Appeal No. UKEAT/0180/17/JOJ

EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 13 October 2017
Judgment handed down on 12 April 2018

Before

NAOMI ELLENBOGEN QC

(DEPUTY JUDGE OF THE HIGH COURT)

(SITTING ALONE)

LUTON BOROUGH COUNCIL APPELLANT

MR M HAQUE RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For the Appellant	MR NATHANIEL CAIDEN (of Counsel) Instructed by: Luton Borough Council Legal Services Town Hall George Street Luton LU1 2BQ
For the Respondent	MR ATTIQ MALIK (of Counsel) Instructed by: Liberty Law Solicitors Britannia House Leagrave Road Luton LU3 1RJ

SUMMARY

JURISDICTIONAL POINTS - Claim in time and effect date of termination

PRACTICE AND PROCEDURE - Application/claim

PRACTICE AND PROCEDURE - Preliminary issues

The statutory provisions in the **Employment Rights Act 1996**, the **Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994** and the **Equality Act 2010**, which operate to extend time limits to facilitate conciliation before the institution of proceedings, are to be applied sequentially and do not provide for alternative limitation periods.

NAOMI ELLENBOGEN QC (DEPUTY JUDGE OF THE HIGH COURT)

Introduction

1. This appeal concerns a point of statutory construction. I refer to the parties as they appeared before Watford Employment Tribunal.

2. In circumstances which are not material for present purposes, the Claimant was summarily dismissed on 20 June 2016, his effective date of termination. He contacted ACAS on 22 July 2016, which issued an early conciliation certificate on 22 August 2016. On 18 October 2016, he presented his claim form, by which he brought claims for unfair and wrongful dismissal, and for direct and indirect race and religion or belief discrimination. In its response form, the Respondent contended that all such claims had been presented out of time (and were, in any event, denied).

3. On 12 January 2017, a Preliminary Hearing took place to determine the following issue:

> **"Having regard to the extension of time limits, as a result of the parties being engaged in ACAS conciliation, were the claims presented in time and if not should time be extended to allow the claims to proceed to a final hearing on the basis that either it was not reasonably practicable to have [sic] in time or it is just and equitable to do so?"**

4. The Tribunal did not receive evidence. In its Judgment and Reasons, sent to the parties on 15 April 2017, it concluded that all claims had been presented in time and could proceed to a final hearing. The Respondent appeals from that finding, contending that it derived from an erroneous construction and, hence, application of the applicable statutory provisions. Before me, as below, the Respondent was represented by Mr Nathaniel Caiden and the Claimant was represented by Mr Attiq Malik.

The Relevant Statutory Provisions

5. The Claimant's claims variously arise under the **Employment Rights Act 1996** ("ERA"), the **Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994** ("the 1994 Order") and the **Equality Act 2010** ("EqA"). It is common ground that, in each case, provisions entitled "*Extension of time limits to facilitate conciliation before institution of proceedings*" are engaged and that they are materially identical in their terms. For ease of reference, therefore, I shall refer to the relevant provisions of the **ERA**, but my reasoning should be taken to apply equally to the corresponding provisions in the **1994 Order** and the **EqA**.

6. The limitation period applicable to a complaint of unfair dismissal is set out in section 111 of the **ERA**, which provides (so far as material):

> **"111.** ***Complaints to employment tribunal***
>
> **(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.**
>
> **(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal -**
>
> > **(a) before the end of the period of three months beginning with the effective date of termination, or**
> >
> > **(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.**
>
> **(2A) Section … 207B (extension of time limits to facilitate conciliation before institution of proceedings) apply for the purposes of subsection (2)(a)."**

7. Section 207B of the **ERA** provides:

> **"207B.** ***Extension of time limits to facilitate conciliation before institution of proceedings***
>
> **(1) This section applies where this Act provides for it to apply for the purposes of a provision of this Act (a "relevant provision").**
>
> **But it does not apply to a dispute that is (or so much of a dispute as is) a relevant dispute for the purposes of section 207A.**
>
> **(2) In this section -**
>
> > **(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act**

1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when a time limit set by a relevant provision expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) Where an employment tribunal has power under this Act to extend a time limit set by a relevant provision, the power is exercisable in relation to the time limit as extended by this section."

