Neutral Citation Number: [2025] CIGC (Civ) 35

IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION **G 2022-0254**

BETWEEN:

PETRONA ALETHIA GORDON

Plaintiff

AND:

THE CAYMAN ISLANDS GOVERNMENT

1st Defendant

POSTMASTER GENERAL

2nd Defendant

ATTORNEY GENERAL OF THE CAYMAN ISLANDS

3rd Defendant

IN CHAMBERS

Appearances:	**Ms. Nikue Assarpour of Priestleys Attorneys for the Plaintiff** **Mr. Paul Edwards, Crown Counsel from Attorney General's Chambers for the Defendants**
Before:	**Hon Justice Marlene Carter**
Date of Hearing:	**23 October 2025**
Draft Ruling circulated:	**04 November 2025**
Further submissions:	**12 & 19 November 2025**
Ruling delivered:	**27 November 2025**

Civil Division – Writ of Summons – Jurisdiction – Public Law or Private Law Claim – Exclusivity Principle – Sections 4 & 7 of the Limitation Act (1996 Revision)

RULING

Introduction

1. The defendants' summons dated 10 April 2025 seeks the following orders;

> *"1. A declaration that the Court has no jurisdiction to hear the Plaintiff's claim in the terms pleaded in the Amended Statement of Claim filed 3 April 2025.*
> *2 Alternatively, should the Court decide that it has jurisdiction to hear and/or determinate **[sic]** the private law element of the claim, to declare that the Plaintiff's claim is statute barred pursuant to sections 4 and 7 of the Limitation Act (1996 Revision):*
> *3 Any further orders that this Honourable Court sees fit; and*
> *4 Costs of the Application be costs to the Defendants."*

2. The Agreed Statement of Facts reproduced here sets out the context in which the application is made.

(1) The Plaintiff was employed by the 1st and 2nd Defendants at all material times.

(2) On 1 October 2011 the Plaintiff was appointed to the position of Deputy Postmaster General (Finance.).

(3) On 19 May 2016 the Plaintiff made a hostile working environment grievance complaint against the 2nd Defendant. The complaint was reduced to writing on 17 June 2016.

(4) The Plaintiff's 2015/16 performance assessment was conducted on 9 and 16 June 2016 by the 2nd Defendant. On 24 June 2016, the Plaintiff signed the 2015/2016 performance assessment noting her comments and concerns to the same therein.

(5) The Plaintiff was awarded grade 2 for her 2015/2016 performance assessment. The Plaintiff noted her comments and concerns to the same therein.

(6) At no stage prior to 6 December 2016 was the Plaintiff nor the 2nd Defendant advised by the Deputy Governor or the Premier that in order to qualify for the Pay Stagnation Remedy the Plaintiff would be required to obtain a grade 3 or above in her 2015/2016 performance assessment.

(7) A panel was convened on 29 August 2016 and 5 September 2016 to determine the merits of the Plaintiff's hostile working environment grievance complaint.

(8) On 30 November 2016, the Deputy Governor announced that the Premier had approved the funding of the final step in their strategy to end pay stagnation ("Pay Stagnation Remedy"). This was to address the stagnant pay of those working in the Civil Service whose salary grades *"did not increase and who have not received an increment during the past three years*". The

Pay Stagnation Remedy applied to eligible staff members, that is, those who received a grade 3 or higher in their 2015/2016 performance assessment. The announcement of the eligibility criteria post-dated the completion of the 2015/2016 performance assessment.

(9) On 6 December 2016, Ms. Martinez-Ebanks Acting Postmaster General, informed the Plaintiff that she was not eligible for the Pay Stagnation Remedy, as she was only awarded a grade 2 in her 2015/2016 performance assessment.

(10) On 6 December 2016, the panel concluded that the hostile working environment grievance complaint was not made out. On 16 December 2016, Mr Alan Jones wrote to the Plaintiff and the 2nd Defendant advising them of the outcome.

(11) On 12 December 2016 the Plaintiff submitted a "Pay Stagnation Appeal' to the Deputy Governor.

(12) On 17 January 2017, the Plaintiff appealed the finding of the Grievance Hearing to the Deputy Governor, Mr Franz Manderson via her Attorney at the time, Brady Attorneys at Law.

(13) The office of the Deputy Governor acknowledged receipt of this appeal by undated letter.

