Neutral Citation No [2003] NIQB 13 | *Ref:* **HIGF3869**

Judgment: approved by the Court for handing down | *Delivered:* **11/02/2003**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

COLETTE ELIZABETH McCONVILLE

Plaintiff;

-and-

SOUTHERN HEALTH & SOCIAL SERVICES BOARD

Defendant.

HIGGINS J

[1] The plaintiff's claim is for damages for personal injuries loss and damage sustained by her on three separate occasions between August 1998 and May 1993 during the course of her employment with the defendant as a Care Assistant at Hoophill House Residential Home, in Lurgan, Co Armagh. The plaintiff was born on 16 April 1950 and at the time of the first alleged incident was 38 years of age. The statement of claim dated 22 December 1997 alleges that on three separate occasions the plaintiff was required to lift patients as a result of which she sustained injury to her lower back. The nature and extent of these injuries led to the plaintiff's discharge from her employment in October 1996. The plaintiff alleges common law negligence and breach of the Manual Handling Operations Regulations (NI) 1992. A defence was entered on 26 March 1998. By an amended defence dated the 11 September 2000 the defendant denies that the plaintiff was required to lift a patient on any of the three occasions alleged and that she sustained injury thereby. In addition the defendant denies negligence but does not admit breach of statutory duty and puts the plaintiff on formal proof of each allegation of breach of statutory duty. Alternatively the defendant pleads that if the plaintiff did sustain injury it was not occasioned by any negligence or breach of duty on the part of the defendant or its servants or agents and

alleges that the plaintiff was guilty of contributory negligence. Finally in paragraph 9 of the defence the defendant pleads –

> "9. The plaintiff's causes of action, if any, against the defendant are barred b y the lapse of time and by the provisions of the Limitation (Northern Ireland) Order 1976 and/or the Limitation (Northern Ireland) Order 1998."

[2] A Reply was filed on 11 August 1998. The Notice of Setting Down is dated 1 November 1999. On 26 July 2001 the defendant applied for an order that a preliminary issue be tried first. On 3 October 2001 Master McCorry ordered that the limitation issue pleaded by the defendant, be tried as a preliminary issue and that the plaintiff be at liberty to call oral evidence on that issue. In the event the plaintiff gave evidence briefly and was cross-examined.

[3] During the latter stages of her employment the plaintiff was required to take time off work due either to a gynaecological problem or to her back complaint or both. The frequency of her absence from work led to an investigation of her position and she voluntarily provided her medical notes and records to the Occupational Health Physician for this purpose. The medical records revealed a serious back problem. On 10 October 1996 the Occupational Health Physician was of the opinion that the plaintiff "should be considered to be rendered permanently incapable of returning to employment which involves any form of manual handling or spending prolonged periods of time on her feet". He recommended retirement on grounds of ill-health. This led ultimately to the termination of the plaintiff's employment later that same month. She has not worked since.

[4] The plaintiff consulted her Trade Union on 25 November 1996. She was referred to a solicitor, whom she saw on 15 January 1997. On 6 February 1997 the plaintiff's solicitor wrote a letter of claim in general terms "with regard to injuries she sustained during the course of her employment," alleging that these were due to negligence and breach of statutory duty. No information as to how or when the injuries were alleged to have been sustained, was contained in this letter. An appointment was made for the plaintiff to be examined by Mr Lowry FRCS and this took place on 3 March 1997. A writ was issued on 21 March 1997 and a Statement of Claim delivered on 22 December 1997. The Statement of Claim alleges generally negligence and breach of statutory duty namely breach of the provisions and requirements of the Manual Handling Regulations (NI) 1992 (sic). The allegations of negligence and breach of statutory duty do not differentiate between the three incidents. I assume the allegations of negligence apply to each but that the breach of statutory duty alleged is directed only to the third incident in time,

as the Regulations were not in force prior to 1992. The negligence alleged is in the following terms -