8. The parties agree that an extension of the limitation period in sub-section 111(2)(a) of the **ERA** is conferred by section 207B, but they disagree as to the effect of the latter section, in particular of sub-sections 207B(3) and (4). In short, the Respondent contends that those sub-sections respectively provide for different limitation periods, that sub-section 207B(4) takes precedence and is the applicable limitation period in this case and that, on the facts of this case, all claims were presented out of time. The Claimant contends that sub-sections 207B(3) and (4) are to be applied sequentially and that, so applied, his claims were presented in time. Before summarising the parties' arguments, I explain how their respective positions are said to come about.

*Sub-section 207B(3) of the **ERA***

9. The primary limitation period for a claim of unfair dismissal under sub-section 111(2)(a) of the **ERA** is three months, beginning with the effective date of termination. Thus, in this case, subject to section 207B, the primary limitation period would have expired on 19 September 2016. Under sub-section 207B(3) of the **ERA**, the period beginning with the day after Day A and ending with Day B (in each case as defined by sub-section 207B(2)) is not to be counted. Here, that period, running from 23 July to 22 August 2016, was 31 days. Adding 31 days to 19 September 2016, the primary limitation period expired on 20 October 2016. The

claim form was presented on 18 October 2016, and, accordingly, was presented in time, if sub-section 207B(3) applies.

*Sub-section 207B(4) of the **ERA***

10. As above, subject to section 207B, the primary limitation period under sub-section 111(2)(a) of the **ERA** expired on 19 September 2016. That date fell between 22 July (Day A) and 22 September 2016 (one month after Day B). The limitation period therefore expired on 22 September 2016 and the claim form was presented 26 days out of time, unless sub-section 207B(4) is to be applied following the prior application of sub-section 207B(3). In that event, the expiry of the primary limitation period, calculated in accordance with sub-section 207B(3), did not fall within the period beginning with Day A and ending one month after Day B. Thus, sub-section 207B(4) was not engaged and the claim form was presented in time.

11. The issue to be determined, therefore, is whether the time limit to which sub-section 207B(4) refers is the unmodified time limit, for which sub-section 111(2)(a) of the **ERA** provides, or the modified time limit, as extended by sub-section 207B(3). If it is the former, the claim was presented out of time (subject to any appropriate extension under sub-section 111(2)(b)); if it is the latter, the claim was presented in time. The same issue arises in each of the other claims, with the same result. The grounds of appeal that HHJ Eady QC permitted to proceed, following a Rule 3(10) Hearing, are directed at that question.

The Parties' Submissions

12. I summarise below the written and oral submissions received from both parties.

The Respondent's Submissions

13. For the Respondent, Mr Caiden submitted that sub-sections 203B(3) and (4) of the **ERA** provide for alternative time limits, that the time limit to which sub-section 203B(4) refers is the 'original time limit' in section 111 of the **ERA**, and that, as the later and more specific of the two statutory provisions, sub-section 207B(4) should take precedence over sub-section 207B(3). Mr Caiden contended that the underlying legislative intention and context are that time limits in employment claims should be short, in order to protect respondents whilst affording sufficient time to claimants to know the facts giving rise to the claim and the appropriate respondent(s) and to draft proceedings. Extensions of time are to be determined with those purposes in mind. Referring to **HMRC v Garau** UKEAT/0348/16/LA, per Kerr J at paragraph 27, Mr Caiden submitted that respondents are entitled to benefit from the expiry of limitation periods, an entitlement diluted to a limited extent in return for the obligation on a claimant to comply with the mandatory early conciliation provisions. He referred me to paragraph 65 of the Explanatory Notes to the **Enterprise and Regulatory Reform Act 2013** (by operation of which the requirement to provide certain information to ACAS prior to instituting relevant proceedings was inserted as section 18A of the **Employment Tribunals Act 1996**) and also to a passage from *Hansard*.

14. The effect of such material, so Mr Caiden contended, was to demonstrate that the purpose of section 207B of the **ERA** is to protect a claimant from disadvantage because early conciliation would otherwise consume some of the time available to him in which to prepare his claim. That can be its only intention because, at the time of entering early conciliation, the name of the prospective respondent and the basis of the claim would be known, he submitted. With that intention in mind, it was Mr Caiden's position that section 207B is ambiguous: the relationship between sub-sections (3) and (4) is not stated and it is not clear whether the time

limit to which sub-section (4) refers is the 'original time limit', under sub-section 111(2)(a) of the **ERA**, or the latter as extended by sub-section 207B(3). In Mr Caiden's submission, the intended reference was to the 'original' time limit. He sought to support that submission by reference to earlier HMCTS administrative guidance (no longer given), to certain practitioner texts and commentaries, to an extract from the decision of a different employment tribunal in **Torres v Cardiff and Vale University Health Board** ET 1600577/2015 and to *Hansard*.

