



# EMPLOYMENT TRIBUNALS

**Claimants:** Mrs D Boland and others

**Respondent:** Littlewoods

**Heard at:** Leeds                      **On:** 19, 20, 21, 22, 23, 26, 27, 28 29  
and 30 October 2009

**Before:** Employment Judge Hepworth

**Members:** Ms L Atkinson  
Mr I Preston

**Representation**

**Claimants:** Mr Draycott, Counsel

**Respondent:** Mr Lewinsky, Counsel

## JUDGMENT

1. The claims of Mrs Cople, Howie, Ferguson, Westworth, Wynne, McAvoy, Caffrey and Gilbertson succeed to the extent stated in the reasons below.
2. The claims of Ms Smith, Jobling, Owens, Chipchase, Dawes and Jones fail.
3. The Tribunal was informed that the claim of Ms Boland was withdrawn.

## REASONS

1. These are example claims from Claimants who allege that they were unlawfully excluded from their employers' occupational pension scheme on the basis of their part time status, this being a breach of the Equal Pay Act 1970 and Article 141 of the European Treaty.
  - 1.1 The Tribunal heard evidence from twelve Claimants, Elizabeth Howie, Ann Ferguson, Mabel Westwood, Ann Smith, Susan Jobling, Helena Owens, Mary Wynne, Jane Ward, Anita McAvoy, Angela Caffrey and Evelyn Gilbertson. The Tribunal also read written statements produced on behalf of Jacqueline Chipchase, Betty Dawes and Patricia Jones. These witnesses did not attend to give evidence at the Hearing and therefore did not give evidence under oath and were not available for cross-examination. The Tribunal also heard evidence from the following witnesses on behalf of the Respondent: Barbara Wynn, Angela Moran, Brenda Hird, Patricia Jones and Colette Bedson. The Claimants

**Case No: 2401601/2001 and others**

were represented by Mr P Draycott of Counsel and the Respondent by Mr S Lewinsky of Counsel. The Tribunal heard evidence and submissions over a period of seven days, and four days were taken by the Tribunal in reaching its conclusions and the drafting of those conclusions and Reasons.

- 1.2 The Tribunal found that at the time to which the claims relate the Respondent was a very large company having many sites in Liverpool, Bolton, Preston, Glasgow and retail shops in towns and cities. Its business involved the famous Littlewoods Pools organisation, a large mail order business and the retail shops. The businesses were then owned by the Moores family in Liverpool. Many thousands of employees were employed and there are many hundreds of Claimants whose entitlement to a declaration of retrospective entry into the Respondent's occupational pension scheme depend on the conclusions of this Hearing.

**2. The issues and the background to this Hearing:-**

- 2.1 These are example claims. They all concern a particular sub-issue within the *Preston v. Wolverhampton Healthcare NHS Trust* litigation – the “opters cases”. The jurisdiction on this issue began in 2002 in the decision by Judge John MacMillan in the *Preston v. Wolverhampton Healthcare NHS Trust (No 3)* case. Claims under the original *Preston* authority were first registered in Tribunal in 1994. The following principles are accepted by the parties and are not in dispute:-

- (a) The Claimants were excluded for different periods on the Respondent's occupational pension scheme because of their part time status. It has been decided in the *Preston* litigation that such exclusion is in breach of the Equal Pay Act 1970 and Article 141 of the European Treaty being indirectly discriminatory against female employees, as having a disproportionate effect upon them as females. No justification defence is put forward to us.
- (b) The “opters principle” relates to the period when the scheme was not compulsory for full-timers to join and Claimants (part-time workers) who did not join or delayed in joining for a significant period when the rules were changed to allow them to join. The principle suggests that they would not have joined for the period prior to that when they were actually excluded by the rules of the scheme and full-timers were entitled to join. It could be inferred had they been full-timers that they would not have joined at this time.
- (c) The decision by Judge MacMillan in relation to opters was not appealed when the *Preston (No 3)* decision was appealed on other points to the Employment Appeal Tribunal before His Honour Judge McMullen in 2004 although he did refer briefly to them.
- (d) Judge MacMillan had decided that the opters issue would turn on the facts of each individual case and indicated that there could be special exceptions, giving examples such as when the Claimant has already joined a private pension scheme and where a Claimant is so close to retirement that it was not worthwhile to join the scheme.

**Case No: 2401601/2001 and others**

- (e) Judgment has also been made in other decisions and Employment Tribunals have been given further guidance in relation to delay in joining the scheme in the case of *Betts and others v. Boots Company Plc* [2006] at Employment Tribunal. Mr Draycott for the Claimants did not accept that the decision in *Betts* complies with the burden of proof requirements in discrimination law.
- (f) Issues relating to the opters principle have also been considered by the Employment Appeal Tribunal in *Dennison v. The University College* [2006] in which His Honour Judge Elias said that no-one:-

“Had suggested that the guidance is inappropriate or legally incorrect. In my judgment it provides a legally sound and practical approach that Tribunals can safely adopt in relation to cases which it is addressing. Plainly (my underlining) an employee has not complaint if she would not have joined the scheme even if eligible to do so.”

This was considered in a different way in *Lavety v. Lanarkshire Health Board* [2008] in which the Honourable Lady Smith treated the issue as a matter of remedy, saying that :-

“When it comes to remedy it is accordingly necessary to look at the question of whether a part-time worker who has been excluded from the pension would, on the balance of probabilities, have joined the scheme during the period of her exclusion from it if she had been eligible to do so. That is the fundamental question which was confirmed by the President (Elias J) in *Dennison*.”

- (g) There has also been a similar Hearing to the instant one conducted by Judge N Garside at Employment Tribunal in Newcastle in which the Tribunal considered a number of example cases on the opters principle. There was no suggestion made at this Hearing that the opters principle was not compliant with the law, European Community or otherwise. Mr Draycott represented the Claimants at this Hearing. Mr Draycott also represented these Claimants at a Case Management Discussion in Manchester followed by a Pre-Hearing Review at which he attempted to amend the pleadings to allege that the opters issue was not compliant with European law. This was rejected as it was found to have no reasonable prospect of success. However this was appealed to the Employment Appeal Tribunal and his Honour Judge McMullen allowed the appeal saying that as it was a discrimination case it was not appropriate for a Judge to decide that it had no reasonable prospect of success without first hearing evidence.
- (h) These claims are heard in the Leeds Employment Tribunals because a Respondent witness is a lay-member at the Manchester Region of Employment Tribunals.
- (i) The Tribunal was informed that there are still live issues relating to whether the Claimants have provided appropriate comparators for the purposes of

the Equal Pay Act in 1970 but this is not an issue for this Tribunal.