(14) On 6 May 2019 and 25 July 2019, the Plaintiff followed up on the Pay Stagnation Appeal.

(15) On 7 August 2019, Mrs. Andrea Fa'amoe, the Acting Chief Officer for the Portfolio of the Civil Service, responded to the Plaintiff.

(16) On 5 October 2019, the Plaintiff filed a complaint for gross-maladministration to the Office of the Ombudsman.

(17) On 30 July 2020, the Plaintiff was informed by Mrs. Gloria McField-Nixon to refer the Pay Stagnation Appeal to Mr Jefferson. The Plaintiff did so on 19 January 2021.

(18) On 25 March 2021 and 23 August 2021, the Plaintiff followed up with Mr Kenneth Jefferson with respect to the Pay Stagnation Appeal.

(19) On 2 June 2022, the Plaintiff's counsel requested that Mr Jefferson waive the 30-day window of an appeal to be made.

(20) On 26 July 2022, Mr Jefferson concluded he was unable to proceed with the Pay Stagnation Appeal and informed the Plaintiff that the Hostile Work Environment complaint was considered closed.

(21) On 30 November 2022, the writ of summons was filed.

3. The plaintiff's Particulars of Claim states the following:

"*This failure to offer the Pay Increase to the Plaintiff was in breach of*

a. The express terms of the Employment Contract (including but not limited to clause 5 thereof);

b. The First and Second Defendants' implied duty to not act capriciously in relation to pay and to provide a suitable working environment;

c. The implied terms of the Employment Contract to not act in a manner likely to destroy or seriously damage the relationship of trust and confidence between the First and Second Defendants and the Plaintiff; and

d. The implied obligation of good faith.

.....The Defendants have failed to pay the Pay Increase to the Plaintiff in full or at all.

As a result of the aforesaid breaches the Plaintiff has suffered loss and damage and the sum of CI$36,522.06 remains due and owing to the Plaintiff, plus interest. ...."

4. The defendants submit that the basis of the application concerning jurisdiction is as follows:

> *"The Defendants are not challenging the Court's jurisdiction to try the claim on its merits. The Court does have jurisdiction to try claims for breach of contract. The Defendants, however, assert that the Court should decline to exercise it's jurisdiction to try the claim. The Defendants rely on four reasons why the Court should not exercise its jurisdiction to try the claim; (a) by virtue of the principle of exclusivity (b) by operation of the Limitation Act 1996; (c) because the Plaintiff's claim amounts to an abuse of process and (d) by operation of section 11(2) of the Crown Proceedings Act (1997 Revision).*[1]

(i) The Exclusivity Principle

5. The defendants submit that the legal principle of exclusivity requires that challenges to the government's act or decisions be made by way of judicial review and, to do so by way of an ordinary writ may amount to an abuse of process. In this regard, counsel referred to the authority of *O'Reilly v Mackman*[2] quoting the following from Lord Diplock**:**

> *"Now that those disadvantages to applicants have been removed and all remedies for infringements of rights protected by public law can be obtained upon an application for judicial review, as can also remedies for infringements of rights under private law if such infringements should also be involved, it would in my view as a general rule*

[1] Paragraph 28 of the Defendant's Skeleton Arguments
[2] [1983] 2 AC 237

be contrary to public policy, and as such an abuse of the process of the court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he was entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions of Order 53 for the protection of such authorities."

6. Counsel also noted the *dicta* of Henderson J in ***Coe, Multon, Smith and Ebanks v Governor and Four Others***[3] as authority for the application of the exclusivity principle in Cayman Islands Law.

> *"25. The result is that this writ action seeking to overturn a government decision and establish a public law right is, at least arguably, improperly founded. Such claims are best brought under the provisions of O.53 of the Grand Court Rules as a judicial review of administrative action. The first to fourth defendants have argued that the claim should be struck out for just this reason. They point out that the court has jurisdiction to strike a claim even after a trial (see Summers v. Fairclough Hones Ltd (11)), and that the so-called "exclusivity principle" set out in O'Reilly v Mackman (8) and confirmed in subsequent decisions supports their contention. In essence, the principle of exclusivity requires that challenges to governmental acts and decisions be advanced by way of judicial review; to pursue such a claim in a writ action is tantamount to an abuse of process….*
>
> *26. I am satisfied that the principle of exclusivity is part of the legal system in the Cayman Islands. It is open to this court to view a writ action which challenges the validity of a government act or decision and does not assert any private law right, or in which the assertion of a private law right is a transparent fiction adopted for the sole purpose of avoiding the judicial review process, as an abuse of the process of the court."*