15. Mr Caiden submitted that, were section 207B of the **ERA** to be construed as the Claimant contends, sub-sections 207B(3) and 207B(4) would have been drafted in such a way as to make the need for their sequential application clear. Furthermore, if sub-section 207B(4) is only to be applied to the primary time limit as already extended by sub-section 207B(3), the reference in the former sub-section to "*the period beginning with Day A and ending one month after Day B*" would be superfluous: time could never expire during that period. In any event, he said, if the two sub-sections are found to be in conflict, the later should prevail, in accordance with the principle in **Wood v Riley** (1867-68) L.R. 3 C.P. 26. Finally, Mr Caiden submitted that policy supported his construction, in which the applicable time limit is readily ascertainable and easier to calculate, providing certainty and simplicity. An extension of the primary limitation period is only required in order to draft the claim, should conciliation fail. One month from Day B in which to do so is sufficient and consistent with the short primary time limits applicable to claims in the employment tribunal and with the expected duration of the early conciliation process.

The Claimant's Submissions

16. For the Claimant, Mr Malik submitted that the Tribunal had been correct to hold that the claims had been presented in time. There is no conflict between sub-sections 207B(3) and

207B(4). The principle in **Wood v Riley** is, therefore, not engaged and, in any event, is obsolete, per Nicholls LJ in **Re: Marr (a bankrupt)** [1990] 1 Ch. 773, 784H-785C. In fact, Mr Malik contended, the relevant sub-sections are simply different provisions concerned with overlapping aims and applications. Thus, neither sub-section must yield to the other (see **Cusack v Harrow London Borough Council** [2013] 1 WLR 2022 SC). The Employment Tribunal had been correct to adopt the approach previously taken by Leeds Employment Tribunal in **Booth v Pasta King UK Limited** 1401231/2014. The wording of sub-section 207B(4): "*if a time limit set by a relevant provision would (if not extended by this subsection) expire during the period*" (emphasis added) made clear that the sub-sections were to be read sequentially, given that sub-section 207B(4) would not apply in every case. In any event, why should a claimant receive a reduced extension of the primary limitation period according to whether sub-section 207B(3) or 207B(4) applies? Such a construction would deter claimants from meaningful engagement in the conciliation process, contrary to Parliament's intention. **Garau** is not on point, because it deals with time spent in conciliation before the limitation period has started to run, he submitted. The act of drafting and submitting an ET1 had been over-simplified by the Respondent. It can entail investigation and research and it is important to get it right: a case rests on what is pleaded. The Respondent's construction of section 207B 'risks' being incompatible with a Claimant's Article 6 right to a fair trial, in reducing the primary limitation period by the time spent in conciliation. The wording of sub-section 111(2A) of the **ERA** and of Schedule 1 to the **Employment Tribunals (Early Conciliation: Exemptions and Rules of Procedure) Regulations** 2014/254 highlights the importance given by Parliament to conciliation and the related ability to extend the otherwise short primary limitation period. The Claimant's construction of section 207B is neither complicated nor creative of uncertainty.

Discussion

17. For the reasons which follow, I take the view that the Tribunal's (and the Claimant's) construction of section 207B of the **ERA** is correct: where it applies, sub-section 207B(4) operates to extend the time limit as first modified by sub-section 207B(3) of the **ERA**.

18. Sub-section 207B(3) applies in every case: as its wording makes clear, it establishes the method by which to work out when it is that a time limit set by a relevant provision expires. By contrast, sub-section 207B(4) expressly applies only in the circumstances to which it refers. Those circumstances are "*where a time limit set by a relevant provision would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B*". If, determined in accordance with sub-section 207B(3), the expiry date would fall within the period specified in sub-section 207B(4), that latter sub-section operates to extend the time limit in the manner provided. As a matter of construction, the two sub-sections are, on their face, to be applied sequentially, as I explain further below.

19. Mr Caiden's reference to the 'original time limit' (by which he means the three-month period specified in sub-section 111(2)(a)) ignores both the wording and structure of sections 111 and 207B of the **ERA**:

19.1. The time limit set out in sub-section 111(2)(a) is expressly "*subject to the following provisions of this section*".