- (j) It had been thought that the jurisdiction in relation to these cases was clear and not in dispute. It is based on European authorities starting with the *Defrenne v. Sabena* [1976], *Vroege v. Fisscher* [1995] and other European cases. It is accepted that pension entitlement is pay for equal pay purposes and it is indirectly discriminatory not to allow a part-timer to join an occupational pension scheme because of the disproportionate effect this would have on female employees.
- (k) Mr Draycott now says that Judge MacMillan was wrong in his decision in 2002. The opters principle does not comply with the law relating to the burden of proof. Further, not allowing a part-time employee to enter an occupational pension scheme is a breach of European law and the Claimant is entitled therefore to a declaration. A Claimant does not have to show any detriment – the premise for the opters rule. Also the latent definition of indirect discrimination has not been correctly put into English law in that it requires detriment but it should not do so as the European Article makes no reference to detriment.
- (l) The representatives provided initial skeleton submissions followed by written submissions at the end of the Hearing together with oral submissions lasting for over two hours by Mr Lewinsky and one and a half hours by Mr Draycott. I do not intend to rehearse these submissions. The original ones are attached to and included within this Judgment.

3. The following cases were considered and where appropriate applied *E v. BBA* [2006] IRLR 471; *Bilka Kaufhaus* [1987] ICR 110; *Vroege v. Fisscher* [1995] ICR 635; *Preston v. Wolverhampton Healthcare NHS Trust and others* [2000] ICR 961; *Preston v. Wolverhampton Healthcare NHS Trust and others (No 3)* [2004] IRLR 96; *Preston v. Wolverhampton Healthcare NHS Trust and others (No 2)* [2001] IRLR 237; *Smith and others v. Abdel Systems Limited* [1995] ICR 596; *Strathclyde Regional Council v. Wallace* [1998] IRLR 146; *S. A. Ancienne Maison v. Administration des Douanes* [1978] 3 CMLR 133; *National Pensions Office v. Jonkman* [2007] 3 CMLR 25; *Dennison v. University of College* UKEAT 2006; *Lavety v. Lanarkshire Health Board* UKEAT 2008; *Betts and others v. Boots Company Plc* [2006] Employment Tribunal; *Preston v. Wolverhampton Healthcare NHS Trust (No 3)* [2002] Employment Tribunal; *Sorbie and others v. Trust House Fortie Hotels Limited* [1977] ICR 55; *Igen Limited v. Wong* [2005] IRLR 258; *King v. Great Britain China Centre* [1991] IRLR 513; *Shamoon v. Chief Constable of the RUC* [2003] IRLR 285; *Barber v. Guardian Royal Exchange Assurance Group* [1990] IRLR 240; *Dietz v. Stichting Thaiszong Rotterdam* [1996] IRLR 692; *Magorrian v. Eastern Health and Social Services Board* [1995] IRLR 86; *O'Flynn v. The Adjudication Officer* [1996] ECR; *R (Elias) v. Secretary of State for Defence* [2005] IRLR 788; *Redcar and Cleveland Borough Council v. Bainbridge* [2008] IRLR 776.

#### 4. Findings of Fact

The unanimous conclusions of the Tribunal in each individual case and generally were the

following:-

#### 4.1 General Findings

From the relevant time in this case, 8 April 1976 and before the Respondent provided a contributory occupational pension scheme for the benefit of its employees. This has now been closed to new entries from October 2001, the company now operating a stakeholder pension scheme from that date. Employees who were members of the Respondent's final salary scheme were required to contribute 6% of gross earnings. The Claimants in this case were part-time workers on relatively low earnings and therefore a reduction of earnings by 6% would amount to a significant reduction in wage. Various changes were made in eligibility to the scheme over the years. The scheme distinguished between zoned staff and graded staff, the former being members of management. The Claimants in this case were graded employees. Between 8 April 1976 and 31 December 1976 the scheme was open to full-time employees on a voluntary basis. Between 1 January 1977 to 31 May 1978 the scheme was closed to all except full-time zoned employees. From 1 June 1988 the scheme was open to full-time graded employees subject to certain service requirements. From 1 April 1990 the scheme was open to part-timers working 22.5 hours or more a week. From 1 January 1991 the scheme was open to part-timers working fifteen hours or more a week. From 1 January 1992 the scheme was open to part-timers working twelve hours or more a week. From 1 July 1995 the scheme was open to all part-time employees. The Tribunal accepted the evidence from the Respondent's witnesses that changes in eligibility for the company scheme were communicated to staff. In general this information was consistent with evidence given by the Claimants. The first and most significant means of communication was a briefing of all employees on new terms and conditions of employment including changes to requirements for pension membership which took place following negotiations with trade unions and carried out by appropriate managers. Groups of employees were briefed by supervisors who would in the course of the briefing read out joint statements. Copies of these statements were then provided to union members and the briefs were taken away. There was a union meeting at which the union representatives would explain and discuss the proposed changes in terms and conditions, in particular proposed pay increases. There were annual changes to pay. There was then a ballot. Copies of the joint statements were placed on notice boards. Similar briefings took place in relation to non-union members. The company also produced a newsletter called Littlewoods News in the 1990s (earlier there had been other differently named newsletters). This contained information about the right to join the pension scheme and changes to rules. Joint statements and notices relating to the right to join the pension scheme were contained on notice boards. These were displayed on corridors and in the canteens. Further, the Respondent introduced evidence of a significant number of female part-time employees who did join the company's pension scheme during relevant periods, in particular periods just after changes for rules of membership had been made. The unanimous conclusion of the Tribunal was that there had been clear information communicated to all employees at all the Respondent's sites relating to changes in the pension scheme membership entitlement. However the Tribunal also found that it was possible, although not likely, that an employee could slip through the net of communication, for example if they had been on holiday or sick at the time of the joint statement, had not looked at notice boards and also had not been told by other employees and representatives about the changes. In relation to those Claimants who were aware of changes the Tribunal was unanimous in finding that simply because they paid full national