7. The defendants' submission is that the plaintiff's claim involves the examination of a public law issue, and only incidentally involves the determination of a private law claim, and as such, it should not have been brought as a civil action. The defendants contend that the plaintiff's claim is, in effect, a request to challenge and dispute the decision to award her a grade 2 on her 2015/2016 performance assessment ("The Performance Assessment Grade"). However, it is dressed up as an ordinary writ for breach of contract saying that such a course was only adopted to avoid "*the clear appeal process*" set out in the *Public Service Management Act* ["PSMA"][4].

[3] [2014] (1) CILR 251
[4] See Sections 53(2) and 54(1)

8. The defendants argue that if the plaintiff was dissatisfied with The Performance Assessment Grade, the PSMA has a set appeal process which could have been engaged, and that this was the proper course the plaintiff should have utilized to challenge or dispute that grade.

9. The defendants contend that it is inappropriate and tantamount to an abuse of process to now seek to challenge that decision to award her The Performance Assessment Grade by way of an ordinary writ for breach of contract. The plaintiff, having chosen not to appeal via the PSMA appeal process, should now be precluded from challenging that decision by alleging breach of contract.

10. Counsel for the defendants invited the court to consider that when the plaintiff alleges that the 1st defendant acted capriciously regarding pay by failing to grant her the Pay Stagnation Remedy, she was essentially stating that Cabinet had so acted. In written submissions, counsel stated this aspect of his argument thus:

> "*This contention is even more unsustainable as the decision to fund a pay increase was undisputably a policy matter, and the plaintiff was aware or ought to have been aware of that fact…. The Cabinet authorized the expenses necessary to pay the Pay Stagnation…. It is trite law that the only permitted course to challenge a policy decision is by way of judicial review provided that the issue is justiciable."*

11. The plaintiff contends that the relief sought by her is grounded entirely in private law arising from the contractual relationship between the parties and not from any public law challenge to the policy itself. As such, the plaintiff submits, the central question for the court is: whether the defendants' decision to condition the Pay Stagnation Remedy on a prior performance review undertaken without notice or warning of its implications, gave rise to a breach of implied terms of the plaintiff's employment contract.

12. In her submissions to the court, counsel for the plaintiff clarified that the plaintiff's claim was based on the implied terms derived from common law to which the contract of employment between the plaintiff and the defendants is subject. The plaintiff claims that the defendants' actions in (i) basing the Pay Stagnation Remedy on a performance assessment undertaken before the policy's announcement, (ii) to failing to notify the plaintiff that a performance assessment might affect her eligibility for the Pay Stagnation Remedy, and (iii) failing to implement the policy in a fair, transparent or procedurally sound manner, all led to the alleged breaches of the implied terms of her employment contract set out in the statement of claim and referred to above.

13. Paragraph 6 of the plaintiff's skeleton argument states as follows: "*the plaintiff does not challenge the legality or validity of the pay stagnation policy itself. The complaint lies rather in the manner in which defendants implemented that policy in her specific case. In particular, the defendants applied the policy retrospectively by relying on a performance assessment conducted before the policy's introduction and did so without giving the plaintiff proper notice of the potential consequences of that assessment, and in circumstances where the plaintiff will say her performance review was already the subject of dispute."*

14. Counsel for the plaintiff argued that the exclusivity principle, as stated in ***O'Reilly***, does not prevent a claimant from enforcing private law rights even where the employer is a public authority. There is no issue on this point as counsel for the defendants agreed in his submissions.