"PARTICULARS OF NEGLIGENCE

(a) Failing and omitting to provide and maintain a safe and suitable place of work.
(b) Failing and omitting to provide a safe and suitable system of work.
(c) Failing and omitting to provide any or adequate instruction or training for the plaintiff in the lifting of patients.
(d) Failing and omitting to have any or adequate regard to the health and characteristics of the patients that the plaintiff had to deal with and lift at all material times.
(e) Failing and omitting to provide any or adequate warnings.
(f) Exposing the plaintiff to dangers of which the defendant knew or ought reasonably to have known.
(g) Failing and omitting to provide any or adequate supervision.
(h) Failing and omitting to have any or adequate regard to the size and weight of the said patients.
(i) Failing and omitting to provide any adequate numbers of staff to assist the plaintiff at all material times.
(j) Failing and omitting to provide any or any adequate mechanical assistance for the plaintiff's use at all material times.
(k) When a bath lift was provided instructing employees including the plaintiff not to use the bath lift when it was unsafe and improper to do so.
(l) Failing and omitting to provide any other mechanical equipment for the plaintiff's use at all material times.
(m) Failing and omitting to provide any or adequate patient care plans and written procedures to be followed for the handling, movement and lifting of the patients at all material times.

(n) Failing and omitting to carry out any or any adequate assessment of the risks to the plaintiff in lifting the patients at all material times.
(o) Allowing the plaintiff to undertake lifts which were condemned.
(p) Failing and omitting to provide any or any adequate or regular medical examinations of the plaintiff during the course of her employment.
(q) Failing and omitting to monitor the occurrence of difficulties or accidents involving employees, the plaintiff in particular, in order to take appropriate action to prevent further recurrence.
(r) Discouraging the plaintiff from mentioning or reporting difficulties or accidents.
(s) Failing and omitting to have any or any adequate regard to the dangers or (sic) lifting patients in all the circumstances.
(t) Failing and omitting to exercise reasonable care in the circumstances."

[5] By a Notice for Further and Better Particulars dated 21 May 1999 the plaintiff sought , inter alia –

> 1. In respect of the Defendant's denial that it failed to provide a safe system of work, provide particulars of the alleged safe system arising out of the pregnant (sic) negative contained in the Defendant's denial.
>
> 2. In respect of the denial by the Defendant that it was in breach of its statutory duty under Article 4 of the Manual Handling Operations Regulations (NI) 1992, state:
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> > (a) whether the defendant is simply denying there was a breach of statutory duty of (sic)
> >
> > (b) whether the defendant is alleging that it took all "reasonably practicable" measures to avoid the need for the plaintiff to undertake the manual handling operations, the subject of this action.

> If the latter please provide particulars of the measures so taken by the defendant."

[6] The plaintiff does not seem to have sought particulars of the defendant's assertion of contributory negligence.

The defendant replied on 6 March 2001 as follows –

> "1. The defendant provided and maintained a safe and suitable system of work at all material times.
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> 2. The defendant provided adequate instruction and training for its employees including the plaintiff.
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> 3. The defendant provided adequate warning to its employees including the plaintiff with regard to safe lifting and handling of patients.
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> 4. The defendant provided adequate supervision of its employees including the plaintiff at all material times.
>
> 5. The defendant provided and adequately maintained mechanical assistance for its employees including the plaintiff at all material times.
>
> 6. The defendant provided adequate personal assistance to its employees including the plaintiff at all material times."

[7] On 26 March 1998 the defendant issued a notice for further and better particulars of the three allegations of injury. The Notice sought, inter alia, the names of the patients concerned, the names of other members of staff involved and the name of the member of staff who gave the plaintiff instructions not to use the bath lift, as alleged in the Statement of Claim. The plaintiff supplied this information by way of a Reply to the Notice for Further and Better Particulars dated 9 August 1998. No issue about the relevance of the 1992 Regulations to the first two incidents appears to have been taken on the pleadings.

