read in full, refers, at paragraph 6, to Mr O'Brien experiencing time limit issues as the proceedings should have been presented within three months of the date when Mr O'Brien ceased to hold office and at paragraph 3 refers both to the PTWR and the Framework Directive. Mr Latham accepts that he did not consult the PTWR claiming that he found them difficult to locate on the internet and he has no explanation for not realising that a three months rather than a six year time limit applies.

17. He did not telephone Browne Jacobson despite their name appearing in the newsletter. Indeed apart from doing some unspecified research on the internet he appears to have taken no real steps towards commencing these proceedings until he read an article in the Times newspaper on 10 July 2013 by Francis Gibb, the Legal Editor which discussed the O'Brien litigation and had as a sub-heading "Lawyers offer to act in no win no fee deals". Amongst the names of solicitors mentioned in that letter he noticed Leigh Day, who had been professional clients of his when at the Bar in medical negligence claims. He telephoned both them and Browne Jacobson shortly after reading the article. He appears to have been interested at that stage only in ascertaining what the cost might be rather than in obtaining any advice which may well have been because he mistakenly believed that his claim was still in time as less than six years had expired from the date of his retirement as a circuit judge.

18. So far as he can now remember the date on which he commenced these proceedings, 19 July 2013 was probably just a coincidence and was not as the result either of reading the article by Francis Gibbs' in the Times or by anything he learned from speaking to Leigh Day or Browne Jacobson. If there was a

trigger he thinks it might have been the Ministry of Justice's failure to acknowledge his letter of 10 July, but that seems unlikely given the very short space of time between the posting of the letter and the issuing of proceedings.

19. Mr Latham is quite adamant that it was not until the April newsletter that he had any knowledge of the ***O'Brien*** litigation or of any possibility of fee paid judges being able to claim pension rights. After his retirement he did not lose touch with his former colleagues completely, attending both the annual dinners of the Council of Circuit Judges and dinners held by his Inn, Grays Inn, for Circuit Judges, although not on an annual basis. He is quite sure that Mr O'Brien and his litigation was never the subject of conversation. Despite being a regular reader of the Times newspaper he did not read the law reports and therefore did not see the reports of 10 February 2009, 11 November 2010 nor 22 September 2013 nor did he see an article about Edward Benson of Browne Jacobson, Solicitors, who was lawyer of the week on 22 March 2012. His evidence concerning his knowledge of another Times law report, that of 22 February 2013, is, to say the least, very confused. At paragraph 3.03 of his witness statement he says that it is the only one of the numerous law reports and articles included in the respondent's bundle that he had seen but in 3.04 he says that he did not see it at the time because of his caring responsibilities for his wife, although he now accepts that those responsibilities gave him more rather than less time for such things as reading the Times. His witness statement suggests that he only saw that report as a result of receiving the April 2013 newsletter but in his oral evidence he was clear that he did not read it at that time but had instead gone straight to the judgment of the Supreme Court on their website. It is not at all clear now even to Mr Latham at what stage and in what circumstances he did become aware of the law report in the Times of 22 February 2013 although there is no real doubt that was aware of it at some stage prior to it appearing in the bundle for this hearing..

20. Because of a point raised by Mr Latham at the end of his closing submission I need to deal briefly with the Moratorium issued by the respondent in connection with these proceedings on 5 April 2013 or more accurately with an undated document which they issued soon afterwards which they rather optimistically described as 'clarification'. Mr Latham relies on paragraph 5. This reads:

> *"If your claim would potentially have been out of time as at 1 March 2013, the Ministry of Justice reserves the right to argue (a) that you were out of time for the purposes of regulation 8(2) and (b) that it is not just and equitable that your claim should be heard for the purposes of Regulation 8(3) or both. However, in making any arguments under (b) the MOJ will approach your claim as if it were issued on 1 March 2013 and will not take time points against you in respect of any actual delay in issuing your claim after that date".*

21. Finally, Mr Latham relies on a statement in his letter of appointment as a Circuit Judge informing him that a judicial appointment is a lifetime appointment and he is not permitted to return to private practice after retiring. After commencing these proceedings Mr Latham wrote to the respondent asking them to waive that condition in his case but they declined to do so. This he contends

is a factor which I may take into account in determining whether it is just and equitable that his case should be heard.

Submissions

22. Ms Seaman submits that from the authorities it emerges that the Tribunal has three questions to which it needs to provide an answer. The first is, was Mr Latham ignorant of the right to claim a pension for part-time service until April 2013? The second question is was that ignorance reasonable and the third is was it reasonable for him to delay for a further three months or thereabouts before commencing proceedings until July 2013.