15. However, counsel for the plaintiff submits that even in ***O'Reilly***, it was recognized that there may be exceptions to the exclusivity principle "*particularly where the invalidity of the decision arises as a collateral issue in a claim for infringement of a right of the plaintiff arising under private law."*

16. Counsel submitted that the plaintiff's claim for breach of contract is not a public law challenge to the legality of the underlying policy, nor does it seek to impugn the lawfulness of any governmental act or decision. She noted further that the plaintiff's claim challenges the defendants' contractual conduct in applying the policy retrospectively and without procedural fairness. Counsel stated as follows:

> *"In circumstances where an employer implements a policy in a manner that contravenes the implied terms of an employment contract – such as the duty of trust and confidence, the duty not to act capriciously, or the duty to act in good faith – the proper legal remedy lies in a contractual claim for breach, not in judicial review proceedings."*[5]

(ii) Limitation

17. *S.7 of the Limitation Act (1996 Revision)* states:

> *"S.7 An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued."*

18. The defendants submit that even if the court were to find that the writ of summons could proceed, the plaintiff had filed the writ outside the limitation period. The defendants contend that, in a contractual claim, "*..the general rule is that, for contract claims, a cause of action accrues at the point when the*

[5] From the Plaintiff written submissions at paragraph 19

breach of contract occurs, regardless of whether the claimant has suffered any actual damage at that time."[6]

19. Counsel for the defendants argued that the complaint centered around The Performance Assessment Grade, and therefore the breach must have occurred on 24 June 2016. Counsel noted that the plaintiff's claim filed on 30 November 2022 was therefore outside the limitation period. Counsel further contends that this was not a situation in which the plaintiff's arguments for a continuing breach could be sustained.

20. The defendants submit that in this case, no application to extend time for filing the writ of summons was made. Further, the court must be mindful of the impact on the defendants, if a court were to grant such an extension. Counsel referred to the authority of ***Weavering Macro Fixed Income Fund Limited v Ernest & Young*** Judgment, Cause No. FSD 160/2012 which adopted the summary of the principles of Ord.6, r.8(6) of the Rules of the Supreme Court 1999 which states:

> *"A writ will not normally be renewed so as to deprive the defendant of the accrued benefit of a limitation period."*[7]

21. Counsel for the plaintiff submitted that it was incorrect to view the plaintiff's claim as an attempt to challenge the award of The Performance Assessment Grade. Counsel agreed that the plaintiff had not sought to appeal that decision and argued that she was not doing so now. Rather, the plaintiff's claim was based on her assertion that the defendants breached her employment contract by retrospectively tying that historic assessment to a new pay policy and that this had been done in a manner that was capricious, unfair, and damaging to the implied duties owed to her as an employee.

22. The plaintiff argues that it is the implementation and application of the policy in her individual case that forms the basis of her claim. As such, counsel argues that the breach of contract occurred when the plaintiff became aware that the Pay Stagnation Remedy was to be retrospectively tied to her earlier performance assessment and that it was upon this occurrence that the cause of action arose. Counsel set that date as 06 December 2016, bringing the filing of the writ on 30 November 2022 within the 6-year limitation period.

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[6] *Dorne Mitchell v Leigh Day* ***(a firm)*** *[2025] EWHC 1081 (KB) at paragraph 14*
[7] *Weavering Macro Fixed Income Fund Limited v Ernest & Young* Judgment, Cause No. FSD 160/2012, paragraph 52.

23. The issue is therefore whether the date for the purposes of the *Limitation Act* is the date upon which the plaintiff became aware of the breach or when the act which led to the breach of duty challenged by the plaintiff actually occurred.

24. In the alternative, Counsel for the plaintiff submitted that the court could view the actions of the defendants of which the plaintiff complains, as a continuing act, thereby extending the period from which the limitation date for institution of the cause of action would be counted.

(iii) Abuse of Process

25. The defendants submit that if, as the plaintiff asserts in reply to the instant application, neither The Performance Assessment Grade nor the Pay Stagnation Remedy is challenged, then "*in practical terms, no live issue remains as the policy was applied in accordance with its terms*." The defendants state that there is no factual basis for finding that the plaintiff's employment contract was breached, and for this reason, the claim is plainly unsustainable and discloses no arguable cause of action.

26. Counsel for the plaintiff asserted that the defendants' submission was taken from the mistaken premise that the plaintiff's cause of action derived from the award on The Performance Assessment Grade.

27. Counsel contended that the plaintiff's pleadings set out the precise terms of the contract alleged to have been breached, the defendants' actions which constituted the breach, and how those actions resulted in her sustaining damage and loss. Counsel referred to ***Malik & Another v Bank of Credit and Commerce International SA (IVL)***[8] and ***FC Gardner Ltd v Beresford***[9] in support of her contention that the implied terms asserted by the plaintiff as being part of her contract of employment were well-established in contract law.