## Case No: 2401601/2001 and others

insurance payments and made contributions to Medicash (originally “penny in the pound”) was not relevant to the Tribunal deciding whether they would have joined the scheme if they had been entitled to. An employee may well make a definite decision to pay a full national insurance payment in order to obtain immediate benefits relating to unemployment, sick pay and maternity, as well as a national pension entitlement. Medicash gave benefits of money such as optician charges for new glasses and a payment in respect of hospital convalescence. However the payments were small and the Tribunal did not consider that they were an indicator that the Claimants would have joined the pension scheme earlier if they had been entitled. Further, if there is any doubt about this, the Tribunal was unanimous in finding that the Respondent was at all times encouraging its employees to join the pension scheme. There was evidence that any changes to the pension scheme was costed but this was quite a normal and sensible thing for a company to do. Many hundreds of part-time employees did join the pension scheme when they became entitled because of clear communication. This was inconsistent, in the unanimous view of the Tribunal, with any suggestion by the Claimants’ representative that the Respondent company was underselling the right to join the scheme in order to cut costs. The Tribunal unanimously found that the considerations of Judge MacMillan lucidly stated in Paragraphs 13 to 29 of the *Betts* Judgment to be extremely helpful in its conclusions. We agree totally with all the points made in these paragraphs, in particular that the Claimants in these cases can genuinely and honestly believe that they are telling the truth in relation to events happening over twenty years ago but in fact they are simply stating what is obvious to them from their position now e.g. of course I would have joined the scheme or I would be thinking very carefully about providing for retirement.

## 5. Conclusions in relation to the individual cases

### 5.1 Brenda Copple

Mrs Copple was employed in the pools side of the business at Birkenhead and was a graded employee from 14 August 1971. The issues in her case were that if the Tribunal found that she would have joined the scheme pre-1977 she would be entitled to a declaration for 8 April 1976 to 1 January 1991. If the Tribunal found that she would not have joined the scheme pre-1977 but would have joined later she would be entitled potentially for the period 1 June 1988 to 1 January 1991. The Tribunal found that Ms Copple joined a private (Royal Life) pension scheme on 28 February 1983 and started paying an AVC in 1990. Graded staff members became entitled to join only on 1 June 1988. She became entitled to join the scheme on 1 January 1991 when employees became eligible when working fifteen hours a week or more. She was given advice to continue the Royal Life pension on 14 May 1991 and made regular AVCs of £20.00 per month to the private pension from 28 February 1994. She joined the Respondent’s occupational pension scheme on 31 January 1995 with a delay of four years. She was compensated for shortfall caused by bad advice from Royal Life for the period 14 May 1991 to 5 May 1997 which put her in the position that she would have been in had she joined the Respondent’s occupational pension scheme on 14 May 1991. The Employment Tribunal found unanimously that for the period 1988 to 1991 she would have joined the scheme if entitled. Evidence for this in particular was that having become aware that part-time staff were entitled to join the scheme she was given bad advice by Royal Life advising her to stay in their private scheme rather than transfer to the Respondent’s occupational scheme. The Tribunal also noted when she had worked previously for Camall Laird and the Water Board she had joined their occupational pension

schemes. The Tribunal noted in relation to her employment between 1971 and 1983 she did not take out a private scheme because in effect it was too expensive. Therefore on balance she would not have joined the scheme before 1977 and her claim for the earlier period fails.

## **5.2 Elizabeth Howie**

Ms Howie worked in the pools part of the business in Hillingdon, Glasgow from November 1971. The Respondent's scheme was closed to graded staff from 1 January 1977 but they became entitled to join from 1 June 1988. Ms Howie became eligible to join the pension scheme from 1 January 1991 when the scheme was opened to part-time employees working at least fifteen hours a week or more. She joined the pension scheme on 18 April 1981, a delay of just over three months. The issue in this case is that if the Tribunal found that the Claimant would have joined the scheme pre-1977 she would be entitled to a declaration from 8 April 1976 to 1 January 1991. If the Tribunal found that she would not have joined pre-1977 but would have joined later her entitlement would be from 1 June 1988 to 1 January 1991. This is a straightforward case. The Claimant was aware of her entitlement to join the scheme because of the changes in the rules in January 1991. She chose, for financial reasons (an expensive Christmas in 1990), not to join until April 1991. The Tribunal noted that although the Claimant did not join any private pension scheme she did invest for the future, taking out mortgages in relation to properties other than her home by way of investment. The Tribunal accepted that she had been told in the 1970s (correctly) that she did not qualify to be a member of the scheme. Consequently the conclusion of the Tribunal was that she is entitled to a declaration from 8 April 1976 to 1 January 1991.

## **5.3 Ann Ferguson**

Ms Ferguson worked as a graded employee in the pools side of the business in Hillingdon, Glasgow from March 1973. The Respondent's scheme was closed to graded staff from 1 January 1977, graded staff being entitled to join the scheme from 1 June 1988. The Claimant became entitled to join the scheme, because of her hours of work, from 1 January 1991. The issues in this case are that the Tribunal found that she would have joined the scheme pre-1977 if she was entitled she would be entitled to a declaration from 8 April 1976 to 1 January 1991 and if the Tribunal found that she would not have joined pre-1977 but would have joined later then from 1 June 1988 to 1 January 1991. In this case the Claimant joined the Respondent's pension scheme on 15 July 1991. The Tribunal accepted the Claimant's explanation for not joining in January 1991 as she had a torn ligament and was off work for the period between December 1990 and March 1991. There was also a fire which gutted the premises of the Respondent's site in Glasgow on 27 April 1991, the premises reopening on 27 July 1991. The Tribunal found that these were satisfactory explanations for not joining in January 1991. However the Tribunal found that the Claimant would not have joined in 1977. She was honest and open in her evidence about her family's financial position in early years, in particular because of the financial cost of bringing up a family it was not possible to contemplate entering a pension scheme. Only by the end of the 1980s and the early 1990s was she in a position to consider joining a pension scheme. Consequently the Tribunal found that she would not have joined pre-1977 and therefore she is entitled to a declaration for 1 June 1988 to 1 January 1991.