[8] The plaintiff has been examined by Mr Lowry FRCS on three occasions - 3 March 1997, 7 August 1998 and 19 June 2000. Before the second examination Mr Lowry FRCS obtained the medical notes from the plaintiff's General Practitioner. The plaintiff's case would appear to be that on (or about)

5 August 1988 she suffered an injury while lifting a patient at work. She consulted her General Practitioner who sent her to hospital for X-ray. The X-ray revealed disc space narrowing at L 4/5. She was not off work as a result of this alleged injury. She suffered a further injury involving low back pain in September 1989 again when lifting a patient. She was off work for about 6 weeks and was admitted to Craigavon Area Hospital on 17 October 1989. She was treated with traction for 12 days. She suffered a further injury on 10 May 1993. On this occasion she was admitted to Musgrave Park Hospital and later transferred to Craigavon Area Hospital. On this occasion degenerative changes were noted in the facetal joints as well as the disc space narrowing at L 4/5 which had been noted earlier. She was off work for 6 weeks. She continued to see her GP and later attended a Pain Clinic. Mr Lowry's opinion was that the plaintiff had a somewhat abnormal back at the time of the original incident in 1988 the aetiology of which was a vexed question. The first incident provoked the onset of a definite back problem and this condition had deteriorated, as a result of the subsequent incidents.

[9] In response to the defendants plea that the actions are statute-barred the plaintiff filed an affidavit on 20 September 2001. In addition she gave evidence during the trial of this preliminary issue. She averred that her job with the defendant was a relatively well-paid job and the reason she did not make a claim in respect of her injuries was that she wished to keep her job. She feared losing her job at a time when some of her four children were undergoing third level education and others were still at school. She was the main breadwinner in the home. Her career prospects were good and she did not want to jeopardise them. Between 1993 and 1996 she completed successfully an NVQ Level 2 course in care, with a view to applying for a more senior post that would not have involved manual handling of patients. As a result of the termination of her employment she was denied the opportunity of advancement. She referred to a reluctance among the staff to report matters to the Head of the Home, who was regarded as unapproachable, domineering and intimidating, with an abrasive manner. Persons who complained were belittled. The attitude of the Head of Home was that there were plenty of people looking for a job. She refused to permit the use of a bath lift because she regarded such use as taking away a patient's dignity.

[10] Statements obtained form six employees or former employees supporting the plaintiff's claims were forwarded to the defendant's solicitors on 22 October 1999. Early in 1996 the plaintiff was off work and in hospital for an unrelated gynaecological matter. In May 1996 the defendant requested that the plaintiff undergo a consultation and examination with the Occupational Health Doctor to ascertain whether or not she could return to work. The plaintiff gave consent for her GP notes and records to be made available to the Occupational Health Doctor for this consultation and examination. The plaintiff complains that these notes and records were

disclosed to her employers and used to terminate her employment because of her back problems. Once her employment was terminated the reasons for not taking action earlier were no longer applicable. Thereafter she acted promptly, contacting her Trade Union and then her solicitor.

[11] In her affidavit the plaintiff averred that the absence of documentation, for example, the formal Accident Report Forms, was not significant or relevant. If she had taken action within the statutory period, there would have no documentation in any event as no report was made of the first and last incident, though she had made a verbal report of the second to the Head of Home. Thus the defendant is in no worse position as a result of the claim being made outside the statutory period. To date none of the persons, whose statements have been provided to the defendant's solicitors, has been interviewed by the defence.

[12] Mr G Simpson QC appeared on behalf of the defendant and Mr Potter on behalf of the plaintiff. It was submitted by Mr Simpson that the period of time that had elapsed from the date of the each incident to the date of the issue of the Writ of Summons was lengthy and significant. From the first incident to the issue of the Writ a period of 8 years and 7 months had elapsed; from the second incident to the issue of the Writ a period of 7 years and 6 months had elapsed; and from the third incident to the issue of the Writ a period of 3 years and 10 months had elapsed. Thus he submitted that if the court did not accede to the application of the defendant and on the assumption that a trial took place later in the year 2003, over 14 years would have elapsed from the first incident, over 13 years from the second incident and about 6 years from the third incident.

[13] The substance of the case made on behalf of the defendant is that the passage of time and the failure of the plaintiff to report the first and last incident have prevented any meaningful investigation of the plaintiff's claim. Some of the named patients have since died. There was a significant turnover of staff at Hoophill House and many of them are untraceable. Two employees mentioned, McCrory and Laverty, are no longer employed by the defendant. The passage of time has presented great difficulty in tracing relevant papers. Despite searches no Accident Report Forms or other documentation relating to the plaintiff's claims have been discovered. Hoophill House was closed in June 2000. In the absence of documentation, in particular an Accident Report Form, the defendant has great difficulty in investigating the plaintiff's claims properly.