(iv) Incorrect Parties

28. I agree with the defendants' submissions on this issue. The provisions of section 11(2) of the *Crown Proceedings Act (1997 Revision)* are clear. The first and second defendants should be removed from the proceedings as named defendants. These defendants are not being sued in their personal capacities[10].

[8] [1998] AC 20
[9] [1978] IRLR 63
[10] See *Kernohan v H.E The Govenor, et al* [2011] 2 CILR 7

Court's considerations

29. I agree with the defendants' submission that the plaintiff is now precluded from challenging the award of Grade 2 on her 2015/2016 performance assessment because she failed to engage the appeal process during the time prescribed for so doing, as set out in the PSMA[11]. Even if that initial appeal process was exhausted and the plaintiff was dissatisfied with the result, it was still open to her to lodge an appeal to the Chief Officer for that Ministry. If aggrieved by the Chief Officer's decision, then an appeal to the Civil Service Appeals Commission and ultimately a challenge to that decision by way of judicial review if she considered that the Appeal Commission's decision was not lawful, rational, proportionate, and procedurally fair.

30. The principle of exclusivity as stated in ***O'Reilly***, will not permit an action which seeks the establishment of an infringement of a public law right by way of an ordinary action. The remedy is by way of an application for judicial review. In ***R (Tucker) v Director General of the National Crime Squad***[12] the court stated that there was *"no single test or criterion by which the question whether a decision had a sufficient public law element to justify intervention by judicial review could be determined…the susceptibility of a decision to the supervision of the courts had to depend in the ultimate analysis on the nature and consequences of the decision and not on the personality or individual circumstances of the person called upon to make the decision."*

31. The court in ***Tucker*** advanced a series of factors to be determined when considering whether a public body with statutory powers was exercising a public function amenable to review or a private function that was not. The three factors identified were:

(i) whether the defendant was a public body exercising statutory powers,

(ii) whether the functions being performed in the exercise of those powers was a public or a private one, and

(iii) whether the defendant was performing a public duty owed to the claimant in the particular circumstances under consideration.

32. In the case of ***Richards* v *Worcestershire County Council and Another***[13] the claimant sought to recover monies which had been spent on his care after he was compulsorily detained under section 3 of the *Mental Health Act 1983*. The claimant alleged that it was the defendant's duty under the Act to pay for such services. The defendant applied to strike out the claim as an abuse of process stating that

[11] Sections 53(2) and 54(1)
[12] [2003] EWCA Civ 57
[13] [2018] PTSR 1563

the bringing of private law proceedings rather than a claim for judicial review infringed the exclusivity principle, that it was contrary to public policy for a person who sought to establish that a decision of a public law authority had infringed rights to which he was entitled to protection under the public law to be permitted to proceed by way of ordinary action. The defendant also claimed that no private law cause of action arose.

33. Dismissing the appeal, the Court of Appeal held that although the claim to recover payments was based on section 117 of the *Mental Health Act*, it was a private law claim which had no wider public impact. The court stated that the exclusivity principle should not be allowed to prevent the claimant's claim, and the question of whether the defendant's non-compliance with section 117 gave rise to a private law claim for unjust enrichment or restitution required determination at trial after evidence has been called. There was therefore no proper basis for striking out the claim.

34. In ***Roy v Kensington & Chelsea FPC***[14] the House of Lords confirmed that, notwithstanding the involvement of a public body, a claimant may pursue a private law cause of action in contract or tort. On the issue of whether, as submitted by counsel for the plaintiff, the exclusivity principle is directed to the protection of public law rights only and has no application where the rights asserted are contractual, Lord Bridge stated:

> *"It is appropriate that an issue which depends exclusively on the existence of a purely public law right should be determined in judicial review proceedings and not otherwise. But where a litigant asserts his entitlement to a subsisting right in private law, whether by way of claim or defence, the circumstance that the existence and extent of the private law right asserted may incidentally involve the examination of a public law issue cannot prevent the litigant from seeking to establish his right by action commenced by writ or originating summons, any more that it can prevent him from setting up his private law right in proceedings brought against him."*

35. Counsel for the defendant submitted that the court could look to the test in ***Jones v Powys Local Health Board***[15] if it concluded that a narrower interpretation of the exclusivity principle referred to in ***Roy*** was the better approach to determining whether this is a public law or private law claim. Essentially, to apply that test, the question for the court is whether the plaintiff is in substance asserting an entitlement to a subsisting right in private law, which "*may incidentally involve the examination of a public law issue*" or whether the "*primary focus*" or "*dominant issue"* is to challenge a public law act or decision.