#### 5.4 Mabel Westworth

Ms Westworth was a graded employee from May 1972 in the pools part of the business in Edge Lane, Liverpool. The scheme was closed to graded staff from 1 January 1977. The Claimant took out a Scottish Life endowment policy in 1983. Graded staff were entitled to join the scheme from 1 June 1988. The Claimant herself was entitled to join, because of her hours of work, from 1 January 1991. She joined the pension scheme on 22 January 1992, a delay of approximately one year. The issues in this case are that if the Tribunal found that she would have joined pre-1977 she would be entitled to a declaration from 8 April 1976 to 1 January 1991. If the Tribunal found that she would not have joined pre-1977 but would have joined later if allowed then her declaration would be from 1 June 1988 to 1 January 1991. The conclusion of the Tribunal was that the Claimant provided a satisfactory explanation for not joining the scheme immediately in 1991 because her husband was off work sick. However she joined in January 1992 when he went back to work and they were able to afford to pay into a scheme. The Tribunal however was unanimous in finding the Claimant would not have joined pre-1977 as she was not in a financial position to join. She took out no form of savings, pension or endowment schemes before the one taken out in 1983. The Claimant is therefore entitled to a declaration but only for the period 1 June 1988 to 1 January 1991.

#### 5.5 Ann Smith

Ms Smith worked in the mail order side of the business in Crosby, Liverpool and Old Hall Street, Liverpool. The Claimant started employment as a graded employee in August 1982 after the scheme had been closed to graded staff on 1 January 1977. Graded staff were entitled to join on 1 June 1988. The Claimant started a private Sun Alliance pension scheme in 1989 and became eligible to join the Respondent's occupational pension scheme on 1 January 1991, because of her hours of work. She joined the pension scheme on 27 February 1992, a delay of one year and one month. The issue in this case is that if successful her entitlement would be from 1 June 1988 to 1 January 1991. The Tribunal found that the Claimant had delayed for what it considered a significant period. It did not accept her evidence that she had not heard of the change in the rules on 1 January 1991. The Tribunal preferred the evidence (particularly from Brenda Hird) that there had been clear briefings and communication and that in particular the weekend shifts on which the Claimant worked were provided with that communication. The conclusion of the Tribunal was that the Claimant was informed but was more concerned with the issue of pay increases. The Tribunal's conclusion was that her evidence of joining a Royal and Sun Alliance private scheme in 1989 was not enough to provide a prima facie case that she would have joined in 1988 if entitled, in particular as it took over a year to join in 1991. Her claim therefore fails.

#### 5.6 Susan Jobling

Mrs Jobling was employed as a full-time cashier and wages clerk on the retail side of the business from 1962 to September 1974. The Respondent's scheme was

### **Case No: 2401601/2001 and others**

closed to graded staff from 1 January 1977 and the Claimant recommenced employment as a graded employee on 4 November 1978. She was advised against a personal pension in 1987 and graded staff became entitled to join on 1 June 1988. She became eligible to join the scheme on 1 January 1991 but joined on 24 November 1992, a delay of one year and eleven months. If successful her entitlement to a declaration would be from 1 June 1988 to 1 January 1991. The Tribunal did not accept that she had made a prima facie case that she would have joined the pension scheme in 1988 if entitled. The Tribunal did not accept her evidence that there had been no joint statement or briefing, that there were no notice boards and nothing contained in Littlewoods News or that she never heard any discussion of change to rules relating to joining the pension scheme in the staff office. The Tribunal also did not accept that delays caused by errors and administrative delays by the Respondent caused the delay to joining until November 1992. The Tribunal found that the documentation indicated that the Claimant's application form had been received on 24 November 1992 and not before. Consequently she did not show a prima facie case that she would have joined in 1988 and it is the unanimous conclusion of the Tribunal that the claim fails.

#### **5.7 Helena Owens**

Ms Owens worked in the pools part of the business in Shaw Road in Birkenhead, beginning employment as a graded employee on 19 August 1968. The scheme was closed to graded staff on 1 January 1977 and graded staff became entitled to join again on 1 June 1988. The Claimant became eligible to join the pension scheme because of the hours she worked on 1 January 1991. The Claimant never joined the pension scheme, being made redundant in February 1995. The issues in this case are that if she was successful and the Tribunal found that she would have joined the scheme pre-1977 her declaration would be from 8 April 1976 to 1 January 1991. If the Tribunal found that she would not have joined pre-1977 but would have later if allowed the declaration would be from 1 June 1988 to 1 January 1991. The Claimant's explanation was a simple one. She stated that she was aware that she could join the pension scheme in 1991 but she was 57 at this time and had been told by a colleague that she could not join the scheme because she was within five years of retirement age. She assumed that this was 60 (and not 65). She assumed therefore that she was too old to join and therefore did not join. The unanimous conclusion of the Tribunal was that the Claimant did not provide a prima facie case to show that she would have joined the scheme either pre-1977 or in 1988. On balance the Tribunal found that the Claimant was aware that the normal age of retirement was 65 and the Tribunal found that she had been informed and overlooked it. Consequently the unanimous conclusion of the Tribunal is that this Claimant fails in total in her claim for a retrospective membership of the scheme.

#### **5.8 Mary Wynne**

Ms Wynne was employed in the retail part of the business in Gateshead, having been employed originally as a graded employee in June 1979 and moving to the Ayr branch in 1986 (making monthly contributions into a TESSA in 1986) then moving then to the Gateshead branch in 1989 and working 11  $\frac{3}{4}$  hours a week. She was eligible to join the pension scheme from 1 January 1992 and joined on 12 May

### **Case No: 2401601/2001 and others**

1992, a delay of approximately four months. The issue in this case, if successful, is that the Claimant would be entitled to a declaration from 1 June 1988 to 1 January 1992. The Tribunal accepted the Claimant's evidence that she applied to join the scheme in either January or February 1992 and had been told at a staff meeting by her manager there was some delay which led to her not being registered as a member until May 1992. The Tribunal found that Ms Wynne had made a prima facie case that she would have joined the scheme in 1988 even though her evidence was somewhat confused about the requirement to join including filling in application forms and providing documents such as a birth certificate. The conclusion of the Tribunal is that this Claimant is entitled to the period of grace referred to by Judge MacMillan in the original *Preston (No 3)* case at Employment Tribunal. She is therefore entitled to a declaration for the period 1 June 1988 to 1 January 1992.