19.2. Sub-section 111(2A) then provides that section 207B applies for the purposes of sub-section 111(2)(a).

19.3. Sub-section 207B(3) requires that, in working out the expiry of the time limit set by section 111, the specified period is to be excluded. There is no saving clause, ousting its application in the event that sub-section 207B(4) applies.

19.4. Sub-section 207B(4) applies where the time limit set by a relevant section would expire within the specified period "*if not extended by this subsection*". The Respondent's construction is consistent with the alternative wording, "*if not extended by this section*", which the draftsman did not use. Throughout section 207B, care has been taken to distinguish use of the word 'section' from use of the word 'sub-section'.

19.5. Thus, the time limit set by sub-section 111(2)(a) of the **ERA** necessarily encompasses the application of sub-section 207B(3). If that time limit, so modified, would expire within the period specified by sub-section 207B(4), the latter makes provision for a further modification.

19.6. It follows that there is no separate 'original time limit', properly so-called: there is one time limit, the expiry of which is determined by the combined application of sections 111 and 207B of the **ERA**. Whilst the wording of the equivalent provisions in the **EqA** and the **1994 Order** is not identical, it makes equally clear that the applicable time limit in each case is to be determined by a combined application of the two relevant sections, or articles (as the case may be).

20. I see no ambiguity in the wording of section 207B, nor do I consider that the construction that I have found to be correct is contrary to public policy. As HHJ Eady QC

observed in **Tanveer v East London Bus and Coach Co Ltd** UKEAT/0022/16/RN, at paragraph 7, subsequently endorsed by Kerr J in **Garau**, at paragraph 28, the intention behind section 207B of the **ERA** is that prospective claimants should not be disadvantaged by the time taken to comply with the early conciliation requirement. That is consistent with paragraph 65 of the Explanatory Notes to the **Enterprise and Regulatory Reform Act 2013**:

> **"Section 8:** ***Extension of limitation periods to allow for conciliation***
>
> **This section gives effect to Schedule 2, which sets out how the relevant time limits for bringing a claim will be extended where necessary to provide sufficient time for early conciliation to take place and to ensure that the claimant is not disadvantaged."**

21. Sub-section 207B(4) furthers that intention by ensuring that a prospective claimant should always have at least one month from the end of the early conciliation period in which to bring a claim. Otherwise, a prospective claimant who contacts ACAS towards the end of the unmodified time limit would have little time in which to commence proceedings, should conciliation fail. It does not follow from that intention that there should be no entitlement to any longer period and I consider that clear wording to that effect would have been required in order to achieve any such aim and/or to disapply sub-section 207B(3) in circumstances in which its wording is otherwise of general application. Mr Malik is correct to observe that the act of drafting an ET1 has been unduly minimised by the Respondent. Whilst the drafting of some ET1s will be more straightforward, the exercise can entail considerable work and the assistance and associated cost of legal advisors.

22. The Respondent's submission that limitation periods in employment cases are intentionally short takes the matter no further. By operation of section 207B and equivalent statutory provisions, the applicable limitation period allows for early conciliation to take place. Even then, it remains short. Parliament could have legislated to require a prospective claimant to contact ACAS by a certain point within the applicable (unmodified) limitation period, but did

not do so. It is the expiry of the limitation period as modified from which the respondent is entitled to benefit (as noted in **Garau**, at paragraph 27).

23. As I have concluded that there is no ambiguity in section 207B of the **ERA**, still less that it leads to an absurdity, the conditions permitting reference to *Hansard*, set out in **Pepper v Hart** [1993] AC 593 HL, are not satisfied. Nonetheless, it is worth noting that nothing in the passage from which Mr Caiden sought to draw support is inconsistent with the conclusion that I have reached. It does, however, run contrary to some of Mr Caiden's other submissions.

24. The passage in question appears in *Hansard* HL, Deb, 26 Feb 2013, col 982-3, in which, at Report Stage, Viscount Younger of Leckie, then the Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills, was addressing a proposed amendment:

> **"… Schedule 2 amends various pieces of primary legislation so that the relevant time limits for bringing a tribunal claim will be extended where necessary in order to provide sufficient time for early conciliation to take place so that the claimant is not disadvantaged. … The amendments made by Schedule 2 address concerns that the early conciliation process will disadvantage prospective claimants by consuming some of the limitation period and therefore the time in which they have to prepare any claim that they want to lodge with an employment tribunal, and thereby dissuade them from engaging fully with the conciliation offered by ACAS.**
>
> **Schedule 2 effectively stops the clock for those jurisdictions where early conciliation applies so that the time during which a claim is subject to the early conciliation process will not count for the purposes of calculating the passage of the limitation period for that claim. In addition, where the limitation period would expire during the prescribed period for early conciliation, or within a month after the day on which the ACAS certificate is deemed to have been received, Schedule 2 automatically extends the limitation period for that claim so that the claimant has one calendar month from the deemed date of receipt of the certificate in which to lodge that claim at an employment tribunal." (emphasis added)**