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[14] [1992] 1 AC 624
[15] [2008] All ER (D) 234 (Nov)

36. Applying that test, it appears to this court that the plaintiff's claim can be classified as a claim in private law which is tangential to the Pay Stagnation Policy and the manner of its implementation, so that the Policy was not the primary focus or dominant issue.

37. The plaintiff has argued that the claim is directed to the manner in which the second defendant dealt with the plaintiff's case in the context of a yet undetermined workplace grievance and the use of The Performance Assessment Grade to determine her entitlement to the Pay Stagnation Remedy. As such, the claim is concerned with private law obligations within the context of a contract of employment. If one were to consider the three factors in ***Tucker*** in the context of the instant claim: the defendant is a public body; the function of the defendant in the exercise of the powers was a public one. However, the defendant was not performing a public duty owed to the plaintiff. Rather, the 2nd defendant's action was a function in a private law context, being the contract of employment between the plaintiff and the second defendant.[16] As was stated ***Richards*****:** *"The exclusivity principle should not become a general barrier to citizens bringing private claims in which breach of a public duty is one ingredient."*[17]

38. It is evident from the arguments before me that the plaintiff is not seeking to challenge The Performance Assessment Grade. The plaintiff's claim is more nuanced. There is no challenge to the grade but rather to how the defendants utilized that grade in determining that the plaintiff was not entitled to the Pay Stagnation Remedy. The plaintiff's claim seeks to marry the various issues that surrounded her employment at the time to support a cause of action based on implied terms of her contract of employment. This is a private law claim which incidentally involves the examination of a public law issue. The claim does not run afoul of the exclusivity principle.

39. On the issue of limitation, where a contractual claim is being considered, as in this case, the limitation period starts to run when the cause of action accrues to the plaintiff, that is, when all the legal elements present to enable the plaintiff to make a claim are present. This is different to a claim in tort, for instance, where the cause of action accrues, not when the defendant commits the act which results in the breach, but when the claimant suffers the loss or damage. The instant claim and argument concerning the limitation period is also dissimilar to that which the court grappled with in ***Coe***, where

[16] See also Regina v East Berkshire Health Authority, ex parte Walsh, [1985] Q.B. 152
[17] [2018] PTSR 1563 at paragraph 65

the Constitutional limitation period was expressed as within one year of "*either the date on which the decision was made or the date on which the plaintiff could reasonably have known about the decision*."

40. The cause of action in this case must be taken to run from the date of the implementation of the Pay Stagnation Remedy on 30 November 2016 when the decision that the plaintiff has complained of, which caused the alleged breaches of the implied terms of her contract, was taken and implemented by the 1st defendant. The plaintiff's alternative argument on the issue of limitation, that the breaches complained of continued past 6 December 2016 because the defendants owed continuing duties under her employment contract, is untenable.

41. In support of this position, Counsel referred to ***Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp***.[18] In that case, a solicitor's duty, a contractual duty to register an option on behalf of the plaintiff, was found to have continued until such time as performance became impossible. The court found that the continuing failure of the defendants to perform their duty under the contract meant that they were liable to the claimant, especially where they had themselves had not treated themselves *functi officio* in relation to the option where having drawn it up, they were very much aware that it had to be registered in order to protect it and their client's rights against claims by third parties.[19]

42. The instant matter is distinguishable from that in ***Midland Bank***. Here, the alleged date of the breach of duty is the date of the Pay Stagnation Remedy. The appeal process, whereby the plaintiff could have challenged The Performance Assessment Grade, upon which the decision not to award her the Pay Stagnation Remedy was based, was never engaged by the plaintiff. The plaintiff has not pointed to any avenue in law by which ***the defendants*** could have reviewed The Performance Assessment Grade save the appeal process available only to the plaintiff by dint of Sections 52 and 54 of the PSMA. The Performance Assessment Grade was fixed. This case does not support the plaintiff.