[14] The thrust of the case made on behalf of the defendant was that the plaintiff had made a conscious decision not to make a claim in respect of any of the incidents. She was under no misapprehension or misunderstanding about any factual matter relating to any of the claims. It was only when her employment was terminated that she sought to pursue her claims, by which

time the claims were outside the statutory period and in two cases substantially so. As a result the defendant had been denied any opportunity to investigate her claims. Even the letter of claim was vague and did not suggest that a number of different incidents were alleged. Some of the patients had since died and there were difficulties in tracing former staff as potential witnesses. If her actions were permitted to proceed the plaintiff could state anything in evidence without fear of contradiction by the defendant. The defendant will have little or no opportunity to say anything about the claims. Thus this plaintiff would be in stronger position than a plaintiff who had brought his action within the statutory period, reported the incidents to his employers and caused an investigation to follow the completion of an Accident Report Form, in the usual way. As a result of the lateness of these claims the defendant would be denied their right to a trial of the issues within a reasonable time. It was submitted that the defendant was severely prejudiced. The earliest opportunity to investigate was August 1998 and the statements provided in October 1998 were of no assistance to the defence in attempting to defend the claims. Furthermore it was submitted that it was incumbent on a plaintiff who issued proceedings outside the statutory period to move with great expedition once the proceedings were launched. The plaintiff had not done so. Five years was allowed to elapse from the date of the writ to date and one year and eight months from the date when the action was set down.

[15] Counsel for the plaintiff responded that the claims are straightforward accidents at work with little to investigate. The death of the patients is of no significance as experience has shown that patients are never called as witnesses in these types of action. Hoophill House catered for patients who were usually helpless, mentally and physically confused, often immobile and sometimes aggressive. In those circumstances it was clear that the Care Assistants would be required to lift them in circumstances which gave rise to a foreseeable risk of injury. The claims centred on the system of work employed by the defendant as well as the training and instruction given to employees. There is no machinery or mechanical device to be examined or investigated or any requirement for an engineer's report. The plaintiff has provided information in respect of each incident – the name of the patient, the name of those assisting her and in one case the names of witnesses. In relation to the third incident there is contemporaneous evidence to support the plaintiff's version of events. In relation to all three incidents the change of personnel relied on by the defendants had occurred prior to the expiry of the relevant limitation period. In those circumstances it was submitted the defendant would be in a position to meet the plaintiff's claims. In addition it was argued that once the proceedings were initiated the defendant did not move with any great alacrity and allowed considerable time to pass before making the present application.

[16] By virtue of Article 7 of the Limitation (NI) Order 1989 the limitation period in respect of actions for damages for personal injuries caused by negligence or breach of statutory duty is fixed at three years from the date on which the cause of action accrued. The possible later date when a plaintiff had knowledge of certain facts does not apply in this case. By virtue of Article 7 (4), but subject to Article 50, the date after which the plaintiff could not bring an action in respect of the first incident was on or about 5 August 1991. In respect of the second incident the date was on or about 25 September 1992 and in respect of the third incident the date was on or about 10 May 1996. Article 50 provides, inter alia, that the court may direct that the provisions of Article 7 (and, thus the three year limitation period) should not apply in certain circumstances. Paragraph 1 of Article 50 provides:

> "50.-(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which -
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> (a) the provisions of Article 7,8 or 9 prejudice the plaintiff or any person whom he represents; and
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> (b) any decision of the court under this paragraph would prejudice the defendant or any person whom he represents.
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> the court may direct that those provisions are not to apply to the action, or are not to apply to any specified cause of action to which the action relates."

[17] Paragraph 4 of Article 50 sets out the matters to which the court should have regard in acting under Article 50. It is in these terms:

> "(4) In acting under this Article, the court is to have regard to all the circumstances of the case and in particular to -
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> (a) the length of, and the reasons for, the delay on the part of the plaintiff;
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> (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by Article 7,8 or, as the case may be 9.

(c) the conduct of the defendant after the cause of action arose, including the extent if any to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;

(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;

(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;

(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received."

[18] By virtue paragraph 4 the court is required to have regard to all the circumstances, but the paragraph highlights in sub-paragraphs (a) to (f) certain circumstances to which the court must have regard in particular.