25. It was Mr Caiden's position that nothing in that passage evidences an intention that the extension of time is to promote use of ACAS early conciliation. I do not accept that. Whilst engagement in conciliation remains voluntary, the intention that emerges from the clause underlined in the first paragraph cited above (and from paragraph 65 of the Explanatory Notes to the **Enterprise and Regulatory Reform Act 2013**) is that sufficient time should be provided so that a claimant should not be dissuaded from full engagement with the conciliation service.

Consumption of part of the limitation period and, thus, of the time available in which to prepare any claim should conciliation fail was considered to run contrary to that aim. To leave a claimant with minimal time in which to commence proceedings, alternatively, to require him or her to focus on preparing a claim whilst simultaneously engaging in early conciliation, would be unlikely to maximise its prospects of success. Whilst, as Mr Caiden points out, there is nothing to preclude parties from continuing to conciliate through ACAS once proceedings have been commenced, by that stage the parties have been put to the trouble and, in many cases, expense of, respectively, commencing and defending proceedings. Early conciliation is intended to avoid that. I note, also, Viscount Younger's use of the words "in addition" when explaining the effect of the second provision, having previously explained the operation of the "stop the clock" provision. That, too, runs contrary to the submission that sub-section 207B(4) should be construed as an alternative limitation period.

26. In support of the Respondent's construction of sub-section 207B of the **ERA**, Mr Caiden further submitted that it would be logically impossible for time ever to expire during the period for which sub-section 207B(4) of the **ERA** provides, if that sub-section is to be read sequentially with sub-section 207B(3). That is not so. Assume that a prospective claimant contacts ACAS on the last day of the three-month period for which sub-section 111(2)(a) of the **ERA** provides (Day A). The period beginning with the following day and ending with Day B is not to be counted (sub-section 207B(3)). However, on the assumed facts, it would not be counted in any event because the whole of that period falls after the relevant three months (see paragraph 29 of **Garau**, albeit in different circumstances). The application of sub-section 207B(3) therefore results in no modification of the time limit. Nonetheless, as the relevant time limit would otherwise expire on Day A, by operation of sub-section 207B(4) the time limit instead expires a month after Day B. In this example, sub-sections 207B(3) and (4) have been

applied sequentially, but, on the assumed facts, result in only one modification. A variation of this submission was that, for the purposes of sub-section 207B(4), there is no need to know Day A, if that sub-section is to be applied sequentially, and that a construction which renders statutory wording superfluous should not be adopted. In fact, as the example given in this paragraph demonstrates, the date on which Day A falls determines whether the time limit is first to be modified under sub-section 207B(3) (which would not be the case if Day A coincided with the end of the unmodified time limit) and whether sub-section 207B(4) applies.

27. If and to the extent that former administrative guidance and/or some commentators and employment tribunals have, to date, suggested a different interpretation of the relevant legislative provisions, I disagree with their interpretation, which is not binding upon me. I should also note that the employment tribunal decisions, commentary and guidance to which I have been directed have not all pointed in one direction. The commentary in *Tolley's Employment Handbook* and in *Harvey on Industrial Relations and Employment Law* assumes (without explanation) that, for the purposes of sub-section 207B(4), the relevant time limit is unmodified by sub-section 207B(3), albeit that, in the same passage of *Harvey* ([290.03]), reference is made to **Tanveer**, in which a different approach was adopted (see below). An Employment Lawyers Association briefing, dated May 2014 (one month after section 18A of the **Employment Tribunals Act 1996** was brought into force), summarises what sub-section 207B(4) is said to provide, but uses the words 'original time limit', which do not appear in that sub-section. Elsewhere, as the Respondent acknowledges, **Booth** and **Savory v South Western Ambulance Service NHS Foundation Trust** ET 1400119/2016 are examples of employment tribunal decisions consistent with the construction that I find to be correct. **Savory** itself refers to two further tribunal decisions to similar effect. In volume 5 of the *IDS Employment Law Handbooks*, the sound advice given is that a cautious approach to