43. Counsel also referred the court to the case of ***Matthew and others v Sedman and others***[20] in support the plaintiff's argument regarding the limitation period. ***Sedman*** dealt with the very specific issue of whether, where a cause of action accrues at or on the expiry of the midnight hour at the end of a day, the day following counts towards the calculation of the limitation period. This is what is referred to as a midnight deadline case. The plaintiff has not advanced a submission that this is a midnight deadline case. ***Sedman*** was concerned with the effect of such a deadline on the accrual date. That

[18] [1978] 3 All ER 571
[19] See especially pages 613 at f-g and 614 at b.
[20] [2021] UKSC 19

issue is not germane to the determination in this case. There is no indication that the Pay Stagnation Remedy was stipulated to have only come into effect at midnight on the 30 November 2016.

44. However, counsel for the plaintiff drew the court's attention to the provisions of Section 5 of the Limitation Act (UK). It is noteworthy that Section 5 of the Limitation Act, (UK), the section under consideration in ***Sedman***, and Section 7 of the *Limitation Act (1996 Revision)* are in identical terms. The court in ***Sedman*** considered this section and the manner of its application. Lord Stephens noted at paragraph 47: "*I consider that the reason for the general rule which directs that the day of accrual of the cause of action should be excluded from the reckoning of time is that the law rejects a fraction of a day. The justification for that rule is straightforward; it is intended to prevent part of a day being counted as a whole day for the purposes of limitation, thereby prejudicing the claimant and interfering with the time periods stipulated in the Limitation Act 1980.*" Counsel submitted that Sedman was persuasive authority for the proposition that the law does not recognize a fraction of a day in determining the beginning of the limitation period and therefore serves as an illustration of the application of Section 7.

45. Section 7 of the *Limitation Act* sets out a strict timeline for the institution of proceedings founded on simple contract. There is good reason for strict adherence to the time allowed for bringing a claim. The *Limitation Act* serves to ensure commencement of actions within a reasonable time period and thereby provides certainty as to the opportunity for a plaintiff to bring a claim and conversely enables a defendant to rely upon a defence of limitation in appropriate circumstances.

46. I agree with the defendants' submissions that a court should not deprive a defendant of the benefit of the limitation period, more so in circumstances where a plaintiff makes no request for an extension or advanced reasons supporting a relaxation of the provisions of section 7. However, in this case, the claim brought by writ of summons filed on 30 November 2022 is not statute barred.

47. The general rule regarding the calculation of the limitation period for the purposes of the provision of Section 5 of the Limitation Act (UK) [*Section 7 of the Limitation Act (1996 Revision)*] was based on long-standing authority. In ***Sedman*** it was submitted that *"the rule could be discerned from landmark cases such as* ***Mercer v Ogilvy*** *(1796) 3 Pat App 434,* ***Lester v Garland*** *(1808) 15 Ves Jun 248 (33 ER 748),* ***The Goldsmiths' Co v The West Metropolitan Railway Co*** *[1904] 1 KB 1 and* ***Stewart v Chapman*** *[1951] 2 KB 792."*

48. Section 8 (a) of the *Interpretation Act (1995 Revision)* states:

> "*8 . In computing time for the purpose of any Law, unless the contrary intention appears-*
>
> *(a) a period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day in which the event happens or the act or thing is done;"*

In essence Section 8 codifies the general rule referred to in ***Sedman***, the effect of which is in this case the cause of action having accrued on 30 November 2016, the period for institution of the cause of action for breach of simple contract expired on 30 November 2022. The Plaintiff's claim was therefore validly filed on the last day within the period of limitation in line with the provisions of Section 8.

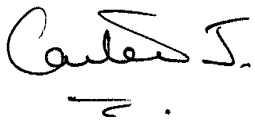
49. There is no need for this court to further address the issues raised regarding abuse of process in light of its findings on the issues of limitation and the exclusivity principle. On the basis of the court's findings at paragraph 38 herein, the plaintiff has demonstrated that the claim is not one that is unarguable.

50. The defendants' application for a declaration that the court has no jurisdiction to hear the plaintiff's claim in the terms pleaded in the Amended Statement of Claim filed 3 April 2025 is rejected, so too the defendants' application for a declaration that the plaintiff's claim is statute barred pursuant to section *7 of the Limitation Act (1996 Revision)*.

Costs

51. Costs to the plaintiff to be taxed if not agreed.

52. The court is grateful for the very helpful submissions of counsel on this application and the manner in which they both attended to the issues raised on this application. Their actions demonstrated the highest standards of integrity of the Bar.



Hon. Mrs. Justice Marlene Carter
Judge of the Grand Court