[19] There was no dispute between counsel as to the relevant law and they referred me to various cases on the relevant legislation. Both were agreed that it was a relevant circumstance in this case that the plaintiff has no cause of action against her solicitor in respect of the claims.

[20] The terms of Article 50 of the Limitation Order make clear that the court has a discretion whether to direct that the provisions of Article 7 relating to the specified period in personal injury actions should or should not apply. The exercise of that discretion is unfettered, as the case-law has determined. Whether it is equitable to do so or not is to be decided on all the circumstances, but in particular the court is to have regard to the six matters referred to in paragraphs (a) to (f) of Article 50 (4), where relevant. In its determination whether it would be equitable to allow an action to proceed, the court must have regard to the degree to which the plaintiff would be prejudiced by strict adherence to the limitation period and the degree to which the

defendant would be prejudiced by the decision to allow the action to proceed. The word equitable means 'fair and just'.

[21] Paragraph 4(a) refers to the length of and the reasons for the delay. The delay referred to in paragraph 4(a) (and in paragraph 4 (b) is the delay after the expiration of the relevant limitation period. In this case the length of that delay, certainly so far as the first two incidents are concerned, is considerable – 4 years and 7 months in the first incident and 3 years and 6 months in the second incident. Proceedings were issued 9 months and a few days after the expiration of the limitation period in the third and last incident. The reasons for the delay are the same in each case. The plaintiff did not wish to jeopardise her employment. As Mr Simpson pointed out the plaintiff has been unable to identify any other person whose employment was jeopardised by legal proceedings. However, that assumes that someone had a cause of action and took proceedings, about which there is no evidence. The assertion by the plaintiff that the Head of Home was a domineering character is supported by other evidence and not contradicted. For the purposes of this preliminary hearing I should proceed on the basis that this assertion is probably correct. It is not unknown for employees to decide not to take action against an employer for a variety of reasons. Some employees are not litigation minded while others aver that they do not like the idea of suing an employer or going to court. However, many employees, and probably the greater number, are less reticent.. While it must be a relevant factor that this was a conscious decision by the plaintiff, the reasons for the decision namely, fear of losing her employment, are probably of greater significance.

[22] Paragraph 4(b) relates to the extent to which the evidence adduced or likely to be adduced by either the plaintiff or the defendant is likely to be less cogent having regard to the delay. The defendant submits that the passage of time has destroyed any opportunity the defendant had of obtaining any evidence. Therefore, strictly speaking the issue of the cogency of defence evidence does not arise. However the loss of opportunity to investigate is one of the general circumstances that the court must take into consideration. The cogency of the evidence the plaintiff might adduce may be affected by the passage of time. The cogency of the evidence that the plaintiff herself might give is less likely to be affected by the passage of time. The factual matrix is a simple one. If the plaintiff's medical history is correct, the plaintiff is not likely to forget the circumstances in which she came to acquire a defective back. The position may be otherwise for witnesses with no special reason to remember the occasion. The plaintiff has the advantage of contemporaneous medical notes from

her general practitioner and the hospitals. Much may depend on her credibility.

[23] Counsel were agreed that paragraphs 4(c) and (d) were not relevant to this case.

[24] Paragraph 4 (e) relates to how promptly and reasonably the plaintiff acted once she knew that the incidents might give rise to an action for damages. It is clear that the plaintiff knew at the time of the incidents or very shortly thereafter that the incidents might give rise to an action for damages. She did not act promptly. Whether she acted reasonably depends on the view the court takes about the reasons advanced on behalf of the plaintiff as to why she took no action at the relevant time. Having heard the evidence of the plaintiff and scrutinised the affidavits and the statements, my conclusion is that it was reasonable for the plaintiff not to take steps to bring legal proceedings because of the attitude of the Head of Home and the fear of losing her employment. Once she had lost her employment the plaintiff herself did act promptly in pursuing her case.

[25] Paragraph (f) relates to the steps taken by the plaintiff to obtain legal, medical or other advice and the nature of the advice received. The plaintiff did not obtain legal advice at the time of each incident though legal advice in relation to the last incident was much closer to the time of the incident. She did receive medical advice at the time of each incident and the details of it are relevant to the nature of the plaintiff's claim.

