

Limitation

Introduction

- Limitation periods impose time limits within which a party must bring a claim, or give notice of a claim to the other party.
- Limitation periods are imposed by statute, primarily the Limitation Act 1980 ("LA 1980"). There are different limitation periods for different types of cause of action. For example, the limitation period is six years for a normal contract claim, but 12 years if the contract was created by deed.
- It will be necessary at the outset of any new claim to determine whether or not the limitation period has expired. If it has, the claim will be "statute-barred" and the claimant may be prevented from bringing a claim against the alleged wrongdoer.
- If a claim is brought out of time, the defendant will be able to plead the defence of limitation and the claimant will have the burden of proving that the cause of action arose within the relevant statutory period.

When does time run from?

- Time runs from different dates depending upon the cause of action. For example, in a negligence claim, time will usually run for six years from the date when the negligent act or omission occurred. In a contract claim, the limitation period will run from the date when the contract was breached.
- In respect of negligence claims, it is possible to bring a claim outside the six-year limitation period if the damage complained of was not discovered until after the expiry of the six-year limitation period ("latent damage"). This extension to the ordinary six-year limitation period was introduced by the Latent Damage Act 1986. In such circumstances, a claimant has three years from either the date of knowledge of loss or the date when he ought reasonably to have known of his loss. What constitutes "ought reasonably to have known" depends on the circumstances of the case, and

specific advice should be sought on that. There is a 15-year long-stop date from the date of the defendant's negligent act or omission.

- In respect of fraud, concealment or mistake, time does not run until after its discovery or when such fraud etc. could with reasonable diligence have been discovered by the claimant.
- The commencement of proceedings (when the court receives the claim form) will stop time running for that cause of action. Quite often, when disputing parties are in settlement discussions and the expiry of the limitation period is near, the claimant will commence proceedings which are then put on hold whilst settlement discussions continue; this protects the claimant's right to sue. Whilst such "protective proceedings" can be amended later with the court's permission, such permission will not extend to allowing a fresh cause of action to be included in the proceedings.
- Limitation periods may be varied or excluded by agreement. For example, a sale and purchase agreement for the acquisition of a company may provide for non-tax claims to be brought within the second annual audit of the target company post-acquisition. In addition, a defendant may be prevented from relying upon a defence of limitation by its conduct.
- A contractual term which imposes a shorter limitation period than the LA 1980 may be subject to the "reasonableness test" under the Unfair Contract Terms Act 1977 (the "UCTA"). For example, where parties are contracting on one of the parties' written standard terms, the imposition of a nine-month limitation period for an action for breach of contract, will be subject to the reasonable test. However, while the UCTA protects consumers (vulnerable to the imposition of draconian terms because they have less bargaining power), in relation to sophisticated commercial entities, the courts are less willing to intervene with contractual limitations of liability agreed between the parties and may hold that commercial parties of equal bargaining strength should be bound by a truncated limitation period.

What are the applicable time limits?

- The key limitation dates for causes of action are as follows:

<p>Negligence (other than personal injury or death)</p> <ul style="list-style-type: none"> Within six years of the negligent act or omission (If later) within three years of the date of knowledge in cases of latent damage Negligent latent damage is barred by way of long stop after 15 years from the negligent act or omission Period runs from the date the damage is suffered For physical damage, the limitation period runs from the date of the damage, not the act which causes damage 	<ul style="list-style-type: none"> Section 2 – Limitation Act 1980 Section 14A – Limitation Act 1980 Section 14B – Limitation Act 1980
<p>Tort (generally, including conversion and trespass)</p> <ul style="list-style-type: none"> Within six years of the date the cause of action accrued 	<ul style="list-style-type: none"> Section 2 – Limitation Act 1980
<p>Product liability claims</p> <ul style="list-style-type: none"> Within 10 years of the relevant time defined by s.4 Consumer Protection Act 1987 Within three years, subject to a long-stop period of 10 years from the date of supply 	<ul style="list-style-type: none"> Consumer Protection Act 1987 (non-personal injury or death claims) Sections 11 and 33 – Limitation Act 1980 for personal injury or death claims
<p>Personal injury or death</p> <ul style="list-style-type: none"> Within three years of accrual of the negligent act or omission or knowledge if later 	<ul style="list-style-type: none"> Section 11 – Limitation Act 1980
<p>Fraud</p> <ul style="list-style-type: none"> Within six years of the date the cause of action accrued Time does not begin to run until the fraud has, or with reasonable diligence would have been, discovered, if the defendant deliberately conceals any fact relevant to the cause of action 	<ul style="list-style-type: none"> Section 2 – Limitation Act 1980 Section 32 – Limitation Act 1980
<p>Libel, slander and malicious falsehood</p> <ul style="list-style-type: none"> Within one year of the cause of action accruing A fresh cause of action accrues every time the claimant is defamed 	<ul style="list-style-type: none"> Section 4A – Limitation Act 1980
<p>Contract</p> <ul style="list-style-type: none"> Within six years of the date of breach The cause of action occurs as soon as the contract is breached. By contrast, in tort, no cause of action arises until all elements of duty, breach and damage are present Unlike tort, the limitation period cannot be extended on latent damage grounds 	<ul style="list-style-type: none"> Section 5 – Limitation Act 1980
<p>Contract under seal (deeds)</p> <ul style="list-style-type: none"> Within 12 years of the breach of contract or deed 	<ul style="list-style-type: none"> Section 8 – Limitation Act 1980
<p>A claim for the recovery of land, proceeds of sale of land or money secured by a mortgage or charge</p> <ul style="list-style-type: none"> Within 12 years of the right accruing (after that time, the title of the person is extinguished) 	<ul style="list-style-type: none"> Sections 15, 17 and 20 – Limitation Act 1980

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A claim for arrears of rent <ul style="list-style-type: none"> • Within six years of the date the rent became due 	<ul style="list-style-type: none"> • Section 19 – Limitation Act 1980
An action for non-fraudulent breach of trust <ul style="list-style-type: none"> • Within six years of the date on which the right of action accrued 	<ul style="list-style-type: none"> • Section 21(3) – Limitation Act 1980
An action claiming personal estate of a deceased person <ul style="list-style-type: none"> • Within 12 years of the date the right to receive the share or interest accrued 	<ul style="list-style-type: none"> • Section 22 – Limitation Act 1980
An action for a contribution <ul style="list-style-type: none"> • Within two years of the right accruing. A contribution here refers to a defendant's entitlement to claim against another party with whom he may be jointly liable for the claimant's loss 	<ul style="list-style-type: none"> • Section 10 – Limitation Act 1980
To enforce a judgment <ul style="list-style-type: none"> • Within six years of the date upon which the judgment became enforceable 	<ul style="list-style-type: none"> • Section 24 – Limitation Act 1980

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Should you have any questions please contact [Julie Herriott \(julie.herriott@pinsentmasons.com\)](mailto:julie.herriott@pinsentmasons.com) or your usual Pinsent Masons adviser who will be able to assist you further.

This note does not constitute legal advice. Specific legal advice should be taken before acting on any of the topics covered.

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