23. She submits that there is no question that Mr Latham was aware of the difference in treatment between circuit judges and fee paid judges and in fact the existence of a pension was one of the attractions for him in accepting appointment to the Circuit Bench. She accepts that the evidence probably does suggest that Mr Latham was ignorant of his right to claim a pension for part-time service until the newsletter of April 2013. However she submits that this really was not reasonable. He retired in 2008 but continued to go to social events, to receive the Council of Circuit Judges newsletter, to read the Times and, had he been so minded, to conduct legal research. It is clear from the publications in the respondent's bundle that ***O'Brien*** was becoming an increasingly frequent topic of discussion in the legal press from around 2010 onwards. But even if she is wrong in that submission she submits that it clearly was not reasonable for him to delay roughly three months more before commencing proceedings. He had the newsletter, he conducted extensive research on the internet as a result of receiving that newsletter and he has admitted that it was his own error and his own error entirely in misunderstanding the nature of the time limit. Given the nearly 15 year delay in starting proceedings it would clearly not be just and equitable for time to be extended.

24. The Moratorium has no relevance, Mr Latham did not rely to it and to the extent that he argues that the respondent is prevented by the wording of the Moratorium from taking out of time issues this argument was raised in a case called ***Edwards*** (Case Number: 2205250/2013) and rejected: (see paragraphs 10-13 of the reasons - judgment dated 27 November 2014). The fact that he is not permitted to return to practice has no bearing on these proceedings at all. It is simply a fact of judicial life.

25. Mr Latham accepts Ms Seaman's analysis of the questions for the Tribunal to consider and agrees that he was aware of the difference in treatment between fee paid and salaried judges. He submits that Ms Seaman appears to concede the first point and to accept that prior to receiving the newsletter he was unaware of the right to bring such a claim. It cannot be said that this ignorance was unreasonable because the great majority of the publications relied on by the respondent to show that he should have been aware of ***O'Brien*** were in specialist journals or law reports which he never saw and all of the reports are after he retired and no longer took an active interest in matters legal. He only read the news section of the Times. Following the judgment in ***Bowden*** all earlier decisions about just and equitable extension of time, and not just those in the JPS litigation, will need to be reassessed.

26. On the question of whether his ignorance of the right to bring proceedings was reasonable, Mr Latham submitted that he has been quite candid about the reasons for the delay in issuing proceedings and he agreed that the three months delay from April to July was entirely attributable to his mistaken belief that he was dealing with a Limitation Act 6 year time limit and his claim was therefore still in time. But following ***Bowden*** it is clear that the assessment of what is just and equitable is not simplistic: even judges need time to consider their position and that is precisely what the exception in regulation 8(3) contemplates.

27. So far as the Moratorium is concerned Mr Latham does not contend that he placed any reliance on it or that the Tribunal or the respondent are bound by it. But it must be a circumstance to take into the equation of what is just and equitable that the respondent Ministry now appears to be going back on their word in the Moratorium and taking out of time points and relying upon facts in support of out of time points which occurred after 1 April 2013. In the light of the overriding objective he submits that the Tribunal should strongly take into account that the respondent has gone back on what appears to be the clear wording of the clarification document. The Tribunal should also take into account that it would not be just and equitable for him to loose out on the possibility of obtaining an enhanced pension in the light of the respondent's refusal to allow him to return to practice given their implied undertaking on his appointment as a Circuit Judge that he would retire with a generous pension.

Discussion and Conclusions

28. I will approach this matter on the basis that the appropriate date from which to calculate the running of time is the date on which Mr Latham retired as a Circuit Judge. I do so simply because that is the more favourable date from Mr Latham's point of view and if the correct date is, as was held in ***Miller and Others***, the much earlier date on which he ceased to be a fee paid judge, all of the conclusions to which I come are a fortiori.

29. I accept Ms Seaman's helpful analysis of the issues. Although Mr Latham was clearly fully aware of the difference in treatment between full-time and part-time judicial office holders I accept that he was ignorant of the right to bring a claim for a pension for his part-time service until sometime in the early part of 2013. I am troubled by the uncertainty which surrounds the Times law report of 22 February 2013, but I think that the only conclusion to which I can reasonably come on the balance of probabilities, given Mr Latham's own evidence, is that he was aware of it prior to receiving the newsletter of the Council of Circuit judges in April. The Times law report was not referred to in the newsletter and Mr Latham is certain that he did not refer to it as a result of receiving the newsletter. He has not said that he researched Times law reports on line. Newspapers are rather ephemeral things and it therefore seems more likely than not that he did see the report at around the time of its first appearance. Following Lord Justice Brandon in ***Walls Meat Co -v- Khan*** it then becomes almost inevitable that I must conclude that his ignorance of the right to bring a claim was reasonable until he read that law report. If he was genuinely ignorant of the right to bring a claim until then, it is very difficult to see how he can be criticised for not making enquiries about the right to bring a claim the existence of which was totally unknown to him. I accept, with some hesitation, his evidence that at no time in

the conversations with his fellow circuit judges at social events was the question of the ***O'Brien*** litigation raised althoguh I find that rather surprising.