[26] It is undeniable that the defendant has been unable to conduct an investigation of the plaintiff's claims. A proper report at the time of the incident would have enabled the defendant to carry out its own inquiries. The Limitation Order imposes no obligation on a plaintiff to report incidents at the time of occurrence. It is concerned with the limitation of the period beyond which an action for damages for personal injuries cannot be brought. However it must be a relevant circumstance, when a limitation point is taken, that no formal accident report was made or form completed contemporaneously with the events in question. A report of some sort was made in one instance in this case but no report of any nature in the others. Details of the patients being lifted and the witnesses would have been relevant to any inquiry nearer the time. But these were not provided until much later. In view of the nature of the plaintiff's claim, namely, lifting a patient, the level and extent of the inquiries that might have been made by the defendant, at the time of each incident, would probably have been limited. There are contemporaneous medical records. The plaintiff's claim centres round the system of work employed by the

defendant and the type of instruction and training given. It must be a relevant factor that the defendant has pleaded that the defendant did provide a safe and suitable system of work and did provide adequate instruction and training. In relation to the limitation issue the court may infer (or assume for the purposes of the application) that the defendant has proof, whether documentary or oral, to substantiate that pleading.

[27] Article 50 (1) permits the court to direct that the provisions of Article 7 should not apply to any specified cause of action. Here there are three specified causes of action. The court could direct that Article 7 should not apply to all or some of the claims made or make no such direction and declare the actions statute barred. The degree of prejudice raised in the last issue is far less than the degree of prejudice raised in the first two incidents. Perhaps uniquely the nature of the injury alleged to have been sustained is similar in each instance or, at least, an aggravation of the first injury, always remembering the possibility of a pre-existing defect.. The court could conclude that Article 7 should not apply to the last incident. Any trial of the issues relating to the last incident would give rise, in all probability (and perhaps inevitably), to a consideration of the medical state of the plaintiff's back before the date of the last incident and how that occurred. This would entail a consideration of the nature and extent of the injuries allegedly sustained in the first two incidents. The probability of such an inquiry is, it seems to me, a relevant circumstance in the limitation issue. While it may be a relevant circumstance it is a limited one and certainly not determinative of the issue. It is another factor to be weighed in the balance.

[28] There has been significant delay in this case from the date of the first incident, though less so in relation to the third incident. The delay from the date of the first incident to the consultation with her trade union, which led to the service of the writ, was entirely the plaintiff's conscious decision. Thereafter the delay has been in the advancement of the proceedings by both sides. The cogency of evidence on the plaintiff's side is less likely to be affected than the cogency of any evidence likely to be adduced on behalf of the defence. The real prejudice to the defence lies in the lost opportunity of a contemporaneous investigation at the relevant times. If it is an issue whether the plaintiff was injured at work at all, on any of the occasions pleaded, then this issue will be difficult for the defendant to deal with. Much may depend on the plaintiff's credibility, about which I express no view. The plaintiff has lost her job and the prospects of promotion. She has sustained, allegedly, a serious injury to her back or a serious aggravation of a pre-existing defect in her back. She has no claim against her solicitors, as they have not been at fault. Both parties

appear to be responsible for the delays that have occurred since the issue of the proceedings, though those delays probably prejudice the defendant more than the plaintiff. The defendant did not avail of the opportunity to investigate the witnesses offered by the plaintiff. It seems on balance that the difficulties with personnel and documents probably would have arisen in any event. While there is prejudice to the defendant, mainly through the lost opportunity to investigate, I consider in the light of all the circumstances, and in particular the medical evidence, the witness statements and the issues pleaded, that the greater prejudice, if Article 7 is applied, lies with the plaintiff. She would lose the opportunity to seek to recover compensation not only for the alleged injuries but also for the loss of a well-paid job and the prospects of advancement in that employment. She has no alternative remedy for these significant events in her life. Those are factors that require to be given considerable weight in any preliminary point on limitation. I have considered and weighed all the issues and submissions of counsel and have had regard to the degree to which the provisions of Article 7 prejudice the plaintiff and the degree to which the dis-application of Article 7 would prejudice the defendant. It appears to me that it would be equitable, in all the circumstances, to allow the action to proceed on all the specified causes of action.