#### **5.9 June Ward**

Ms Ward was employed in customer services at the mail order business in Preston. She worked full-time from September 1974 to May 1977. The scheme was closed to graded staff on 1 January 1977. She recommenced full-time employment on 6 April 1979, changing to part-time working in June 1987. Graded staff were entitled to join from 1 June 1988. The Claimant started a Standard Life private pension in March 1989. She was eligible to join the company pension scheme up to 1 January 1977 and then from 1 January 1991. She joined the scheme on 2 September 1991, a delay of two years and three months (at the start of employment) and eight months in 1991. The issue in this case is that if successful she would be entitled to claim for the period 1 June 1988 to 1 January 1991. The Tribunal accepted the Claimant's evidence that she did not join in 1991 immediately because she was given bad advice in 1991 that she could not be a member of the Respondent's occupational pension scheme if she was already a member of a private pension scheme and that once she received correct advice she elected to transfer. The Tribunal noted that she did not give any proper explanation other than that she did not think about it relating to not joining in the 1970s. The Tribunal found the reason for not joining quickly in 1991 was because of incorrect advice (being told that she could not be a member at the same time of a private pension and the company scheme but not told of her right to transfer) and therefore she is entitled to a declaration for the period 1 June 1988 to 1 January 1991.

#### **5.10 Anita McAvoy**

She was employed as a graded employee in April 1979 working in the pools part of the business in Edge Lane, Liverpool. Graded staff became eligible to join the scheme on 1 June 1988 and the Claimant became eligible to join, because of her hours of work, on 1 January 1991. She joined on 12 April 1991, a delay of approximately four months. The issue in this case is that if successful a declaration would be for the period 1 June 1988 to 1 January 1991. Although the Tribunal accepted that there was strong evidence from Angela Moran for the Respondent to show that pools employees were informed of changes to pension scheme eligibility, it was unanimous in accepting that the Claimant had slipped out of the net and had not been informed. However as soon as she found out she applied to join and did so. The Tribunal found her to be an excellent and reliable witness and she proved a prima facie case which was not affected by evidence from the Respondent that a

significant number of other employees on her shifts at Edge Lane actually joined at various times in January, February and March of 1991. She is therefore entitled to a declaration from 1 June 1988 to 1 January 1991.

#### **5.11 Angela Caffrey**

She was employed in the mail order part of the business at Preston commencing employment as a graded employee from 13 January 1986. Graded employees were entitled to join from 1 June 1988 and the Claimant became eligible, because of her hours of work, from 1 January 1991 but did not join until 7 April 1992, a delay of approximately one year and three months. She had joined a Royal and Sun Alliance pension scheme on 30 March 1989 and had been given additional backdated entitlement of seven months as compensation for bad advice backdated to 7 September 1991. The Tribunal found the Claimant to be a credible and reliable witness. The Tribunal found that because of the date to which she received compensation from the R&SA for mis-selling her delay in joining was a small one – approximately two months. The Tribunal accepted that she did not return to work following maternity leave until June 1991 and was compensated back to the start of September 1991. The Tribunal found that she had made a prima facie case and that there was not satisfactory evidence from the Respondent to indicate that her evidence was incorrect.

#### **5.12 Evelyn Gilbertson**

Ms Gilbertson was employed in the pools part of the business. The company scheme was closed to graded staff on 1 January 1977. She commenced employment as a graded employee on 11 May 1985 working 11 ¾ hours. Graded staff became eligible to join on 1 June 1988. The Claimant became eligible to join the pension, on becoming a full-time employee, on 10 February 1992. She actually joined the scheme on 23 July 1992. If she had remained part-time she would have been eligible from 1 July 1992 when entry rules changed. The delay was therefore for a period of five months. The issue in this case is that if she was successful she would be entitled to a declaration from 1 June 1988 to 1 January 1992 or 10 February 1992. The Tribunal accepted the Claimant's evidence and found that she had made a prima facie case that she had been told initially that she was ¼ hour short in hours to join the scheme but decided to join in February 1992 when taking up a full-time position. She actually joined in July 1992 because there had been an eight week probationary period in which she was required to undertake her new full-time role before being confirmed as a full-time employee. In the view of the Tribunal this made her delay in joining nearly just over two months and in the circumstances it was not a significant delay. The Claimant is therefore entitled to a declaration for the period 1 June 1988 to 10 February 1992.

5.13 The final three Claimants, Jacqueline Chipchase, Betty Dawes and Patricia Jones did not attend the Hearing. In general the Tribunal considered that it was extremely difficult for them to be successful taking into account that their evidence, although provided in written form, was not given under oath and they were not available to cross-examination questions from the Respondent's representative. However the Tribunal did consider each case individually in the following way.

#### 5.14 Jacqueline Chipchase

Ms Chipchase was employed in the mail order part of the business becoming eligible to join the scheme on 1 January 1991, because of her hours of work, joining on 16 May 1991. She had commenced employment as a graded employee on 27 January 1976 and graded employees were entitled to join from 1 June 1988. The issues in this case are that the Claimant, if successful, would be entitled to a declaration from 8 April 1976 to 1 January 1991 if the Tribunal found that she would have joined pre-1977 and a declaration from 1 June 1988 to 1 January 1991 if the Tribunal found that she would not have joined pre-1977 but would have joined later if allowed. It was the Claimant's evidence in her statement that she was not informed in January 1991 about the changes in pension scheme rules because she was ill but was later told by a colleague about the changes and then joined. The Tribunal found that the Respondent did show that she was not absent at the appropriate time and she did not give any evidence relating to taking out any personal pension or savings plan prior to being entitled to join the Respondent's occupational pension scheme. Consequently the Tribunal did not find in her favour and her claim fails.

#### 5.15 Betty Dawes

Ms Dawes was employed in the retail business in Ramsgate and she began employment as a graded employee in 1978. Graded staff were entitled to join in general on 1 June 1988. She became eligible, because of her hours of work, on 1 January 1991. She actually joined on 31 August 1994, a delay of three years and eight months. If successful her claim would be for the period 1 June 1988 to 1 January 1991. The Tribunal was unanimous in finding that there was a significant delay in her joining with no satisfactory explanation in order to show a prima facie case that she would have joined in 1988, if entitled. Her claim therefore fails.

#### 5.16 Patricia Jones

She was employed as a graded employee in September 1972. The scheme was closed to graded staff on 1 January 1977. Graded staff were entitled to join on 1 June 1988. The Claimant was entitled to join from 1 January 1991 and joined on 14 May 1991, a delay of just over four months. If successful the declaration would be, if the Tribunal found that she would have joined prior to 1977, from 8 April 1977 to 1 January 1991 and if the Tribunal found that she would not have joined pre-1977 but would have later if allowed from 1 June 1988 to 1 January 1991. The Claimant was aged 58 when entitled to join on 1 January 1991. She said in her statement that she had been told by a trade union representative that employees in their 59<sup>th</sup> or 60<sup>th</sup> year were too old to join the scheme. The Tribunal did not accept that the Claimant had made a prima facie case. She did not attend in order to give that evidence. The information allegedly provided was clearly wrong. Consequently the Tribunal was unanimous in finding that the claim fails.

