



## BECKMANN CLAIMS AND LIMITATION

### *Mendes v Slater & Gordon (UK) Ltd*

By Daniel Jukes, Wilberforce Chambers

#### Introduction

In *Mendes v Slater & Gordon*, HHJ Monty KC (sitting in the County Court at Central London) in this preliminary issues trial held that a six-year limitation period applied to “*Beckmann Claims*”<sup>1</sup> i.e. claims against employers arising out of an alleged failure to ensure that certain benefits payable from a pension scheme on compulsory redundancy had transferred pursuant to Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”).

#### Facts

The claimant, Dr Charles Mendes began his employment in February 1994 with Nuclear Electric, later transferring to Magnox Electric plc in 1995. His employment subsequently transferred under TUPE on multiple occasions: first to E&TS Ltd in 2005 under TUPE 1981, and then to Energy, Safety and Risk Consultants UK Ltd (“ESRC”) in June 2012. His employment ended on 21 May 2017 when he was made redundant at the age of 50 years and 1 month.

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<sup>1</sup> C-164/00 *Katia Beckmann v Dynamco Whichloe Macfarlane Ltd* [2002] ECR I-04839.

At the outset of his employment, Dr Mendes joined the Electrical Supply Pension Scheme (“ESPS”), which provided a valuable redundancy benefit. Under this scheme, employees made redundant after the age of 50 were entitled to an unreduced pension and lump sum, calculated based on years of service, without any actuarial reduction for early retirement.

When Dr Mendes’ employment transferred to E&TS Ltd, his accrued ESPS benefits moved into the Serco Pension & Life Assurance Scheme (“SPLAS”), where he became classified as a Magnox Member. SPLAS offered similar redundancy protections, including entitlement to a full pension and lump sum in cases of redundancy or business reorganisation, with reductions only applying in limited circumstances. Upon his later transfer to ESRC in 2012, his accrued benefits remained in SPLAS, and he joined the Amec Pension Scheme, which was intended to mirror his previous entitlements.

ESRC was required to preserve Dr Mendes’ accrued redundancy pension rights (i.e. *Beckmann* rights), effectively entitling him to benefits reflecting his entire service since 1994. However, upon his redundancy in 2017, Dr Mendes did not receive the full value of these rights. Instead, he was awarded only a pension and lump sum based on his service with ESRC alone, without the enhanced redundancy benefits linked to his earlier employment.

When Dr Mendes’ solicitors failed to bring his claim within the six-year limitation period, they were sued for professional negligence. The solicitors alleged that claims against the employer were subject to the 12-year limitation period for trust claims or no limitation period as the claim was a claim on a specialty. Alternatively, if the limitation period was six years, each alleged under-payment of a pension instalment gave rise to a separate cause of action which started time running.

On 15 July 2025, HHJ Evans-Gordon directed a trial of certain preliminary issues dealing with (i) the question of limitation, and (ii) when does a cause of action accrue in respect of a failure to pay *Beckmann* rights.

## Judgment<sup>2</sup>

Dealing first with the question of whether a fresh cause of action accrues on each pension instalment payment, the defendant argued that if ESRC was obliged to ensure that the pension is at the level it should be, inclusive of the *Beckmann* rights, then a cause of action accrues in respect of each pension instalment every month; every monthly underpayment amounts to a new breach and a new loss caused by that breach. The defendant's argument was predicated on the traditional analysis that both annuities and periodic payments have serial limitation periods arising afresh when each payment falls due.<sup>3</sup>

In contrast, the claimant argued that there was a one-off breach upon redundancy (the failure to ensure that Dr Mendes had his *Beckmann* rights), and that there was an immediate loss (or at least a loss when the first monthly payment was less than it should have been). Put another way, the claim against ESRC was fully constituted in contract (breach) and tort (breach and loss) on the date of Dr Mendes' redundancy. This was a one-off breach which set in motion a chain of damage.

The Judge said the point of departure was the nature of the alleged breach of duty, which the Judge characterised as a failure to provide *Beckmann* rights or their equivalent: [64]. Importantly, the Judge drew a clear distinction between the case at hand, and any claim against a pension trustee for failure to pay a scheme member in accordance with the scheme rules.

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<sup>2</sup> References in square brackets are to paragraph numbers of the Judgment.

<sup>3</sup> See, for example, *Edwards v Warden* (1874) LR 9 Ch App 495 (CA Ch); *Edwards v Warden* (1876) 1 App Cas 281; *Re Axminster Punter Southall v Hazlett* [2021] EWHC 1652 (Ch), [2022] Pens LR 1.

The Judge held that, as at the date of redundancy there was a breach and an immediate loss. On the day before redundancy, Dr Mendes was entitled to his *Beckmann* rights, and ESRC was obliged to fund the Amec Pension Scheme so that those rights would result in payment of the enhanced redundancy benefit. On the basis that at the date of the redundancy, ESRC had failed to do so, the Judge held that Dr Mendes was thus immediately worse off than he was the day before. This was as a result of the failure by ESRC to provide those rights and was an immediate loss to Dr Mendes, as there was no obligation on the trustees to do anything more than pay without the *Beckmann* rights as that was the extent to which the scheme had been funded: [68]-[69].

The Judge also held that the analogy with claims for annuities or periodic payments was “*a flawed one*” on the basis that the claim was not for an annual or periodic payment: [70]. Instead, the Judge characterised the claim as for damages to put Dr Mendes into the position he would have been in but for the breach of duty.

As to the length of the limitation period, the Judge held that Dr Mendes had a contractual claim whereas the claim he had under TUPE was a tortious claim: [89]. Further, the Judge held that the loss of *Beckmann* rights is not to be treated as the loss of trust rights: [91].

On that basis, the limitation period in respect of the failure to give effect to Dr Mendes’ *Beckmann* rights was held to be 6 years and would run from the date of Dr Mendes’ redundancy when the loss was sustained.

## **Analysis**

The Judge’s starting point was, first, to identify that the relevant alleged breach of duty was a failure to provide the *Beckmann* rights or substantively identical rights. Then, second, he defined the right being a right to regular payments reflecting the *Beckmann* rights.

Third and finally, the Judge considered that the obligation in respect of the regular payments transferred from the trustees to ESRC. This analysis seems unobjectionable and correct.

However, with respect to the Judge, it seems in his judgment that from this point onwards the subsequent analysis is open to challenge. First, the Judge held that ESRC was obliged to fund the Amec Pension Scheme on redundancy: [69]. However, the trustees had no such obligation; instead, they were obliged to provide the benefits, including Dr Mendes' *Beckmann* rights. Seen in that light, it cannot be right to say that there was only one single breach at the date of redundancy, as there would be a fresh breach when each periodic instalment of the pension fell due to be paid, including the sums representing Dr Mendes' periodic *Beckmann* rights which were not paid to him.

It is also difficult to understand how there was a breach of the obligation to pay the appropriate pension payments immediately at the date of redundancy. Until a pension payment falls due, there is no breach and thus Dr Mendes had not suffered any loss. That suggests that the claim is, in truth, concerned with the payment of periodic pension payments and not a single breach of contract and/or tortious duty.

Standing back, and if the above criticism is correct, it seems that this claim is a simple periodic pension case and thus the limitation period ought to have run from the date on which ESRC failed to pay the appropriate pension payment.

## **Conclusion**

Whilst this Judgment is the first to provide an answer to questions not properly grappled with by the Courts to date on the interaction between limitation periods and *Beckmann* rights, the reasoning can be subject to a certain degree of criticism. In fact, readers should be aware that the defendant has sought permission to appeal, so watch this space!

**Published April 2026**

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