30. The real problem for Mr Latham lies in the third of Ms Seaman's issues. On a date unknown but probably around the middle of April 2013, he was suddenly presented with all of the information which he needed to start proceedings without any further delay. He was now not only aware of the possibility of bringing such a claim but he was aware that such a claim had already been brought and had reached a very advanced stage. He was alerted to the possibility of time limit issues and he was expressly alerted to the fact that the time limit was three months. He was warned that time limits seemed to be more problematic for retired judges such as himself. He was even given the name of a firm of solicitors who might be able to help him. He claims to have read the Supreme Court judgment in ***O'Brien*** in full. It clearly cannot be reasonable in the light of all that information and in the light of the research which he then carried out for him to delay commencing proceedings for a further three months or thereabouts in the wholly inexplicable, and, as he now accepts, totally mistaken belief, that a six year Limitation Act time limit applied and that his claim was in fact still in time.

31. Applying the section 33 Limitation Act factors, the length of the delay as a result of the approach I am adopting is a little under five years. On the approach Ms Seaman prefers (and which on the current state of the authorities is correct) it is a little under 15 years. The reasons for the delay are that initially this was a cause of action which did not exist until after Mr Latham had taken up a full-time salaried Circuit Judge position and thereafter because he was unaware of the right to bring the claim until sometime between the last week in February and about the middle of April of 2013. The cogency of the evidence other than with regard to the extent of his fee paid sittings is not affected by the delay. Very significant questions hang over the promptness with which Mr Latham acted once he knew of the possibility of bringing a claim and the steps taken by him to obtain appropriate professional advice. So far as knowledge of the facts on which the claim is based is concerned, he has always known them. Following ***Bowden*** I must also consider whether he knew of the possibility of bringing a claim on those facts. There is no doubt that he had all the relevant knowledge roughly three months before he commenced proceedings and he probably knew of Mr O'Brien's claim, and therefore had some of the relevant knowledge, 6 or 7 weeks earlier than that. He took no steps to obtain professional advice, once he was alerted to the possibility of bringing a claim but relied on his own legal researches. As an experienced lawyer there is no criticism to be made of him for that but it is extremely difficult to understand – and he cannot explain - how he came to the conclusions that he did about the time limit.

32. So far as the balance of prejudice is concerned, Mr Latham has not quantified his claim although he recollects that he only ever sat for the minimum number of days required under his appointments. If I am against him he will lose any possibility of a pension accruing from those days of service but at the moment that possibility depends on the CJEU ruling in favour of the claimants on the year 2000 point. As the law stands at the moment his claim cannot succeed in any event. This is therefore not a case where the only thing standing between

the claimant and success is the time limit point. The prejudice for the respondent is the loss of a valid time limit defence and the risk of having to make additional pension payments to Mr Latham. The balance of prejudice does not come down in favour of one party or the other.

34. I am not satisfied that the rather ambiguous wording of the so called clarification of the respondent's Moratorium has the meaning for which Mr Latham contends. It seems tolerably clear that the words 'after that date' are intended to refer to delay occurring after the date of the Moratorium and not to the taking of time points after that date. There is no promise by the respondent not to take time points if a claim is issued after the date of the Moratorium. The issue was dealt with by me in ***Edwards*** and I adopt what I said there. In any event it could not in my judgment be just and equitable that Mr Latham should gain any advantage from a rather unfortunately worded but undoubtedly well intentioned document which played no part in his deliberations and which did not in any way impact on the three months delay between April 2013 and 19 July 2013. The Moratorium had no impact because it applies to out of time claims and Mr Latham was labouring under the misapprehension that his was an in time claim. In any event, if it had any effect on him at all it may have spurred him into taking action earlier than he otherwise might have done because he found it very difficult to understand and thought that he could probably not rely on it as giving him any comfort. One thing is absolutely clear; the Moratorium was not a contributory factor to the delay.

35. I am also not persuaded that there is any relevance in the respondent's refusal to waive the usual condition attaching to salary judicial appointments which prohibits the holder of salaried judicial office from returning to practice upon retirement. As Ms Seaman submits, that is just a very well established fact of salaried judicial life. There is no claim by Mr Latham that he was misled into giving up anything when he accepted salaried judicial office on those terms and there is no obvious connection between him acquiring knowledge of the ***O'Brien*** litigation and commencing these proceedings and a desire to return to practice to boost his pension. I do not accept his contention that there was an implied term in his instrument of appointment that he would be able to retire on a generous, by which he appears to mean full, pension, irrespective of the length of his judicial service. Mr Latham's claims that the prohibition against returning to private practice is contrary to his Human Rights and in breach of EU competition laws are not matters upon which this Tribunal can express any opinion and have no bearing on the question of whether it would be just and equitable for time to be extended.

36. In my judgment taking all of those factors into account it would not be just and equitable to consider this complaint which is out of time as Mr Latham had every opportunity to commence these proceedings by the end of April or the beginning of May 2013 at the very latest and his continued failure to do so was unreasonable.

Employment Judge Macmillan
22 October 2017