### 6. Is the opters test wrong in law?

### Case No: 2401601/2001 and others

This was the proposition put forward on behalf of the Respondent by Mr Draycott. We would like to say that unfortunately the arguments he put forward were rather mercurial and that even at the conclusion of the Hearing we were not completely certain of them. This was illustrated by the correspondence on the "Sorbie" point received after the Hearing had been concluded. This left Mr Lewinsky in a difficult position relating to his response but perhaps more importantly meant that there was a degree of uncertainty as to the issues by the Tribunal even at the end of the Hearing.

- 6.1 This cannot be properly answered without considering, at least briefly, the origin of the opters test. In the case of *Preston v. Wolverhampton Healthcare NHS Trust* it had been decided that excluding part-time employees from an employer's occupational pension scheme was in breach of the Equal Pay Act 1970 and Article 141 of the European Treaty, as it was indirectly discriminatory against women, having a disproportionate effect upon them because of the significantly greater number of women compared to men in the part-time working population. At Employment Tribunal Judge MacMillan stated:-

"Applicants whose claims include periods remained excluded from the scheme by virtue of their part-time hours when membership of the scheme was not obligatory for full-timers. In these cases the applicants' failure to join the scheme upon becoming eligible to do so (when rules for membership changed), or only after a significant delay (any applicant can, I think, be afforded a period of grace to make up her mind which would not jeopardise her earlier claim but in respect of which, as the scheme rules no longer excluded her, a claim would not lie), may be highly relevant in determining whether there has been a breach of the equality clause. Here I think the Respondent is right when they submit that there has been no less favourable treatment or the applicant has not suffered a detriment if, although excluded from membership by the rules of the scheme, she would not have joined even if she had been given the opportunity. But even if I am wrong about the legal analysis and there remains a breach of the equality clause, the applicants' failing to subsequently join the scheme must be highly relevant in the exercise of the Tribunal's discretion to grant a declaration for the period of exclusion by virtue of the rules. To do so would be akin to affording her the luxury of changing her mind. But in my judgment the better view is there is no breach of the equality clause in the first place."

- 6.2 There was no appeal to the Employment Appeal Tribunal on this point, although there were appeals on other issues. In the Judgment delivered on 19 December 2004 his Honour Judge McMullen referred to this issue saying that it would be unjust for him to make any comment about the correctness of that declaration when other parties affected by it chose not to appeal or be represented here. It was sufficient for him to note that the Chairman, Mr MacMillan was making a separate declaration relating to separate circumstances i.e. where the full-timers were given the option of joining the pension and were not obliged to join.
- 6.3 The original European Court jurisdiction originated from the *Bilka Kaufhaus* [1987] ICR 110; *Vroege v. Fisscher* [1995] ICR 635; *Ten Oever* [1995] ICR 74;

**Case No: 2401601/2001 and others**

and *Barber Guardian Royal Exchange Group* [1990] ICR 616 cases. The Courts concluded (subject to justification) that exclusion of part-time workers from an occupational pension scheme was a breach of Article 141. These were all cases which involved contributory pension schemes and also, in the unanimous view of the Tribunal, schemes where the facts concerned periods when it was compulsory for full-timers to join the scheme when part-timers were excluded. Therefore the specific sub-issue of opters i.e. what should happen in the position of part-timers being excluded when it was not compulsory for full-timers to enter was not relevant.

6.4 Mr Draycott for the Claimants puts forward four reasons why the opters test is not legally correct and not compliant with European law:-

- (a) That it should be disapplied on the grounds that it is incompatible with the requirements of Article 141 and that instead all the Claimants' claims should succeed regardless of whether they have joined the Respondent's scheme on a certain date.
- (b) That the opters test has been rendered obsolete. The law does not require the Claimant to establish a detriment in order to succeed in respect of a claim of this type.
- (c) The "Sorbie" Principle

The case of *Sorbie and others v. Trust House Fortie Hotels Limited* [1977] ICR 55 is put forward as entitling Claimants to retain the benefit of the equality clause even after the sex discrimination which caused the same to arise disappeared. This would mean that the Claimants here are entitled once there has been an equality clause placed into the contract to have that retained and to obtain a declaration for the period after they were entitled by the rules of the occupational pension scheme to join that scheme up to the period either when they did join or when they left the Respondent's employment.

- (d) That the opters principle as stated by Judge MacMillan does not comply with the Burden of Proof Directive and the change of law relating to burden of proof in English discrimination law as clarified by *Igen v. Wong Limited*.
- (a) The unanimous conclusion of the Tribunal in (a) was that the opters principle shall not be disapplied as being incompatible with the requirements of Article 141. All the Claimants' claims should not succeed regardless of whether they would have joined the Respondent's pension scheme on certain dates.

Article 141 provides that each member state shall ensure that the principle of equal pay for male and female workers for equal work for which equal value is applied.

#### **Article 1**

The principle of equal pay for men and women outlined in Article

**Case No: 2401601/2001 and others**

119 of the Treaty, herein called principle of equal pay, means for the same work or for work to which equal value is attributed, elimination of all discrimination on the grounds of sex with regard to all aspects of discrimination. In particular where a job classification system is used for determining pay it must be based on the same criteria for both men and women and so drawn up as to exclude any discrimination on the grounds of sex.

**Article 2**

A member state shall introduce in their national legal systems such measures as are necessary to enable all employees who consider themselves wronged by failure to apply the principle of equal pay to pursue their claims by judicial process after possible recourse to other competent authorities.

**Article 4**

Member states shall take the necessary measures to ensure that provisions appearing in collective agreements, wage scales, wage agreements or individual contracts of employment which are contrary to the principle of equal pay shall be, or may be, declared null and void or merely amended.

**Article 6**

Member states shall in accordance with their national circumstances and legal systems, take the measures to ensure that the principle of equal pay is applied. They shall see that effective means are available to take care of this principle. The amended Equal Treatment Directive provides inter alia in Article 2 the purposes of the following provision in the principle of equal treatment shall mean that there shall be no discrimination whatsoever on grounds of sex, either directly or indirectly, by reference in particular to marital and family status.