interpretation should be adopted, pending clarification at appellate level. It is also noted (correctly - see paragraph 8 of **Tanveer**) that **Tanveer** entailed sequential application of the relevant statutory provisions, albeit not directly considering the point now before me. ACAS' guidance, entitled "Conciliation Explained" and issued in 2015, states (at page 7) "*When someone notifies Acas of their intention to make a tribunal claim, the clock stops ticking on their limitation period. The clock starts again once Early Conciliation ends and extra time is added to ensure everyone has at least one calendar month in which to present a tribunal claim after Early Conciliation ends. ...*". In the end, it is for me to determine the proper construction of the relevant statutory provisions.

28. I am not attracted by Mr Caiden's submission that, had it been intended to apply sub-sections 207B(3) and (4) sequentially, their requirements would have been incorporated within a single sub-section, sub-divided into separate paragraphs. The fact that the relevant provisions could have been so drafted does not change the clear meaning of the sub-sections in the form enacted.

29. There being no conflict between sub-sections 207B(3) and (4), the principle in **Wood v Riley** is not engaged. Furthermore, as Mr Malik observes, in **In Re: Marr (A Bankrupt)**, the Court of Appeal held (at 784H to 785C) that there is no such rule. Put at its highest, the two sub-sections are concerned with overlapping aims and applications and, consistent with the approach adopted by the Supreme Court in **Cusack v Harrow London Borough Council**, at paragraph 61, there is no basis in such circumstances for sub-section 207B(4) to override sub-section 207B(3). Nor am I persuaded that the construction for which the Respondent contends promotes greater certainty or simplicity. Once it is clear that the sub-sections operate sequentially, the expiry of the time limit may be readily calculated.

30. For the sake of completeness, I do not accept Mr Malik's submission that the Respondent's construction, if adopted, would 'risk' contravening a Claimant's Article 6 right to a fair trial and I note the diffidence with which that submission was advanced. Section 18A of the **Employment Tribunals Act 1996**, was brought into force on 6 April 2014, requiring that, before a prospective claimant presents relevant proceedings relating to any matter, s/he must provide the prescribed information about that matter to ACAS. Whilst the intention behind section 18A is that there will be meaningful engagement in the conciliation process, there is no obligation upon a claimant so to engage. Prior to 6 April 2014, it was open to a prospective claimant voluntarily to seek the assistance of ACAS, or otherwise to seek to achieve settlement, whilst simultaneously preparing to present proceedings within the limitation period then applicable. I have been directed to no authority supportive of the proposition that the need to prepare proceedings during a period when one is also seeking to achieve settlement impairs the essence of the Article 6 right. That is hardly surprising. There is no circumstance in which the operation of sub-section 207B(4) (without the prior application of sub-section 207B(3)) would result in a shorter limitation period than would have applied prior to 6 April 2014.

Disposal

31. For the reasons set out above, I consider that the Employment Tribunal's construction and application of the relevant statutory provisions was correct and that it was right to hold that the Claimant had presented his claims in time. The Respondent's appeal is dismissed and all claims should now proceed to a Full Hearing.

Costs

32. The Respondent's Notice of Appeal was first referred to HHJ David Richardson, in accordance with Rule 3(7) of the **Employment Appeal Tribunal Rules 1993** (as amended),

who concluded that the argument set out in that Notice was "*plainly wrong*" and that, "*It is entirely plain on the wording of section 207B(4) that it does not in some mysterious way take precedence over section 207B(3)*".

33. At paragraph 19 of the transcript of the Respondent's Rule 3(10) application, HHJ Eady QC recorded that she directed that certain grounds of appeal should proceed to a Full Hearing with some reluctance, saying, "*I would also add the following observation: putting this matter through to a Full Hearing will (should he participate and be represented) involve the Claimant in costs; if ultimately the Respondent's argument is found (as HHJ Richardson suspected) to be plainly wrong, then the Respondent might not be surprised if it then faces a costs application*". By reference to that paragraph, paragraph 52 of the Claimant's skeleton argument indicated his intention to apply for costs, were the appeal to be dismissed. Any application should be made in writing, in accordance with paragraph 22 of the **Practice Direction**, within 14 days of the date on which this Judgment is handed down. The Respondent should submit any representations that it wishes to make within 14 days thereafter. The application will be resolved on the papers unless, in my judgment, any matter arising from either set of representations indicates the listing of an oral hearing to be appropriate.