For the purposes of this Directive the following definition shall apply:-

Indirect discrimination:-

“When an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared with persons of the other sex unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”

The Tribunal unanimously preferred Mr Lewinsky's submission that the amended Equal Treatment Directive did provide, in effect, a requirement for detriment through Article 6(1):-

“Consider themselves wronged by failing to apply the principle of equal treatment”.

and Article 6(2) referring to loss or damage sustained by a person injured as a result of discrimination and Article 8 with a reference to payment of compensation to the victim. All of these matters, the Tribunal found, could only be relevant if the law required a detriment to be suffered by the Claimant. The Tribunal also preferred Mr Lewinsky's submission that even if he was wrong about this the changes do not have retrospective effect save where specifically indicated to do so. In the *Ancienne Maison* case at Paragraph 48 it was said:-

“According to a generally accepted principle a law amending a legislative provision applies save as otherwise provided to the future effects of situations which arose under the previous law.”

The Tribunal preferred Mr Lewinsky's interpretation of this paragraph that unless otherwise stated a legislative provision is not retrospective. This has always been the position within English law. Any amendment would therefore not apply to the position in these cases relating to entitlement to join a pension scheme between 1977 and 1991.

- (b) The unanimous decision of the Tribunal is that the opters principle has not been registered obsolete by the revised definition of indirect discrimination within Article 2 of the amended Equal Treatment Directive. The amended definition of indirect discrimination is the following:-

“When an apparently neutral provision, criterion or practice would put persons of one sex at a particular disadvantage compared to persons of the other sex, unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary.”

It was Mr Draycott's submission that the revised definition of indirect discrimination means that a more flexible approach should be taken than had been the more formulaic criterion set out in the Sex Discrimination Act 1975: *Redcar and Cleveland Borough Council v. Bainbridge* [2008] IRLR 776. He put emphasis on the phrase:-

“Would put persons of one sex at a particular disadvantage compared with persons of another sex.”

The appropriate test for determining whether or not indirect discrimination had been made out on the facts is that arising from the Judgment in the ECJ in *O'Flynn v. The Adjudication Officer* [1996] ECR at 21. It is not necessary in this respect to find that the provision in question does in practice effect a substantially higher proportion of migrant workers. It is

**Case No: 2401601/2001 and others**

sufficient that it is liable to have such an effect. There is domestic support for this approach in *R (Elias) v. District State for Defence* [2005] IRLR 788.

It was the unanimous conclusion of this Tribunal that the inclusion of the word "would" allows for the creation of a hypothetical pool of men and women for the purpose of establishing whether a provision, criterion or practice has caused a particular disadvantage. The unanimous conclusion of the Tribunal was that *O'Flynn v. The Adjudication Officer* authority is not a legitimate authority for showing that there is no need for actual detriment. Although the conclusion in Paragraphs 20 and 21 was that the Claimant had to show that the provision would have that effect rather than does have that effect, it was still a requirement for the Claimant to show detriment in order to bring a claim: in the case of *O'Flynn* that the Claimant had the responsibility for a death and had to bear the cost of transporting the deceased's remains back to Ireland. Further in the *R (Elias)* case the Tribunal also unanimously found that personal detriment was also required for locus standi.

- (c) In relation to the "*Sorbie*" point, before the Tribunal gives its conclusion and reasons on this issue it should be noted that the Tribunal received copious written submissions (initiated by a fax from the Claimants' representative) and resulting in counter-documents from the Respondent after the parties had completed their oral and written submissions. The essence of this disagreement between the parties was the suggestion by the Claimants' representative that the *Sorbie* point had been conceded by the Respondent in their answer to the Claimants' first appeal in these proceedings lodged on 9 August 2007. It is said that the Respondent accepted that if the Claimants can establish they would have joined the Respondent's pension scheme during 1976 and a declaration is made by the Tribunal:-

"this entitlement is capable of running for the whole period of the Claimants' employment."

Their suggestion is that this is a concession envisaging a declaration being granted beyond the Claimants' date of eligibility and up to either the point that the relevant Claimant joined the Respondent's scheme or the date of termination of the employment when they never joined the pension scheme. In particular this will cover a period after the rules of the pension scheme had changed which would give entitlement to access to the particular Claimant to join the scheme. The Respondent in detail denied that any such alleged concession had ever been made. The Tribunal concludes unanimously that it was quite clear to the Tribunal that in written and oral submissions made by the parties, before the end of this Hearing on Tuesday, that the Respondent's representative Mr Lewinsky very definitely did not concede on the *Sorbie* issue. His submission clearly stated that the *Sorbie* point made by Mr Draycott was incorrect, suggesting (although this was disputed by Mr Draycott) that the Respondent had been successful on this point in the *Newcastle* case. The unanimous view of the Tribunal is that it was surprised that such a late submission was made by the Claimants'

**Case No: 2401601/2001 and others**

representative at a stage which made it difficult for a proper response to be provided by the Respondent. The Tribunal was quite clear that no such concession was made. The Tribunal concludes unanimously that if the comment alleged to be made by the Respondent was made then it was made in error and not by way of any concession. It would be of great surprise to the Tribunal that any such concession was made, in particular because the Respondent believed that they have been successful on the point in the Newcastle case.

Further the so called "*Sorbie* issue" had been decided and had been undisputed and unappealed since Judge MacMillan's decision in Employment Tribunal in *Preston (No 3)*. His decision included inter alia in relation to the position of applicants whose claims include periods where they remained excluded from the pension scheme by virtue of their part-time status but membership of the scheme was not obligatory for full-timers:-

"I hasten to emphasise that those reasons would not entitle her to succeed in respect of that part of her claim which falls after the date on which she became eligible for membership. It can only ever be of relevance to that part of the claim during which she was excluded from membership by the scheme's rules."

It is clear to the Tribunal that Judge MacMillan thought that this was an obvious point. A Respondent can only be liable for a period when there was illegality. The illegality was the rule which excluded part-time employees from membership of the occupational pension scheme. As soon as the rules were changed to entitle particular part-time employees to join then there was no illegality in relation to their case. The Tribunal is totally satisfied that this is the correct position on the law. However Mr Draycott does not accept this. It is his third submission to the Tribunal that Judge MacMillan was wrong because of the effect of the case of *Sorbie and others v. Trust House Forty Hotels Limited* [1977] ICR 55. He submits to us that if the Tribunal accepts any part of the Claimants' claim by reason of the application of the opters test then it should make declarations in their favour starting from the day when it is found that they would have joined the scheme given the opportunity to do so until the date they actually joined the Respondent's scheme or left the Respondent's employment. He submits that the *Sorbie* case entitles Claimants to retain the benefit of an equality clause even after the sex discrimination which caused the same to arise has disappeared.

In *Sorbie* female employees had been successful in the equal pay claim. The employees claimed equal pay with a male waiter employed on like work until 5 January 1976 when he was promoted to the position of banqueting supervisor. The Employment Tribunal found that they were entitled to higher pay for the days worked to 5 January 1976 but that after that date they were not entitled to higher rates because there was no longer a comparable man engaged on like work. The Employment Appeal Tribunal allowed the Claimants' appeal deciding that once the equality clause had

taken effect the Claimants' contract remained modified:-

"It would have required something more fundamental such as new contractual agreements, collective agreements or statutory modification for their contractual pay rates to be varied."

The Tribunal was unanimous in deciding that this was not authority for deciding that the Claimants in these cases could succeed in obtaining declarations for retrospective membership of a pension scheme in relation to a period when they were not excluded from that scheme i.e. they had been given the right to join but had not taken that opportunity. The suggestion seems to the Tribunal to lack all legality and logic. The position in the cases before us does not equate to a *Sorbie* situation. In these cases there was never any suggestion that the rules would be changed after full-time male employees left employment.

- (d) Finally it is Mr Draycott's submission that the opters principle does not accord with the burden of proof requirements. The law relating to the burden of proof in discrimination cases is not in dispute and does not need rehearsing. The Tribunal is aware of recent changes relating to the burden of proof in discrimination cases and in particular the guidelines provided by the Court of Appeal in *Igen Limited v. Wong* [2005] IRLR 258. Article 4 of the EC Burden of Proof Directive No 97/80 which applies to equal pay law provides:-

"Member states shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because of the principle of equal treatment has not been applied to them establish, before a Court or other competent authority, facts from which it may be presumed that there has been direct or indirect discrimination, it shall be for the Respondent to prove that there has been no breach of the principle of equal treatment."

It was agreed by the representatives that the basic principle is that there is an initial burden on the Claimant to show a prima facie case by showing facts from which it may be presumed that there has been discrimination and if she does that the burden is then on the Respondent to prove that there has been no breach of the law. In Mr Draycott's submission as to the opters cases it is for the Claimants to show a prima facie case that they would have joined the Respondent's pension scheme for the period when they were excluded because of their part-time status and then the burden passes to the Respondent to satisfy the Tribunal on the balance of probabilities that they would not have done so. He says that because of the Respondent's difficulty as to the latter (and this is a difficulty which is common to all of these cases because of the length of time between the period about which the complaints were made and any Tribunal Hearing) they are in his submission therefore unable to satisfy the Tribunal on the balance of probabilities that the Claimants would not have joined the scheme. He

**Case No: 2401601/2001 and others**

submits in particular that it was incorrectly decided in *Preston (No 3)* and confirmed in *Betts* that the Tribunal must begin with an evidential and rebuttable presumption in favour of the Respondent that the Claimant would not have joined the scheme, if they did not later join the scheme or delayed for a significant period when the rules were changed allowing them to join. It was Mr Lewinsky's submission that in *Preston (No 3)* Judge MacMillan was merely drawing inferences from fact, and he was entitled to do this. The presumption referred to in *Betts* is an evidential, not legal, presumption. Mr Lewinsky quoted Elias J in *Dennison* saying inter alia:-

"That if on becoming eligible a person did not join the scheme then the presumption is that they would not have joined it even had they been eligible to join at an earlier stage. There may be circumstances where they can rebut the presumption by demonstrating that they would then have joined. Neither party has suggested that the guidance is inappropriate or legally incorrect. In my judgment it provides a legally sound and practical approach which Tribunals can safely adopt in relation to cases which it is addressing."

The Tribunal unanimously accepted the submission of Mr Lewinsky, as confirmed above by his Honour Judge Elias. It also however concluded that even if it was wrong about the issue of a rebuttable presumption in the majority of cases the result will be the same. It did not accept Mr Draycott's suggestion that once a prima facie case is made it would be very difficult for a Respondent to satisfy a Tribunal in most cases that a Claimant would not have joined. The Tribunal believes that there are many situations, like the instant one, where initial evidence from the Respondent is very persuasive.

7. For all of these reasons the unanimous conclusion of the Tribunal is that the opters principle is a logical and legally sound one which complies with all principles of equality. In particular the unanimous conclusion of the Tribunal is that it was most unlikely that the law would allow Claimants to be successful in claims where the evidence suggests that they would not have joined the pension scheme at the appropriate time, in effect therefore giving them a second chance, a second chance which has not been given to both male and female full-time employees who also did not take the opportunity to join the scheme when the rules allowed them.
8. Further the Tribunal's unanimous decision was that even if it was wrong about all of these matters the eventual conclusion in these cases would be the same. The Tribunal decided that even if the decision on liability was in favour of Claimants because of the non-application of an opters test they would not be entitled to the discretionary remedy of a declaration of the retrospective membership to the scheme when it was clear that they had not suffered a detriment or disadvantage because they would not have joined the scheme even if entitled. The Claimants would therefore not be entitled to the available remedy of a declaration requiring the Respondent to retrospectively enter the Claimants into their pension scheme for the appropriate period. Detriment or disadvantage has always been a requirement in the Sex Discrimination Act and remains so following the changes to the definition of indirect discrimination following the Employment Equality (Sex Discrimination) Regulations 2005. It is the unanimous decision of the Tribunal that this (correctly) remains the law and is compliant with European Directives.

9. Finally, the Tribunal notes that in 2002 Judge MacMillan, then Chairman of Employment Tribunals, provided a strongly worded "crie de coeur" including:-

"I trust I may be forgiven for concluding this decision with a plea. It is now 7 ½ years since the part-time workers pension flood and 6 ½ years since I gave my decision on the preliminary issues... Many applicants have good claims at least for part of the periods of their exclusion. Many have retired since litigation began, some have died. None it would appear will have their claims resolved until at least the initial batch of test cases has exhausted the appeal process... urging the trade unions to think very long and hard about the extent to which they are prepared to pursue some or all of their arguments on appeal..."

**Case No: 2401601/2001 and others**

Judge McMullen “associated himself with that view.” Seven years further on in time this Tribunal believes that it is even more important for the Respondent and Claimants and those who instruct them to consider whether this Hearing really should be a conclusion to what appears to be seemingly unending litigation.

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Employment Judge Hepworth

JUDGMENT SENT TO THE PARTIES ON

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS