

## Limitation periods: an overview

- **Resource type: Practice note: overview**
- **Status: Maintained**
- **Jurisdictions: Any UK jurisdiction, England, Wales**

An overview of limitation periods under the Limitation Act 1980 and in equity. The note includes guidance on ensuring a claim is brought within the statutory limitation period and also sets out the limitation periods that apply to various types of claim.

*Practical Law Dispute Resolution*

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This note focuses on the key limitation issues to consider when bringing or defending a claim and the relevant limitation period for certain types of claims.

One of the first questions to resolve when considering whether a client is able to bring an action is whether the claim is time-barred. The action must be commenced within the relevant limitation period. If the limitation period has expired, then the defendant has a complete defence to the claim.

It is for the defendant to plead the defence of limitation as the courts will not take the point against the claimant. Once the defendant has raised the defence of limitation, the burden is on the claimant to prove that time has not expired.

For example letters to a potential claimant and defendant explaining about limitation periods, see *Standard documents, Letter to a potential claimant advising on limitation* ([www.practicallaw.com/3-520-0771](http://www.practicallaw.com/3-520-0771)) and *Letter to a potential defendant advising on limitation* ([www.practicallaw.com/5-521-8746](http://www.practicallaw.com/5-521-8746)). For practical considerations and tips on how to avoid a claim being time-barred, see *Practice note, Limitation: Practical Considerations*. ([www.practicallaw.com/7-503-7368](http://www.practicallaw.com/7-503-7368))

The law on limitation periods is set out in the *Limitation Act 1980* ([www.practicallaw.com/8-506-5723](http://www.practicallaw.com/8-506-5723)) (LA 1980) which makes provisions in respect of different causes of action. For example, it provides for a limitation period of:

- Six years for actions in respect of simple contracts and certain actions in tort (*section 5* ([www.practicallaw.com/9-506-7745](http://www.practicallaw.com/9-506-7745)) and *section 2* ([www.practicallaw.com/2-510-1880](http://www.practicallaw.com/2-510-1880)), LA 1980, respectively).
- Twelve years for actions on a specialty, for example, for breach of an obligation contained in a deed (*section 8* ([www.practicallaw.com/6-508-0499](http://www.practicallaw.com/6-508-0499)), LA 1980).

In both cases, the period begins to run from the date on which the cause of action accrued.

For a comprehensive list of the principal limitation time periods, see *Checklist: Length of limitation periods* ([www.practicallaw.com/1-503-5739](http://www.practicallaw.com/1-503-5739)). For more information on the law of limitation in general, see *Law of Limitation* (Bloomsbury Professional).

## Differences in contract and tort

There is no need for substantial loss to have been caused before a claimant is able to sue in contract. The cause of action accrues on the date of the breach of contract and the six year limitation period runs from this date.

For an action brought in tort, for example, in negligence, the period runs from the date the damage is suffered. This is because the causation of loss is an essential component of the tort of negligence. The claimant's right to sue for negligence only accrues when the alleged negligent act or omission causes loss.

For information on the practical consequences of the differences in contract and tort claims, see *Practice note, Limitation: practical considerations: Differences between tort and contract claims* ([www.practicallaw.com/7-503-7368](http://www.practicallaw.com/7-503-7368)).

## Damage suffered and contingent liability

A cause of action in tort accrues when a quantifiable or ascertainable loss is suffered. A contingent liability is not sufficient to start time running (*Law Society v Sephton and Co and others* [2006] UKHL 22 ([www.practicallaw.com/D-000-1292](http://www.practicallaw.com/D-000-1292))) (see *Article, Limitation periods: how long have you got?* ([www.practicallaw.com/9-203-1632](http://www.practicallaw.com/9-203-1632)) and *Watkins and Anor v Jones Maidment Wilson (a firm)* [2008] EWCA Civ 134 ([www.practicallaw.com/D-014-8235](http://www.practicallaw.com/D-014-8235)), discussed in *Legal update, Court of Appeal decision on accrual of cause of action in negligence* ([www.practicallaw.com/7-380-9646](http://www.practicallaw.com/7-380-9646))).

In *Shore v Sedgwick Financial Services Ltd* [2008] EWCA Civ 863 ([www.practicallaw.com/D-014-7954](http://www.practicallaw.com/D-014-7954)), the Court of Appeal held that claims for negligent financial advice regarding the transfer of pension benefits from one scheme to another scheme were statute-barred. The claimant suffered loss for the purposes of the LA 1980 immediately upon the transfer. It was a transaction under which he obtained a bundle of rights which were, from the outset, less advantageous to him. It was therefore not a contingent liability case to which *Sephton* applied and it was not necessary to wait to see what happened to determine whether he was worse off under the new scheme than the old. For more details, see *Legal update, Court of Appeal narrows scope of contingent liability in confirming pensions claim statute-barred* ([www.practicallaw.com/9-382-7215](http://www.practicallaw.com/9-382-7215)).

In *Axa Insurance Limited (formerly known as Winterthur Swiss Insurance Company) v Akther & Darby Solicitors and others* [2009] EWCA Civ 1166 ([www.practicallaw.com/D-011-7694](http://www.practicallaw.com/D-011-7694)), the Court of Appeal considered when the limitation period started to run in respect of damage flowing from the negligent administration of certain after the event insurance policies. The majority of the court (Lloyd LJ dissenting) held that loss had been incurred, and therefore damage suffered for the purpose of the accrual of the cause of action in tort, as soon as the policies were issued. Therefore, time started to run for limitation purposes when the policies had inceptioned. The relevant liability was not a purely contingent one and the case was therefore distinguishable from *Sephton*. For further details, see *Legal update, Start of limitation period where damage flowed from negligent administration of ATE insurance policies* ([www.practicallaw.com/1-500-7656](http://www.practicallaw.com/1-500-7656)). The case demonstrates that there may be cases where there is both a contingent liability in the future and actual damage at the time the relevant transaction is entered into. Where that is the case, time will start to run for limitation purposes from the time when the transaction was entered into.

In *Nouri v Marvi and others* [2010] EWCA Civ 1107 ([www.practicallaw.com/D-000-0830](http://www.practicallaw.com/D-000-0830)), a solicitors' negligence case, the Court of Appeal held that damage was suffered at a particular point in time, namely when completion of a transfer of a property took place, rather than on the registration of the property which occurred later. There was no continuing duty owed by the solicitors to the claimant but, even if there was, it would make no difference to when time began to run. The court refused to find *Sephton* like contingent liability and, whilst each case must be decided on its own facts, this case, together with the *Axa* case, seem to indicate that *Sephton* has a narrow application. For further details, see *Legal update, Court of Appeal finds for solicitors on limitation* ([www.practicallaw.com/0-503-6635](http://www.practicallaw.com/0-503-6635)).

In another solicitors' negligence case, *Bemey v Saul* [2013] EWCA Civ 640 ( [www.practicallaw.com/D-021-6387](http://www.practicallaw.com/D-021-6387) ), the Court of Appeal held that a claim for damages based on negligently conducted litigation was not statute barred because the claim had been issued within six years of the action accruing. The key issue was the date on which the claimant suffered a quantifiable or ascertainable loss. For further details, see *Legal update, When the limitation period starts in solicitors' negligence claims (Court of Appeal)*. ( [www.practicallaw.com/4-531-6752](http://www.practicallaw.com/4-531-6752) )

In *British Telecommunications plc v Luck and others* [2014] EWHC 290 (QB) ( [www.practicallaw.com/D-024-4978](http://www.practicallaw.com/D-024-4978) ), the High Court applied *Sephton* and held that the claim for fraudulent or negligent misrepresentation was not statute-barred. The claimants did not suffer actual loss until they ceased to be members of the BT pension scheme, not at an earlier time when were vulnerable to be removed from the pension scheme. Therefore, the action was brought in time. For more details, see *Legal update, Accrual of cause of action in tort requires express actual damage (High Court)* ( [www.practicallaw.com/4-558-1807](http://www.practicallaw.com/4-558-1807) ).

## Bringing a claim within the limitation period

Claims need to be commenced in time, namely within the relevant limitation period, as well as despatched in time (see *Extension of time for service of claim form*).

Paragraph 17 of the *Practice Direction on Pre-action Conduct and Protocols* ( [www.practicallaw.com/2-609-1045](http://www.practicallaw.com/2-609-1045) ) (Pre-action PD) provides for the situation where proceedings are started to comply with the statutory time limit. If there is insufficient time to comply with the Pre-action PD or any relevant pre-action protocol before the issue of proceedings, the parties should apply to the court for a stay of the proceedings while they so comply. It may be preferable for parties to enter into a standstill agreement in these situations (see *Clydesdale Bank plc v Kinleigh Folkard & Hayward* [2014] ( [www.practicallaw.com/D-024-8801](http://www.practicallaw.com/D-024-8801) ), discussed in *Legal update, Issue of proceedings enough to trigger court's jurisdiction to award costs (High Court)* ( [www.practicallaw.com/4-561-7825](http://www.practicallaw.com/4-561-7825) ); see also *Standstill agreements*).

For cases involving cross-border mediation, section III of *CPR 78* implements the *EU Mediation Directive* ( [www.practicallaw.com/5-509-8051](http://www.practicallaw.com/5-509-8051) ). The provisions ensure that, if a limitation period expires whilst parties are conducting a cross-border mediation, those parties will not be prevented from starting court proceedings. In those situations, the limitation period will be deemed to have expired eight weeks after the mediation concluded.

## Extension of time for service of claim form

After being issued, the claim form must be despatched (by completing the steps required by *CPR 7.5*) within its four month validity period, otherwise a fresh claim form will need to be issued within the relevant limitation period. If the substantive limitation period has expired, the claim will be statute-barred. For further details, see *Practice note, Service of claim form and other documents: an overview. Despatching the claim form* ( [www.practicallaw.com/3-382-5813](http://www.practicallaw.com/3-382-5813) ).

The rules applicable to extensions of time for serving a claim form are set out in *CPR 7.6* (see *Practice note, Service: asking the court for help: Extending time for despatching the claim form under CPR 7.6* ( [www.practicallaw.com/1-383-2862](http://www.practicallaw.com/1-383-2862) )).

A failure to serve a claim form in time has always been dealt with strictly by the courts (see *Aktas v Adepta* [2010] EWCA Civ 1170 ( [www.practicallaw.com/D-000-3204](http://www.practicallaw.com/D-000-3204) )). The general rule is that a good reason must be shown for the court exercising its discretion to allow an extension of time for service under *CPR 7.6(2)* (where the extension of time is sought within the validity period) and the good reason must be a difficulty effecting service.

The fact that an extension of time for service of a claim form may deprive a defendant of a limitation defence should be regarded by the court as a matter of "considerable importance" when deciding whether or not to grant the extension (see *Hashtroodi v Hancock* [2004] EWCA Civ 652 ( [www.practicallaw.com/D-000-2863](http://www.practicallaw.com/D-000-2863) ) at paragraph 18 and *Practice note, Service: asking the court for help: Case law on CPR 7.6(2) (in time application for extension); Hashtroodi* ( [www.practicallaw.com/1-383-2862](http://www.practicallaw.com/1-383-2862) )).

In *Bayat Telephone Systems International Inc and others v Lord Michael Cecil and others* [2011] EWCA Civ 135 ( [www.practicallaw.com/D-000-1487](http://www.practicallaw.com/D-000-1487) ), the Court of Appeal highlighted the importance of serving a claim form within the validity period, particularly where there is or may be a limitation issue, and the court's strict approach to an application to extend time for service of a claim where there are limitation considerations. For further details, see *Legal update, Significance of limitation defence when extension of time to serve claim form sought (Court of Appeal)* ( [www.practicallaw.com/2-504-8996](http://www.practicallaw.com/2-504-8996) ).

In *Malcolm-Green v And So To Bed Ltd* [2013] EWHC 4016 (IPEC) ( [www.practicallaw.com/D-023-9680](http://www.practicallaw.com/D-023-9680) ), the court overturned an order giving an extension of time for service of a claim form, noting that the discretion to give the claimant further time to serve the claim form should not be exercised if the loss to the defendant's limitation defence would be more than de minimis. For further details, see *Legal update, Court overturns extension of time for service of claim form* ( [www.practicallaw.com/6-552-3086](http://www.practicallaw.com/6-552-3086) ).

## Proof of despatch

In cases where limitation is about to expire, it may be important to be able to prove that the claim form was despatched within the four-month validity period. For details of evidence of despatch, see *Practice note, Service: evidence of service* ( [www.practicallaw.com/4-383-3860](http://www.practicallaw.com/4-383-3860) ).

## Standstill agreements

Parties may be able to suspend time for the purposes of limitation by entering into a standstill agreement. However, it is important that a standstill agreement is clearly drafted, otherwise the claim may nevertheless be time-barred.

In *Investors Compensation Scheme v West Bromwich Building Society* [1997] UKHL 28 ( [www.practicallaw.com/D-000-1270](http://www.practicallaw.com/D-000-1270) ), Lord Hoffmann established the following principles to be applied when construing agreements, including situations where something has "gone wrong" with the language chosen by the parties to express the agreement they have reached:

- It is necessary to ascertain the meaning that the document would convey to a reasonable person having all the background knowledge that would reasonably have been available to the parties in the situation they were in at the time of the agreement.
- Relevant background knowledge will include anything that would have affected the way in which the language would have been understood by a reasonable man (provided it was reasonably available to the parties, and subject to the exception identified below).
- The admissible background will not extend to previous negotiations between the parties and statements of subjective intent, that are only admissible in claims for rectification.
- The meaning that a document would convey to a reasonable man is not the same as the meaning of its words. The background may allow the "reasonable man" not only to choose between the possible meaning of words that are ambiguous, but even, possibly, to conclude that the parties must have used the wrong words or syntax.
- If it appears, from the background, that something must have gone wrong with the language, the law does not require judges to attribute to parties an intention which they plainly could not have had.

The meaning that a contract conveys to a reasonable person having all the background knowledge that would reasonably have been available to the parties in the situation they were in at the time of the contract may not be that which one, or both, of the parties to the contract thought it was (see, for example, the comments of Lord Hoffmann in *Attorney General of Belize and others v Belize Telecom and another (Belize)* [2009] UKPC 11 ( [www.practicallaw.com/D-010-4542](http://www.practicallaw.com/D-010-4542) ).

In *Gold Shipping Navigation Co SA v Lulu Maritime Ltd* [2009] EWHC 1365 (Admlty) ( [www.practicallaw.com/D-014-9306](http://www.practicallaw.com/D-014-9306) ) the court, applying the principles in the *Investors Compensation Scheme* case, found that the standstill agreement, which had been drafted by one of the parties, was not effective to stop time running. For further details, see *Legal update, Standstill agreements: a reminder of the need for care* ( [www.practicallaw.com/9-386-3114](http://www.practicallaw.com/9-386-3114) ).

For a sample standstill agreement see *Standard document, Standstill agreement (limitation periods): an example (with drafting notes)* ( [www.practicallaw.com/1-384-0683](http://www.practicallaw.com/1-384-0683) ).

## Risks of issuing prematurely

A claimant may issue proceedings in order to prevent the limitation period from expiring, even if he has no present intention of pursuing the litigation, provided that he can properly formulate the claim. However, to issue a claim form when the claimant is not able to identify the essence of the claim, is an abuse of process and the claim should be struck out (see, for example, *Nomura International plc v Granada Group Ltd* [2007] EWHC 642 (Comm) ( [www.practicallaw.com/D-009-3116](http://www.practicallaw.com/D-009-3116) ), discussed in *Legal update, Strike out for premature issue of claim form* ( [www.practicallaw.com/9-242-0962](http://www.practicallaw.com/9-242-0962) ).

## What is the relevant date?

A claim is "brought" for limitation purposes when the court **receives** the claim form, and **not** the date on which the claim form is issued (*St Helens v Barnes* [2006] EWCA Civ 1372 ( [www.practicallaw.com/D-000-2950](http://www.practicallaw.com/D-000-2950) ). In *St Helens*, the Court of Appeal held that the following wording in PD 7A.5.1 was correct:

"Proceedings are started when the court issues a claim form at the request of the claimant ... but where the claim form as issued was received in the court office on a date earlier than the date on which it was issued by the court, the claim is "brought" for the purposes of the [LA 1980 ( [www.practicallaw.com/8-506-5723](http://www.practicallaw.com/8-506-5723) )] and any other relevant statute on that earlier date."

In *St Helens*, the claimant sought damages from his local authority for negligence and breach of statutory duty. The three-year limitation period for an action for personal injury (sections 11(3) and (4) ( [www.practicallaw.com/3-509-3709](http://www.practicallaw.com/3-509-3709) ), LA 1980) expired on 5 November 2004. The claim form was handed into Liverpool County Court on 4 November 2004 along with the issue fee, and a covering letter stating that the

claimant's solicitors would effect service. The court clerk stamped the letter confirming the date of receipt as 4 November, but the court staff were striking on 5 November, so the claim form was not issued until 8 November.

This case is a reminder to claimants that when starting proceedings late in the day, the court staff should be informed of the tight deadline if a limitation period is about to expire, and care should be taken when documents are left with a court to be issued, instead of waiting while they are issued and taking them away that day. Also, defendants should be aware that the issue date stamped on the face of the claim form may not be the date on which the claim was brought for limitation purposes. Where, on the face of the claim form, it appears that the claim was started too late, a defendant will need to check the date of receipt with the relevant court office, or raise the point in correspondence with his opponent and ask him to obtain the appropriate confirmation from the court (see *Practice note, Service of claim form and other documents: an overview. When is a claim "brought" for limitation purposes?* ([www.practicallaw.com/3-382-5813](http://www.practicallaw.com/3-382-5813))).

In *Page and another v Hewetts Solicitors and another* [2012] EWCA Civ 805 ([www.practicallaw.com/D-000-1458](http://www.practicallaw.com/D-000-1458)), the Court of Appeal, applying *St Helens*, confirmed that the time when an action is brought is a question of construction of the LA 1980, and not of the Civil Procedure Rules, or the accompanying practice directions. The court held that the LA 1980 could be construed so that a claim is brought when the claimant's request for the issue of a claim form is delivered to the court office. Taken literally, this means that once the claimant has delivered the request for issue of a claim form to the court office, with the appropriate fee, he has brought his action. For further details, see *Legal update, Unjust for claimant to bear risk of court failing to process claim form in time (Court of Appeal)* ([www.practicallaw.com/0-519-9463](http://www.practicallaw.com/0-519-9463)).

However, in a related decision, *Page and another v Hewetts solicitors and another* [2013] EWHC 2845 (Ch) ([www.practicallaw.com/D-023-1071](http://www.practicallaw.com/D-023-1071)), the court found that the claim was time-barred as an incorrect issue fee had been paid at the time of issue of the claim form, very close to the expiry of the limitation period. By the time the correct fee was paid, the limitation period had expired and the court held that, in those circumstances, the claimants had not done all that could be reasonably expected of them and had left things too late to correct the error. For further details, see *Legal update, Failure to pay correct court fee within limitation period meant claim out of time (High Court)* ([www.practicallaw.com/5-543-0667](http://www.practicallaw.com/5-543-0667)).

In *Bhatti v Asghar* [2016] EWHC 1049 (QB) (7 April 2016), Warby J found that the authorities appeared to identify a clear principle by which the court is to determine whether a claim has been "brought" for the purposes of stopping limitation from running, namely that:

".. a claim is only brought for those purposes when the party concerned has done all that is in his power or to set the wheels of justice in motion. If he has done that, then the risk of any failing on the part of the court is cast upon the court and the opposite party".

He observed that "doing all that is in one's power" will ordinarily involve proffering the correct court fee to the court office at the same time as presenting the claim form and applicable particulars of claim. A failure by the court itself could, in principle, result in a claim being brought without the correct fee having been paid, for example, if the court staff had made an incorrect calculation which was not the claimant's fault. In such a case, the claimant would have done all it reasonably could do.

For more information on this case, see *Legal update, Underpayment of fees on issuing proceedings may mean proceedings not "brought" for limitation purposes (High Court)*. ([www.practicallaw.com/9-628-2485](http://www.practicallaw.com/9-628-2485))

For more information on when a claim is "brought", and also how to determine exactly when time starts and expires for the purposes of limitation, see *Practice note, Limitation: Practical Considerations: Issuing proceedings* ([www.practicallaw.com/7-503-7368](http://www.practicallaw.com/7-503-7368)) and *Calculating time* ([www.practicallaw.com/7-503-7368](http://www.practicallaw.com/7-503-7368)).

### Extension of time for acknowledgment or part payment

*Sections 29 to 31* ([www.practicallaw.com/9-510-1669](http://www.practicallaw.com/9-510-1669)) of the LA 1980 extend the limitation period in cases where the defendant makes some acknowledgment or payment in respect of the claimant's right of action.

For example, Section 29(5) provides that, where a right of action has accrued to recover a debt or other liquidated pecuniary claim, time starts running for limitation purposes from the date on which the debtor "acknowledges the claim or makes any payment in respect of it".

In *John Howard Ashcroft v Bradford & Bingley plc* [2010] EWCA Civ 223 ([www.practicallaw.com/D-011-8648](http://www.practicallaw.com/D-011-8648)), the Court of Appeal considered the effect, for limitation purposes, of payments made by a mortgage debtor where the amount of the debt was in dispute (see *Legal update, Court of Appeal considers effect of part payment of debt for limitation purposes* ([www.practicallaw.com/5-501-8417](http://www.practicallaw.com/5-501-8417))).

However, once the relevant limitation period has expired, subsequent acknowledgement or part-payment does not extend the limitation period. Section 29(7) of the LA 1980 provides:

"Subject to subsection (6) above, a current period of limitation may be repeatedly extended under this section by further acknowledgments or payments, but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgment or payment."

Section 30 of the LA 1980 provides that an acknowledgment must be made in writing and signed by the person making it. The requisite elements of an effective acknowledgment are therefore:

- A liquidated pecuniary sum.
- An acknowledgment.
- In writing.
- Signed by the maker or his agent.
- Made to the creditor or his agent.

## Adding or substituting new claims or parties in pending actions

Section 35 ([www.practicallaw.com/4-509-7066](http://www.practicallaw.com/4-509-7066)) of the LA 1980 provides rules in relation to adding or substituting new claims or parties in existing actions. Section 35 also provides for rules of court to be made to allow new claims provided they satisfy the conditions of that section. The relevant court rules, for the purposes of limitation, are as follows:

- *CPR 17.4*: amendments of statements of case at the end of the limitation period.
- *CPR 19.5*: joining additional parties to the proceedings at the end of the limitation period.

For a detailed analysis of section 35, CPR 17.4 and CPR 19.5, see *Practice notes, Limitation: amending and bringing new claims in pending actions* ([www.practicallaw.com/0-500-0957](http://www.practicallaw.com/0-500-0957)) and *Limitation: practical considerations: Claims in pending actions* ([www.practicallaw.com/7-503-7368](http://www.practicallaw.com/7-503-7368)).

The following sections set out some case law on these rules.

### Adding new claim after expiry of limitation period

*CPR 17.4* provides for amendments to statements of case after the expiry of a relevant limitation period. Under *CPR 17.4(2)*, the court may allow an amendment, the effect of which will be to add or substitute a new claim, but "only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings".

In *Evans v CIG Mon Cymru Ltd [2008] EWCA Civ 390* ([www.practicallaw.com/D-000-3059](http://www.practicallaw.com/D-000-3059)), the Court of Appeal held that there are limited circumstances when the court may allow the amendment of a claim form to add or substitute a new claim after the expiry of the relevant limitation period even if the new claim does not arise out of the same facts as the existing claim. The question that must be asked is what is the purpose of any proposed amendment. Where it is to correct an error that is obvious on the face of the pleaded case as a whole, as opposed to an amendment to raise a new cause of action, the court may allow the amendment. For further details, see *Legal update, Court of Appeal allows "new claim" after expiry of limitation period* ([www.practicallaw.com/6-381-3371](http://www.practicallaw.com/6-381-3371)).

In *Harland & Wolff Pension Trustees Ltd v Aon Consulting Financial Services Ltd [2009] EWHC 1557 (Ch)* ([www.practicallaw.com/D-000-1557](http://www.practicallaw.com/D-000-1557)), the court found that one of the amendments to the particulars of claim proposed by the claimant could be categorised as a new head of damage arising from the original breach of contract and not a new cause of action. Therefore, it was not necessary to consider *CPR 17.4*. Whether the amendment should be allowed fell under the ordinary principles relating to discretion under *CPR 17.1(2)(b)*. For further details, see *Legal update, Amendments outside the limitation period: what is a new cause of action?* ([www.practicallaw.com/8-386-5986](http://www.practicallaw.com/8-386-5986)).

In *Fattal and others v Walbrook Trustees (Jersey) Ltd and others [2010] EWHC 2767 (Ch)* ([www.practicallaw.com/D-000-3596](http://www.practicallaw.com/D-000-3596)), the High Court dismissed the substantive parts of an application for permission to re-amend the particulars of claim where many of the proposed amendments were objected to on the ground that the limitation period had expired. Unless an amendment fell within the scope of *CPR 17.4*, the court had no power to permit it. But it did not follow that if an amendment did fall within *CPR 17.4*, the court must permit it. The discretion to allow an amendment after the expiry of a limitation period should not lightly or routinely be exercised in a way that would deprive a defendant of a limitation defence. For further details, see *Legal update, High Court considers amendments to a statement of case after the limitation period had expired* ([www.practicallaw.com/4-503-8699](http://www.practicallaw.com/4-503-8699)).

In *Mercer Ltd and another v Ballinger and another [2014] EWCA Civ 996* ([www.practicallaw.com/D-026-8016](http://www.practicallaw.com/D-026-8016)), the Court of Appeal provided a useful reminder of the staged test that must be applied before granting permission to amend a statement of case by introducing a new claim into an existing action after the expiry of a limitation period:

- It must be decided whether it is reasonably arguable that the opposed amendments are outside the applicable limitation period. The court made it clear that the burden is on the claimant in this regard to show that the limitation defence is not reasonably arguable.

- If the claimant is unable to do this and the limitation defence is reasonably arguable, then the claimant will need to be able to show that the new cause of action arose out of the same or substantially the same facts as were already in issue in the existing claim.

For further details, see *Legal update, Reminder of test when applying to amend statement of case out of time (Court of Appeal)* ([www.practicallaw.com/2-575-3625](http://www.practicallaw.com/2-575-3625)).

In *Interface Europe Ltd v Premier Hank Dyers Ltd [2014] EWHC 2610 (QB)* ([www.practicallaw.com/D-027-3547](http://www.practicallaw.com/D-027-3547)), the High Court allowed the defendant to amend a Part 20 breach of contract claim to include a negligence claim outside the limitation period. The court found that the factual matrix for both causes of action was substantially the same and it was relevant that the new claim was not more than a year or so out of time and that it did not extend the value of the claim or significantly alter the necessary investigations. It also held that when considering whether a cause of action arises out of the same facts, it is not relevant that the amendment would change the focus of the case. For more details, see *Legal update, Guidance on approach to late amendments under CPR 17.4(2) (High Court)* ([www.practicallaw.com/7-581-1185](http://www.practicallaw.com/7-581-1185)).

For further information on adding new claims at the end of a limitation period, see *Practice note, Limitation: amending and bringing new claims in pending actions: Limitation issues and CPR 17 and CPR 19* ([www.practicallaw.com/0-500-0957](http://www.practicallaw.com/0-500-0957)).

### Adding or substituting a party after expiry of limitation period

CPR 19.5 provides for the addition or substitution of a party after the end of the limitation period if the relevant limitation period was current when the proceedings were started and the addition or substitution is necessary. Under CPR 19.5(3), the addition or substitution is necessary only if the court is satisfied that either:

- The new party is to be substituted for a party named in the claim form in mistake for the new party.
- The claim cannot be properly carried on by or against the original party unless the new party is added or substituted as claimant or defendant.
- The original party has died or been declared bankrupt and his interest or liability has passed to the new party.

CPR 17.4(3) also provides:

"The court may allow an amendment to correct a mistake as to the name of a party, but only where the mistake was genuine and not one which would cause reasonable doubt as to the identity of the party in question"

If it transpires that there has been a mistake as to identity in the claim form by the claimant, rather than just one of name, the courts will not allow the addition or substitution of the new party (*Sheldon Gary Adelson and Las Vegas Sands Corp v Associated Newspapers Limited [2007] EWCA Civ 701* ([www.practicallaw.com/D-000-0088](http://www.practicallaw.com/D-000-0088))). However, the courts will allow the addition or substitution of a party where the mistake is as to name but not identification. The *Adelson* case clarified the test to be used in determining if a mistake has been made for the purposes of CPR 19.5(3) (see *Legal update, Substitution of new parties at the end of a limitation period* ([www.practicallaw.com/0-371-9970](http://www.practicallaw.com/0-371-9970))).

The general position is that a mistake as to **identification** occurs if a claimant identifies an individual and describes him correctly in the pleadings but later discovers he has identified the wrong person.

A mistake as to **name** occurs where the claimant identifies the right person but describes him incorrectly in the pleadings (see also *S P Manweb plc v Bechtel Water Technology Ltd and others [2008] EWHC 2270 (TCC)* ([www.practicallaw.com/D-015-0651](http://www.practicallaw.com/D-015-0651)), discussed in *Legal update, Amendment after expiry of limitation period* ([www.practicallaw.com/3-383-5478](http://www.practicallaw.com/3-383-5478))).

In *Adelson*, the court suggested that the following requirements must be satisfied:

- A mistake must have been made.
- The mistake must be genuine.
- The mistake must not have been misleading or such as to cause any reasonable doubt as to the identity of the person intending to sue or, as the case may be, intended to be sued.

These principles were applied in *Lockheed Martin Group v Willis Group Ltd [2009] EWHC 1436 (QB)* ([www.practicallaw.com/D-012-2618](http://www.practicallaw.com/D-012-2618)) in which the court set aside an order under CPR 19.5(3)(a) for two parties within the original defendant's group of companies to be substituted as the defendants in place of the original defendant, Willis Group Holdings Ltd, after the expiry of the relevant limitation period. The court was prepared to assume that the claimant had made a mistake as to name and not identity in respect of one of the two group companies, Willis Group Ltd, but it was clear from the claimant's evidence that it had no intention to sue the other group company at the time the claim

form was issued. However, in respect of Willis Group Ltd, the claimant did not pass the test set out in *Adelson* that the mistake must not have been misleading, because it was unclear to Willis Group Holdings, the original defendant, which entity the claimant had intended to sue. For further details, see *Legal update, Group companies and limitation under CPR 19.5(3)* ([www.practicallaw.com/5-386-5582](http://www.practicallaw.com/5-386-5582)).

Other cases that considered substitution after the expiry of the limitation period include:

- *GE Money Home Lending Ltd and Another v HC Wolton & Sons Ltd (t/a Wolton Chartered Surveyors)* [2010] EWHC 1011 (Ch) ([www.practicallaw.com/D-012-1368](http://www.practicallaw.com/D-012-1368)), in which the court accepted that, while on the evidence there was a genuine mistake as to name and not identity by the claimants when issuing the proceedings, the defendant did not know the true identity of the correct claimant at any relevant time and therefore refused an application to substitute a new claimant after the expiry of the limitation period. For further details, see *Legal update, Substitution of new parties after expiry of the limitation period* ([www.practicallaw.com/8-502-2564](http://www.practicallaw.com/8-502-2564)).
- *Parkinson Engineering Services Plc (in liquidation) v Swan and another* [2009] EWCA Civ 1366 ([www.practicallaw.com/D-000-1454](http://www.practicallaw.com/D-000-1454)), in which the liquidator of a company obtained permission to amend a claim by substituting himself as claimant rather than the company on whose behalf he was acting. The Court of Appeal confirmed that the liquidator's proposed amendments were permissible as they were "necessary" within the meaning of *CPR 19.5* and *section 35(5)* ([www.practicallaw.com/4-509-7066](http://www.practicallaw.com/4-509-7066)) of the LA 1980. For further details, see *Legal update, Liquidator's claim against former administrators permitted after expiry of limitation period* ([www.practicallaw.com/2-501-0984](http://www.practicallaw.com/2-501-0984)).
- *Roberts (FC) v Gill & Co and others* [2010] UKSC 22 ([www.practicallaw.com/D-000-6947](http://www.practicallaw.com/D-000-6947)), in which the Supreme Court considered the effect of limitation on a party's application to amend the capacity in which he brought proceedings. For further details, see *Legal update, Supreme Court rules on effect of limitation on change of capacity and addition of new party* ([www.practicallaw.com/1-502-3246](http://www.practicallaw.com/1-502-3246)).
- *Irwin (Administrator of Daniel Lynch Ltd) and another v Lynch and another* [2010] EWCA Civ 1153 ([www.practicallaw.com/D-011-8084](http://www.practicallaw.com/D-011-8084)), in which the Court of Appeal allowed a company to be substituted as claimant, after the expiry of the limitation period, in place of the administrator, in relation to a claim which the administrator had had no standing to bring. For further details, see *Legal update, Company substituted as claimant after limitation period expired in place of administrator with no locus standi* ([www.practicallaw.com/3-503-7167](http://www.practicallaw.com/3-503-7167)).
- *The Insight Group Ltd & Anor v Kingston Smith (a firm)* [2012] EWHC 3644 (QB) ([www.practicallaw.com/D-015-6657](http://www.practicallaw.com/D-015-6657)), in which the court had to decide whether a claim brought mistakenly against a LLP, rather than against the partnership whose business had been taken over by the LLP, was a mistake as to identity or as to name.
- *American Leisure Group Ltd v Olswang LLP* [2015] EWHC 629 (Ch) (10 March 2015) ([www.practicallaw.com/D-030-6622](http://www.practicallaw.com/D-030-6622)), in which the High Court clarified the jurisdiction to substitute a party named by mistake after the end of the relevant limitation period under *CPR 19.5(3)(a)*. For further details, see *Legal update, Clarification of jurisdiction to substitute a party named by mistake after limitation expired under CPR 19.5(3)(a) (High Court)* ([www.practicallaw.com/6-605-9005](http://www.practicallaw.com/6-605-9005)).

For further information on adding new parties at the end of the limitation period, see *Practice note, Limitation: amending and bringing new claims in pending actions: Mistake as to name under CPR 17.4(3) and joining additional parties to subsequent proceedings under CPR 19.5* ([www.practicallaw.com/0-500-0957](http://www.practicallaw.com/0-500-0957)).

### EU ruling on substitution of parties under European Product Liability Directive

In *Ob v Aventis Pasteur SA Appellate Committee* [2008] UKHL 34 ([www.practicallaw.com/D-000-6746](http://www.practicallaw.com/D-000-6746)), the House of Lords (now Supreme Court) considered whether Article 11 of the *European Product Liability Directive* ([www.practicallaw.com/6-509-2459](http://www.practicallaw.com/6-509-2459)) (85/374/EEC) precluded a party from being substituted as a defendant in proceedings after the expiry of the ten-year long stop period provided for in Article 11, or whether the substitution was permitted under *section 35(5)(b)* ([www.practicallaw.com/4-509-7066](http://www.practicallaw.com/4-509-7066)) of the LA 1980 (and *CPR 19.5* which is based on section 35). Although the Court of Appeal had held that a substitution could be made under *CPR 19.5*, the House of Lords found that the issue was not beyond reasonable doubt and therefore a further referral to the ECJ was necessary. For full details, see *Legal update, ECJ to clarify whether Directive allows courts to substitute a party after limitation period expires* ([www.practicallaw.com/2-382-1877](http://www.practicallaw.com/2-382-1877)).

The ECJ confirmed that, in limited circumstances, it is possible to substitute defendants outside the ten-year long stop period provided for in Article 11. Although, as a general rule, Article 11 takes precedence over any national legislation that would allow a producer to be sued after the ten-year long stop date, Article 11 does not preclude a national court from holding that, in proceedings commenced within the ten-year long stop date against a wholly owned subsidiary of a producer (as defined in Article 3(1)) that producer can be substituted for the subsidiary if the court finds that the relevant product was, in fact, put into circulation on the instructions of the producer. In addition, if the claimant was not reasonably able to identify the producer before exercising his rights against the supplier, the supplier should be treated as the producer of the product unless it informed the claimant on its own initiative and promptly who really was the producer or its own supplier. For further details, see *Aventis Pasteur SA v OB (Case C-358/08)* [2009] EUECJ ([www.practicallaw.com/D-011-6745](http://www.practicallaw.com/D-011-6745)).

In light of the ECJ's ruling, the Supreme Court unanimously allowed the appeal. The guidance of the ECJ was that a domestic court must consider whether the manufacturer was, in fact, wholly controlling the distributor and determining whether the product went into circulation. In such circumstances, proceedings against the distributor could properly be regarded as proceedings against the parent company,



thereby allowing the manufacturer to be substituted for the subsidiary. For full details, see *OB v Aventis Pasteur SA [2010] UKSC 23* ([www.practicallaw.com/D-000-6948](http://www.practicallaw.com/D-000-6948)).

## Insolvency and limitation

Where a company goes into liquidation, time stops running for limitation purposes (*Re Cases of Taff's Well Ltd [1992] Ch 179* ([www.practicallaw.com/D-016-9128](http://www.practicallaw.com/D-016-9128)) in relation to compulsory liquidation, and *Re Northern Ontario Power Co Ltd [1954] 1 DLR 627* in relation to voluntary liquidation). This means that a claim against a company that is not time-barred when a company goes into liquidation remains alive.

When a company is in administration, however, the limitation periods of claims against the company continue to run (*Re Cosslett (Contractors) Ltd [2004] EWHC 658(Ch)* ([www.practicallaw.com/D-016-9131](http://www.practicallaw.com/D-016-9131)) and *Re Leyland Printing Company Ltd and Leyprint Ltd [2010] EWHC 2105 (Ch)* ([www.practicallaw.com/D-012-1538](http://www.practicallaw.com/D-012-1538))). For more details, see *Legal update, Administration: High Court holds time does not stop running on claims for limitation purposes* ([www.practicallaw.com/7-503-0362](http://www.practicallaw.com/7-503-0362)).

If you have a claim against a company in administration but have not yet issued proceedings, you should be aware of the limitation period of your claim. Where time is running out, you may seek to protect your position by:

- Obtaining the administrator's acknowledgment of your claim. Note that this restarts the applicable limitation period in accordance with *section 29* ([www.practicallaw.com/9-510-1669](http://www.practicallaw.com/9-510-1669)) of the LA 1980; it does not stop time running (see *Extension of time for acknowledgement or part payment*).
- Applying to the administrator or the court for permission to issue proceedings against the company. Where proceedings are then issued, it would be usual to seek a stay.

In *Brown and another v Button and others [2011] EWHC 1034 (Ch)* ([www.practicallaw.com/D-000-3510](http://www.practicallaw.com/D-000-3510)), the High Court considered the limitation period for a claim under *section 212* ([www.practicallaw.com/6-506-2730](http://www.practicallaw.com/6-506-2730)) of the *Insolvency Act 1986* ([www.practicallaw.com/9-503-9352](http://www.practicallaw.com/9-503-9352)) by the liquidators of a company against the former directors, regarding loans that were unlawful under *section 330* ([www.practicallaw.com/5-510-1671](http://www.practicallaw.com/5-510-1671)) of the *Companies Act 1985* (CA 1985). It held that a claim against a director to repay an unlawful loan under *section 330* had no statutory limitation period, as the claim was treated as one for breach of trust. However, claims based on joint liability under *section 341(2)(b)* ([www.practicallaw.com/1-510-1673](http://www.practicallaw.com/1-510-1673)) of the CA 1985 must be brought within six years from the date of the relevant transaction (*section 9* ([www.practicallaw.com/2-506-7744](http://www.practicallaw.com/2-506-7744)), LA 1980). For further details, see *Legal update, Joint claims against directors statute-barred as no continuing obligation to repay illegal loans (High Court)*. ([www.practicallaw.com/8-506-0693](http://www.practicallaw.com/8-506-0693))

For further information on insolvency and limitation, see *Practice notes, Limitation periods in claims against insolvent companies* ([www.practicallaw.com/0-616-0285](http://www.practicallaw.com/0-616-0285)) and *Limitation periods in claims by insolvent companies* ([www.practicallaw.com/7-615-9127](http://www.practicallaw.com/7-615-9127)).

## Negligence: latent damage

Special rules apply to actions for damages in negligence in respect of latent damage not involving personal injuries (*section 14A* ([www.practicallaw.com/9-510-1688](http://www.practicallaw.com/9-510-1688)), LA 1980). The term "negligence action" does not include actions for breach of a contractual duty to take reasonable care.

Section 14A applies where at the time the claimant's cause of action accrues he does not have knowledge of all material facts. In such a case, the limitation period is the later of either:

- Six years from when the cause of action accrued (that is, the date damage is caused); or
- Three years from the date when the claimant knows or ought to have known:
  - the material facts about the loss suffered;
  - the identity of the defendant;
  - his cause of action (that is, that the loss was attributable in whole or in part to the act or omission that is alleged to constitute negligence).

There is a 15-year long-stop date from the date of the defendant's negligent act or omission.

Difficulties can arise in determining the time at which the claimant acquired knowledge of all relevant facts for the purposes of the three year time period under section 14A. Constructive knowledge is relevant, as well as actual knowledge.

In *Haward and others v Fawcetts (a firm)* [2006] UKHL 9 ( [www.practicallaw.com/D-013-9423](http://www.practicallaw.com/D-013-9423) ), in which actual (rather than constructive) knowledge was in issue, the House of Lords held that, for the three-year time period under section 14A, time starts to run from when a claimant has knowledge of the material facts about the damage and knows that there is a real possibility that the damage was caused by the acts or omissions alleged to have constituted negligence. The claimant must know the factual essence of the act or omission to which his damage is attributable, the substance of which ultimately comes to be pleaded as his case in negligence. It is not necessary for the claimant to know the precise details of the alleged negligence or conclusively identify the acts or omissions that caused his loss. The claimant only needs to have had sufficient information to make it reasonable to commence investigations into the potential claim against the defendant. For further details, see *Legal update, Negligence: limitation period: What knowledge starts time running?* ( [www.practicallaw.com/9-202-0780](http://www.practicallaw.com/9-202-0780) ) and *Article, Limitation periods: how long have you got?*, *PLC Magazine, 2006* ( [www.practicallaw.com/9-203-1632](http://www.practicallaw.com/9-203-1632) ) .

In *Integral Memory plc v Watts* [2012] EWHC 342 (Ch) ( [www.practicallaw.com/D-000-1608](http://www.practicallaw.com/D-000-1608) ), the court held that there was no continuing duty for a firm of accountants to advise of a change of law in respect of a tax scheme after it had been put into place and therefore the claim was time-barred. For further details, see *Legal update, Limitation period in claim for failing to advise of change in the law (High Court)* ( [www.practicallaw.com/3-518-3093](http://www.practicallaw.com/3-518-3093) )

The knowledge requirements for the purposes of section 14A must not be interpreted too strictly (*Haward; Shore*). In *Shore* (see *Differences in contract and tort*), the Court of Appeal upheld the first instance judge's application of *Haward* and finding that the key to knowledge for the purposes of section 14A is knowing facts with sufficient confidence to embark on the preliminaries to the issue of a claim.

In *Williams v Lishman and others* [2010] EWCA Civ 418 ( [www.practicallaw.com/D-011-8839](http://www.practicallaw.com/D-011-8839) ), another pensions case, the Court of Appeal again considered the date of knowledge for limitation purposes under section 14A. The court held that, in a negligent advice claim regarding the transfer of pension funds, all loss occurred at the same time, when the funds were transferred from one type of pension plan to another. The case also emphasises the active participation required by a claimant in these cases. It is not enough to rely on ongoing advice from financial advisers to avoid limitation consequences. For further details, see *Legal update, Concealed loss first loss: correct approach to limitation* ( [www.practicallaw.com/4-502-0859](http://www.practicallaw.com/4-502-0859) ) .

In *Chandra and another v Brooke North and another* [2013] EWCA Civ 1559 ( [www.practicallaw.com/D-023-8946](http://www.practicallaw.com/D-023-8946) ), the Court of Appeal overturned a decision that had allowed new claims to be brought under section 14A on the basis that the claimants did not acquire relevant knowledge until judgment had been delivered in separate proceedings. The first instance decision appeared to demonstrate that a court judgment may constitute "expert advice" for the purposes of section 14A(10)(b) of the LA 1980. However, Jackson LJ held that there were "formidable difficulties in treating [Richards J] as if he were unwittingly an "expert" in relation to the negligence action". For further details, see *Legal update, Guidance on amending particulars where limitation is an issue (Court of Appeal)* ( [www.practicallaw.com/0-551-5447](http://www.practicallaw.com/0-551-5447) ) .

Note that waiver of privilege issues may arise in section 14A applications (*MAC Hotels Ltd v Rider Levett Bucknall UK Ltd* [2010] EWHC 767 (TCC) ( [www.practicallaw.com/D-012-3471](http://www.practicallaw.com/D-012-3471) ) ). For further details, see *Legal update, Issues of waiver of privilege can arise in section 14A limitation cases* ( [www.practicallaw.com/7-502-0792](http://www.practicallaw.com/7-502-0792) ) .

In *Seton House Group Ltd and another v Mercer Ltd* [2014] EWHC 4234 (Ch) ( [www.practicallaw.com/D-028-5021](http://www.practicallaw.com/D-028-5021) ), the court held that:

- For the purpose of section 14A(10)(a), the court must establish what the claimant could himself have observed or ascertained and whether in light of that it would have been reasonable for him to make further enquiry that would have led to additional knowledge.
- For the purpose of subsection (b), the enquiry extends to whether in the circumstances it would have been reasonable to seek expert advice, and if so, what knowledge would have been ascertainable with that advice.

For further details, see *Legal update, High Court guidance on section 14A(10) Limitation Act 1980 in a negligent pensions advice claim* ( [www.practicallaw.com/6-592-7025](http://www.practicallaw.com/6-592-7025) ) .

In *Capita ATL Pension Trustees Ltd and others v Sedgwick Financial Services Ltd and others* [2016] EWHC 214 (Ch) (10 February 2016), ( [www.practicallaw.com/D-036-4079](http://www.practicallaw.com/D-036-4079) ) the judge applied *Seton House* and agreed with the defendants that the last part of section 14A(10) of the LA 1980 only applies where the relevant fact (in this case the potential liability of the second defendant) is ascertainable only with the help of expert advice. For more information, see *Legal update, High Court grants summary judgment on limitation grounds in professional negligence claim* ( [www.practicallaw.com/8-623-0185](http://www.practicallaw.com/8-623-0185) ) .

The case of *Jacobs v Sesame Ltd* [2014] EWCA Civ 1410 ( [www.practicallaw.com/D-027-9202](http://www.practicallaw.com/D-027-9202) ) outlines the way in which a claimant can acquire the requisite constructive knowledge without being required to seek professional advice, but instead acquire that knowledge through observation of the facts ascertainable to them, as provided under section 14A(10)(a).

In *Qadir v Barclays Bank Plc* [2016] EWHC 1092 (Comm) (13 May 2016) ( [www.practicallaw.com/D-100-0057](http://www.practicallaw.com/D-100-0057) ), the court followed the approach in *Haward* holding that the relevant knowledge was the factual essence of what was subsequently alleged as negligence in the claim. The running of time was not dependent on the claimant knowing that the alleged acts or omissions were negligent and, therefore, that it had a legal complaint. As the claim related to the suitability of interest rate swaps, the relevant "building blocks" of knowledge needed were that the swaps were loss making and that alternatives had been available. The claimant had this knowledge and had been in

a position to investigate whether a complaint against the defendant bank was viable, earlier than three years before it commenced proceedings. For more information, see *Legal update, Limitation: considering the "building blocks" of knowledge required under section 14A (High Court)*. ([www.practicallaw.com/7-628-5135](http://www.practicallaw.com/7-628-5135))

## Fraud

Even where more than six years has passed since the accrual of the cause of action, there are certain circumstances in which time is not treated as running for limitation purposes and a claim may still be available.

### Fraud and concealment

Section 32 ([www.practicallaw.com/5-510-1690](http://www.practicallaw.com/5-510-1690)) of the LA 1980 provides that the limitation period does not begin to run until the claimant has discovered the fraud, concealment or mistake, or could with reasonable diligence have discovered it, in any of the following circumstances:

- Where an action is based on the fraud of the defendant.
- Where any fact relevant to the claimant's right of action has been deliberately concealed by the defendant.
- Where the action is for relief from the consequences of a mistake.

Conduct involving the deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of facts involved in that breach of duty (*section 32(2)* ([www.practicallaw.com/5-510-1690](http://www.practicallaw.com/5-510-1690)), LA 1980).

The term "fraud" as used in section 32 is defined narrowly, to encompass only causes of action (such as deceit) where fraud is an essential element of the claim (*G L Baker Ltd v Medway Building and Supplies Ltd [1958] 1 WLR 1216* ([www.practicallaw.com/D-001-4443](http://www.practicallaw.com/D-001-4443))).

Following the decision of the House of Lords in *Cave v Robinson Jarvis & Rolf [2002] 2 All ER 641* ([www.practicallaw.com/D-000-6859](http://www.practicallaw.com/D-000-6859)), the defendant must either have known that he was committing a breach of duty or intended to commit such a breach for him to have made a "deliberate commission of a breach of duty" within the meaning of section 32(2). Since intention is not a necessary element of a breach of trust claim, this has prompted the allegation, in some cases, of a "deliberate breach of duty". This may be difficult to distinguish from a charge of fraudulent breach of duty, even though the element of dishonesty is not alleged.

As to the question of whether a claimant could have discovered the fraud or concealment, see the classic statement of Millet LJ:

"The question is not whether the plaintiffs should have discovered the fraud sooner; but whether they could with reasonable diligence have done so. The burden of proof is upon them. They must establish that they could not have discovered the fraud without exceptional measures which they could not reasonably have been expected to take...the test was how a person carrying on a business of the relevant kind would act if he had adequate but not unlimited staff and resources and was motivated by reasonable but not excessive sense of urgency." (*Paragon Finance v DB Thakerar & Co [1999] 1 All ER 400* ([www.practicallaw.com/D-000-2732](http://www.practicallaw.com/D-000-2732))).

In *Arcadia Group Brands Ltd & Ors v Visa Inc & Ors [2014] EWHC 3561 (Comm)* ([www.practicallaw.com/D-027-9212](http://www.practicallaw.com/D-027-9212)), the High Court rejected the claimants' argument that section 32(1)(b) of the LA 1980 extended the limitation period where a concealed fact had not been discovered prior to the commencement of the proceedings and was still concealed. If a claimant is in possession of facts which are sufficient to enable a cause of action to be pleaded and which cannot be struck out for want of some essential averment, then the limitation period is not suspended. Facts which are still unknown and are not essential to complete the cause of action cannot amount to relevant facts for the purpose of section 32(1)(b). In this case, the claimants had pleaded a detailed claim which could not be struck out. Although they may not have discovered everything relevant to the claim, the trigger for the running of time for limitation purposes is not the discovery of every potentially relevant fact in the broadest sense. For more details, see *Legal update, High Court judgment on limitation in competition damages action against Visa* ([www.practicallaw.com/1-586-3926](http://www.practicallaw.com/1-586-3926)).

In *Williams v Lishman* (see *Negligence: latent damage*) the Court of Appeal gave useful clarification (although obiter) on the meaning of "any fact relevant" in section 32(1)(b) of the LA 1980.

*Trilogy Management Ltd v Marcus Sinclair (a firm) [2016] EWHC 170 (Ch) (02 February 2016)* ([www.practicallaw.com/D-036-2809](http://www.practicallaw.com/D-036-2809)), provides guidance on pleading. Where a claimant is relying on section 32(2) LA 1980, it must expressly plead that the breaches of duty relied on were committed with the knowledge that they were wrongful. In this case, the Chancellor of the High Court found that C had inadequately pleaded its reliance on section 32 of the Limitation Act 1980 (LA 1980) in response to the limitation defence, by failing to plead that the breaches of duty relied on were committed with the knowledge that they were wrongful. For more information, see *Legal update, Importance of including all elements required under s.32 of Limitation Act 1980 in pleading (High Court)*. ([www.practicallaw.com/3-622-7152](http://www.practicallaw.com/3-622-7152))

## Trustees and fraud

Section 21(1) ([www.practicallaw.com/3-510-1691](http://www.practicallaw.com/3-510-1691)) of the LA 1980 prevents fraudulent trustees from raising a defence of limitation. It provides that:

"No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action

a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use."

Section 21(3) ([www.practicallaw.com/3-510-1691](http://www.practicallaw.com/3-510-1691)) imposes a six-year limitation period on breach of trust claims for which no provision has been made elsewhere in the LA 1980:

"Subject to the preceding provisions of this section, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the cause of action accrued."

Under section 38 ([www.practicallaw.com/7-508-5104](http://www.practicallaw.com/7-508-5104)) (which applies the definition in section 68(17) of the Trustee Act 1925), the references to "trust" and "trustee" in section 21 are extended to cover implied and constructive trusts.

Section 21(1)(a) of the LA 1980 applies only to true trustees, that is, *de facto* trustees and those who have lawfully assumed fiduciary obligations in relation to trust property, but without a formal appointment (*Williams v Central Bank of Nigeria* [2014] UKSC 10 ([www.practicallaw.com/D-024-5271](http://www.practicallaw.com/D-024-5271))). Claims based on the dishonest assistance in a breach of trust or the knowing receipt of trust funds against a stranger to the trust are, therefore, subject to the six-year limitation period prescribed in section 21(3) of the LA 1980. For more details, see *Legal update, Section 21 Limitation Act 1980 applies only to true trustees (Supreme Court)* ([www.practicallaw.com/0-558-2154](http://www.practicallaw.com/0-558-2154)).

The majority Supreme Court decision in *Williams* followed the categorisation of constructive trustees identified by Millett LJ in *Paragon* as follows:

- Defendants who have not been formally appointed as a trustee, but lawfully assumed that role before the breach of trust occurred (category 1 trustees).
- Defendants whose status as trustees only arose from the transaction complained of (category 2 trustees).

In *Burden Holdings (UK) Ltd v Fielding & Anor* [2016] EWCA Civ 557 (17 June 2016), the Court of Appeal considered whether the exception in section 21(1)(b) covers property transferred to a company for the benefit of a trustee, as well as property directly received by the trustee. David Richards LJ noted that if section 21(1)(b) was construed to apply only to those cases where the trustee directly and personally acquires trust property, its purpose would be constrained or avoided. In his view, this provision also covered a transfer to a company directly or indirectly controlled by the trustee.

## Personal injury

For negligence resulting in personal injury or death, the limitation period is three years from the date of accrual of the action or the date of the claimant's knowledge of damage, whichever expires later (section 11 ([www.practicallaw.com/3-509-3709](http://www.practicallaw.com/3-509-3709)), LA 1980). This period can be extended at the court's discretion (section 33 ([www.practicallaw.com/7-509-2963](http://www.practicallaw.com/7-509-2963)), LA 1980). These rules therefore differ from the latent damage rules for property damage in which the court has no power to extend the limitation period.

In *A v Hoare and others* [2008] UKHL 6 ([www.practicallaw.com/D-000-6728](http://www.practicallaw.com/D-000-6728)), the House of Lords allowed six appeals against rulings that claims for sexual assaults which took place many years before proceedings commenced were barred by the LA 1980 ([www.practicallaw.com/8-506-5723](http://www.practicallaw.com/8-506-5723)). It also indicated how the flexibility provisions for limitation should be applied in sex abuse cases. A key question was whether the claimants fell within section 11 ([www.practicallaw.com/3-509-3709](http://www.practicallaw.com/3-509-3709)) of the LA 1980. Previously, the House of Lords had held that section 11 did not apply to a case of deliberate assault (*Stubbings v Webb* [1993] AC 498 ([www.practicallaw.com/D-016-9383](http://www.practicallaw.com/D-016-9383))). Allowing the appeals, the House of Lords departed from *Stubbings* and reaffirmed the law laid down in *Letang v Cooper* [1965] 1 QB 232 ([www.practicallaw.com/D-014-3232](http://www.practicallaw.com/D-014-3232)), which held that the precursor to section 11 in a 1954 Act was wide enough to cover all causes of action giving rise to claims for damages in respect of personal injuries.

One of the appeals involved a claim against a defendant who was convicted of rape in 1989 but in 2004, while in prison, won £7 million on the lottery. The claimant's appeal was allowed and remitted to a judge to exercise the section 33 ([www.practicallaw.com/7-509-2963](http://www.practicallaw.com/7-509-2963)) discretion. Their Lordships supported a more generous approach to the exercise of the section 33 discretion in which the reasons for the

claimant's delay in bringing proceedings are highly relevant, as well as the prospects of a fair trial.

In *Cain v Francis* [2008] EWCA Civ 1451 ( [www.practicallaw.com/D-014-7705](http://www.practicallaw.com/D-014-7705) ), the Court of Appeal emphasised the need for a consistent approach as to whether the loss of a limitation defence amounts to a real prejudice where the defendant has accepted liability. The court noted that the authorities generally support the proposition that where a defendant has early notice of a claim, a limitation defence should be regarded as a windfall, and the prospect of not having a limitation defence should be regarded as being of no or only a slight degree of prejudice. For further details, see *Legal update, Whether loss of a limitation defence amounts to real prejudice* ( [www.practicallaw.com/1-384-4822](http://www.practicallaw.com/1-384-4822) ).

In *Ministry of Defence v AB and others* [2012] UKSC 9 ( [www.practicallaw.com/D-000-0532](http://www.practicallaw.com/D-000-0532) ), the Supreme Court, by a majority, decided that claims brought by nuclear test veterans in relation to injuries allegedly caused to them in the 1950s were out of time for limitation purposes, and that the court should not exercise its discretion to allow them to proceed. The essence of the claimants' argument was that they did not know that their injuries were attributable to the defendant's acts or omissions more than three years before proceedings were issued. The majority view by the Supreme Court was that knowledge requires only a reasonable belief in attributability. 'Attributability' means only that it is something more than a fanciful suggestion to argue that the defendant is responsible. It does not require anything like certainty. The standard is, therefore, a very low one. Here, it was clear that the claimants did have an honest and reasonable belief in attributability. There had been publicity about the possibility that the defendant was responsible for the injuries for many years. For further details see *Legal update, 1950's claims are time-barred for limitation purposes (Supreme Court)* ( [www.practicallaw.com/4-518-5591](http://www.practicallaw.com/4-518-5591) ).

Consistent with this decision, in *Collins v Secretary of State for Business Innovation and Skills* [2013] EWHC 1117 (QB) ( [www.practicallaw.com/D-018-8702](http://www.practicallaw.com/D-018-8702) ), the High Court declined to exercise its discretion to disapply the time limit under section 33. The claimant, a former dockyard worker, was held to have had constructive knowledge of the fact that the lung cancer which he had developed by May 2002 was attributable in whole or in part to his alleged exposure to asbestos. For further details, see *Legal update, Constructive knowledge of cause of illness provided limitation defence to asbestos claim (High Court)* ( [www.practicallaw.com/7-527-9625](http://www.practicallaw.com/7-527-9625) ).

However, in *Mutua and others v The Foreign and Commonwealth Office* [2012] EWHC 2678 (QB) ( [www.practicallaw.com/D-015-6128](http://www.practicallaw.com/D-015-6128) ), the High Court, exercising its discretion under section 33, ruled that personal injury cases which arose approximately 60 years ago could proceed because there were "compelling reasons" why the claims had not been brought earlier and a fair trial remained possible. For further details, see *Legal update, Exercise of discretion under section 33 Limitation Act in Kenyan torture case (High Court)* ( [www.practicallaw.com/0-521-7674](http://www.practicallaw.com/0-521-7674) ).

## Mortgage debts

Section 20 ( [www.practicallaw.com/0-508-0505](http://www.practicallaw.com/0-508-0505) ) of the LA 1980 ( [www.practicallaw.com/8-506-5723](http://www.practicallaw.com/8-506-5723) ) provides for two different limitation periods for mortgage debts:

- Twelve years for any action to recover any principal sum secured by a mortgage or other charge on property (whether real or personal). The 12-year period runs from the date the cause of action accrues. That date will generally (in relation to the whole of the principal) be when there has been default on repayment of instalments (of interest and/or principal) for two or three months, but this will depend on the terms of the particular mortgage.
- Six years for any action to recover arrears of interest (or damages in respect of those arrears) in respect of any sum of money secured by a mortgage or charge (or payable in respect of the proceeds of sale of land). The six-year period runs from the date the interest becomes due.

For details of the application of these time periods for mortgage debts, see *Legal updates, Limitation periods for suing on mortgage debts* ( [www.practicallaw.com/0-106-9852](http://www.practicallaw.com/0-106-9852) ) and *Time limits for recovery of money owed after mortgaged property is sold* ( [www.practicallaw.com/5-201-0052](http://www.practicallaw.com/5-201-0052) ).

For details of the effect on the limitation period of making a part payment in respect of a mortgage debt, see *Legal update, Court of Appeal considers effect of part payment of debt for limitation purposes* ( [www.practicallaw.com/5-501-8417](http://www.practicallaw.com/5-501-8417) ).

## Enforcing a money judgment

Section 24(1) ( [www.practicallaw.com/5-510-1708](http://www.practicallaw.com/5-510-1708) ) of the LA 1980 ( [www.practicallaw.com/8-506-5723](http://www.practicallaw.com/8-506-5723) ) provides:

"an action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable".

This is subject to any extension for part payment or otherwise under Part II of the LA 1980.

The House of Lords considered the wording of section 24(1) in *Lowsley v Forbes* [1998] UKHL 34 ( [www.practicallaw.com/D-000-6169](http://www.practicallaw.com/D-000-6169) ), in the context of enforcement by charging order and garnishee proceedings (now third party debt orders). In their Lordships' opinion, "action" meant a fresh action and did not include proceedings by way of execution. Execution has been held to mean the process for enforcing or giving effect to a judgment of the court. The process is "completed" when the judgment creditor gets the money or other thing awarded to him by the judgment (*Re Overseas Aviation Engineering GB Ltd* [1963] Ch 24 ( [www.practicallaw.com/D-000-4236](http://www.practicallaw.com/D-000-4236) )).

In *Yorkshire Bank Finance Ltd v Mulhall and another* [2008] EWCA Civ 1156 ( [www.practicallaw.com/D-000-3022](http://www.practicallaw.com/D-000-3022) ), it was found that there was no provision in the LA 1980 that affected the enforcement of a charging order, even where more than 12 years had passed since the order was made. An application to enforce a charging order was not an application to enforce the judgment but to enforce the charging order, which had "a life of its own". In reaching its decision, as well as considering section 24, the court also considered section 20(1) ( [www.practicallaw.com/0-508-0505](http://www.practicallaw.com/0-508-0505) ) of the LA 1980. For further details, see *Legal update, Court of Appeal considers the application of the Limitation Act 1980 to the enforcement of charging orders* ( [www.practicallaw.com/6-383-8140](http://www.practicallaw.com/6-383-8140) ).

However, delay in enforcing can have other consequences. For example:

- Permission is required to issue a writ or warrant of control on a judgment more than six years old under CPR 83.2(3) (see *Practice note, Enforcing a money judgment by taking control of goods with writs and warrants of control: Is permission to issue a writ or warrant of control required?* ( [www.practicallaw.com/1-380-9649](http://www.practicallaw.com/1-380-9649) )).
- Although permission is not required for execution methods such as charging orders or third party debt orders, the court may take into account the delay in enforcing when it exercises its discretion to grant the order (see *Westacre Investments Inc v Yugoimport SDPR* [2008] EWHC 801 ( [www.practicallaw.com/D-015-0056](http://www.practicallaw.com/D-015-0056) ); discussed in *Legal update, Whether judgment could be enforced by third party debt order after six years* ( [www.practicallaw.com/7-381-3460](http://www.practicallaw.com/7-381-3460) ).
- Interest on the judgment sum will be limited to six years, although interest will still continue to accrue on the sum secured by a charge, until the principal sum is repaid (*Ezekiel v Orakpo* [1997] 1 WLR 340 ( [www.practicallaw.com/D-000-4161](http://www.practicallaw.com/D-000-4161) ) and *Lowsley v Forbes*).

## Contribution claims against third parties

Under the *Civil Liability (Contribution) Act 1978* ( [www.practicallaw.com/0-505-5153](http://www.practicallaw.com/0-505-5153) ) (CLCA 1978), where a defendant is found liable to a claimant, the defendant may seek a contribution from anyone else who is liable to the claimant for the same damage (section 1 ( [www.practicallaw.com/5-506-5121](http://www.practicallaw.com/5-506-5121) ), CLCA 1978).

A claim for a contribution under the CLCA 1978 must be brought within the relevant limitation period under the LA 1980 ( [www.practicallaw.com/8-506-5723](http://www.practicallaw.com/8-506-5723) ). Section 10 ( [www.practicallaw.com/3-510-1728](http://www.practicallaw.com/3-510-1728) ) of the LA 1980 provides that the claim must be brought within two years from the date on which the person seeking a contribution is "held liable ... by a judgment". The Court of Appeal has clarified that this two-year limitation period runs from the date on which the amount of damages were assessed and not from the date on which judgment on liability was given (*Aer Lingus v Gildacraft Ltd and another* [2006] EWCA Civ 4 ( [www.practicallaw.com/D-000-0047](http://www.practicallaw.com/D-000-0047) ), see *Legal update, Limitation period for bringing contribution claims against third parties* ( [www.practicallaw.com/0-201-8687](http://www.practicallaw.com/0-201-8687) ).

In *Hampshire Constabulary v Southampton City Council* [2014] EWCA Civ 1541 ( [www.practicallaw.com/D-028-3560](http://www.practicallaw.com/D-028-3560) ), the Court of Appeal clarified that time starts to run from the date when damages are agreed, but not necessarily costs. The decision also made it clear that a consent order following a Part 36 offer cannot be a judgment for the purposes of bringing a contribution claim under section 10(3) of the LA 1980. For further information see *Legal update, Clarification of limitation period in contribution proceedings involving Part 36 offer (Court of Appeal)* ( [www.practicallaw.com/7-590-7927](http://www.practicallaw.com/7-590-7927) ).

In *WH Newson Holding Ltd and others v IMI Plc and another* [2015] EWHC 1676 (Ch) ( [www.practicallaw.com/D-033-4071](http://www.practicallaw.com/D-033-4071) ), the High Court handed down a ruling on whether a company, from whom contribution is being sought towards damages paid in settlement, can resist a contribution claim by arguing that the claimant's action was time barred. This case turned on an interpretation of section 1(4) ( [www.practicallaw.com/5-506-5121](http://www.practicallaw.com/5-506-5121) ) of the CLCA 1978, which enables a defendant who has made payment in bona fide settlement of a claim to recover contribution provided that the defendant "would have been liable assuming that the factual basis of the claim against him could be established. For further information, see *Legal update, High Court ruling on whether contribution claim can be resisted by arguing that settled cartel damages action was time barred* ( [www.practicallaw.com/9-616-5373](http://www.practicallaw.com/9-616-5373) ).

## Defective Premises Act 1972

The limitation period for breach of the duty to build dwellings properly runs for six years from the completion of the dwelling (Section 1(5) ( [www.practicallaw.com/0-508-8097](http://www.practicallaw.com/0-508-8097) ) of the *Defective Premises Act 1972* ( [www.practicallaw.com/9-508-4735](http://www.practicallaw.com/9-508-4735) ). Under section 1(5):

"Any cause of action in respect of a breach of the duty imposed by this section shall be deemed ... to have accrued at the time when the dwelling was completed".

However, if a person carries out further work to a dwelling, to rectify a defect in its earlier work, then the cause of action accrues (and the six years starts to run) at the time the further work was finished:

" ... but if after that time a person who has done work for or in connection with the provision of the dwelling does further work to rectify the work he has already done, any such cause of action in respect of that further work shall be deemed ... to have accrued at the time when the further work was finished."

The Court of Appeal applied the extended limitation period, from completion of "further work", in *Alderson and another v Beetham Organisation Ltd* [2003] EWCA Civ 408 ( [www.practicallaw.com/D-000-0012](http://www.practicallaw.com/D-000-0012) ).

## Agreeing a different limitation period

The LA 1980 ( [www.practicallaw.com/8-506-5723](http://www.practicallaw.com/8-506-5723) ) is silent as to whether parties may contract out, either by agreeing a longer or shorter limitation period than that prescribed under the Act, or by agreeing that there should be no limitation period applicable between them at all. In some circumstances, it appears that the parties may agree a shorter limitation period, for example, in relation to an acquisition agreement (which may be a deed). Commonly, in acquisition agreements, a limitation period of six years from the date of the contract is agreed in respect of breach of tax warranties (to take account of the HM Revenue & Customs time limit for re-opening tax assessments). A shorter period is usually agreed in relation to non-tax matters (perhaps to link in with the second annual audit of the target company post-acquisition).

However, a contractual term that imposes a shorter limitation period than provided under the LA 1980 may be subject to the reasonableness test under the *Unfair Contract Terms Act 1977* ( [www.practicallaw.com/7-505-7728](http://www.practicallaw.com/7-505-7728) ) (UCTA). For example, where parties are doing business on one of the parties written standard terms of business, the imposition of a nine-month limitation period for an action for breach of contract will be subject to the reasonable test. However, while UCTA plays an important role in protecting consumers, in relation to sophisticated commercial entities, the courts are less willing to take an interventionist approach. In those circumstances, the court may hold that commercial parties of equal bargaining strength should be bound by the agreed limitation period (*Granville Oil & Chemicals Ltd v Davis Turner & Co Ltd* [2003] EWCA Civ 570 ( [www.practicallaw.com/9-106-6359](http://www.practicallaw.com/9-106-6359) ); see *Article, Limitation period: whether reasonable under the Unfair Contract Terms Act 1977, PLC Magazine, 2003* ( [www.practicallaw.com/3-102-3495](http://www.practicallaw.com/3-102-3495) )).

## Limitation periods for equitable remedies

There is no general statutory time limit imposed by the LA 1980 ( [www.practicallaw.com/8-506-5723](http://www.practicallaw.com/8-506-5723) ) on claims for specific performance or for an injunction or for other equitable relief. These remedies are expressly exempted from the time limits that apply in actions that are based on tort, on a simple contract or on a speciality (see *Checklist: Length of limitation periods* ( [www.practicallaw.com/1-503-5739](http://www.practicallaw.com/1-503-5739) )). If beneficial interests are not affected, equitable remedies may generally be awarded after long periods of time.

There is, however, a long established principle that equity will adopt a time limit by analogy with any comparable statutory period, although there is little scope for this principle now that fixed periods have been imposed on many claims based on equitable titles and trusts. There is also the equitable doctrine of *laches* ( [www.practicallaw.com/3-383-9179](http://www.practicallaw.com/3-383-9179) ), which requires that remedies should be sought without unreasonable delay.

Where the LA 1980 specifically provides a time limit for a remedy, the court will not refuse relief within the statutory period on the ground of delay alone, but it may do so where the delay is accompanied by circumstances that indicate acquiescence or abandonment. In those situations, it may be considered inequitable to prosecute the claim. Where the LA 1980 does not provide any time limit for a remedy, then mere delay on its own may be fatal to the claim. The LA 1980 expressly preserves the doctrine of laches to refuse relief on the ground of acquiescence or otherwise ( *section 36* ( [www.practicallaw.com/1-510-1748](http://www.practicallaw.com/1-510-1748) ), LA 1980).

There is no period of limitation prescribed by the LA 1980 for an action by a beneficiary under a trust to recover from the trustee either trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to the trustee's own use ( *section 21(1)(b)* ( [www.practicallaw.com/3-510-1691](http://www.practicallaw.com/3-510-1691) ), LA 1980). However, there is authority for the proposition that a beneficiary cannot be divested of its beneficial interest in the capital of the trust by the operation of laches (*Mills v Drewitt* (1855) 20 Beav 632 ( [www.practicallaw.com/D-016-9385](http://www.practicallaw.com/D-016-9385) )).

## Limitation reforms abandoned

In July 2002, the Lord Chancellor announced that the government had accepted in principle the recommendations by the Law Commission to streamline time limits for bringing civil claims (*Law Commission Report on Limitation of Actions, Report 270, July 2001*).

The Law Commission concluded that the general rule that the limitation period starts from the date of the cause of action, whether or not the claimant knows of the potential claim, has caused injustice, despite special provisions in respect of latent damages and under the *Consumer Protection Act 1987* ([www.practicallaw.com/8-508-2483](http://www.practicallaw.com/8-508-2483)). Also, the traditional six-year limitation period for simple contract and tort actions is outdated in some respects bearing in mind that the six-year period was introduced in 1623 when it was more difficult to gather information than it is today.

There have also been problems with applying the LA 1980 to claims for restitution.

The Law Commission suggested a core limitation period of three years within which to bring a claim for a remedy of a wrong, claims for enforcement of a right and claims for restitution. This period would run from the date on which a claimant knows (or ought reasonably to know) the facts giving rise to the cause of action, the identity of the defendant and that any injury, loss or damage is significant. The court would have discretion to permit a personal injury claim to be brought outside that core period.

The Law Commission also proposed a ten-year long-stop period (30 years in the case of personal injury claims) within which a claim must be commenced. (The long stop limitation period should not run where the defendant has concealed relevant facts but only where the concealment was dishonest.)

Claims in relation to land would also be subject to a ten-year limitation period. The Law Commission recommended that where the core regime applies to common law remedies for a cause of action, it should also apply to equitable remedies for that cause of action, but in equity, delay may still bar a remedy before the limitation period under the core regime has expired.

In January 2007, the government announced its intention to consult on the detailed content of a draft Bill to implement the Law Commission's recommendations. The government indicated that the consultation paper would consider specific issues arising out of the House of Lords decision in *A v Hoare and others* (see *Personal injury*), namely, the exercise of the court's discretion to extend the limitation period and the way in which the claimant's "date of knowledge" is defined in abuse cases.

At the end of 2008 it was announced that a draft Civil Law Reform Bill was to be published in 2009 and one of the key reforms was to be the LA 1980. However, it was announced in November 2009 that proposed reforms on limitation would not be taken forward in the Civil Law Reform Bill. The reasons given were that a recent consultation with key stakeholders had demonstrated that there were insufficient benefits and potentially large-scale costs associated with the proposed reform. In addition, the courts have remedied some of the most significant difficulties with the law identified by the Law Commission, for example, in relation to limitation in child abuse cases. For further details, see *Legal update, Civil Law Reform Bill not to include limitation reforms* ([www.practicallaw.com/5-500-8324](http://www.practicallaw.com/5-500-8324)).

## Resource information

**Resource ID:** 3-107-4908

**Products:** IP&IT, Local Government, PLC UK Commercial, PLC UK Construction, PLC UK Corporate, PLC UK Dispute Resolution, PLC UK Employment, PLC UK Environment, PLC UK Finance, PLC UK Financial Services, PLC UK Law Department, PLC UK Pensions, PLC UK Private Client, PLC UK Property, PLC UK Public Sector, PLC UK Restructuring and Insolvency, PLC UK Tax, Public Law

This resource is maintained, meaning that we monitor developments on a regular basis and update it as soon as possible.

## Resource history

*Burden Holdings (UK) Ltd v Fielding and another* [2016] EWCA Civ 557  
We have amended the section of this note, , to refer to this decision.

*Qadir and another v Barclays Bank plc* [2016] EWHC 1092 (Comm)  
We have amended the section of this note, , to refer to this decision.

*Bhatti and another v Asghar and another* [2016] EWHC 1049 (QB)  
We have amended the section of this note, , to refer to this case.

*Capita ATL Pension Trustees Ltd and others v Sedgwick Financial Services Ltd and others* [2016] EWHC 214 (Ch)  
We have amended the section of this note, to refer to this case.

*Trilogy Management Ltd (a company incorporated in the Bailiwick of Jersey) v Marcus Sinclair (a firm)* [2016] EWHC 170 (Ch)  
We have amended the section of this note, , to refer to this case.

Practice notes on limitation and insolvency  
We have updated the section to refer to two new Practice notes.

*WH Newson Holding Ltd and others v IMI Plc and another* [2015] EWHC 1676 (Ch)  
We have updated section to refer to this case.



Pre-action Practice Direction [April 2015]

We have updated this note to refer to the Practice Direction on Pre-action Conduct and Protocols that came into force on 6 April 2015.

Jacobs v Sesame Ltd [2014] EWCA Civ 1410

We have updated section to refer to this case.

American Leisure Group Ltd v Olswang LLP [2015] EWHC 629 (Ch)

We have updated section to refer to this case.

Seton House Group Ltd and another v Mercer Ltd [2014] EWHC 4234 (Ch)

We have updated the section to refer to this case.

Interface Europe Ltd v Premier Hank Dyers Ltd [2014] EWHC 2610 (QB)

We have updated the section to refer to this case.

Clydesdale Bank plc v Kinleigh Folkard & Hayward [2014]

We have updated the section to refer to this case.

British Telecommunications plc v Luck and others [2014] EWHC 290 (QB)

We have updated the section to refer to this case.

Arcadia Group Brands Ltd & Ors v Visa Inc & Ors [2014] EWHC 3561 (Comm)

We have updated the section to refer to this case.

Hampshire Constabulary v Southampton City Council [2014] EWCA Civ 1541

We have updated section to refer to this case.

Mercer Ltd and another v Ballinger and another [2014] EWCA Civ 996

We have updated the section to refer to this case.

## Related content

### Topics

Administration (<http://uk.practicallaw.com/topic9-103-1256>)

After Death (<http://uk.practicallaw.com/topic8-383-2284>)

Civil Litigation: Employment (<http://uk.practicallaw.com/topic1-540-5245>)

Construction Litigation (<http://uk.practicallaw.com/topic5-381-2956>)

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Court Proceedings: Restructuring and Insolvency (<http://uk.practicallaw.com/topic7-540-5426>)

General Commercial (<http://uk.practicallaw.com/topic7-379-8563>)

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Limitation (<http://uk.practicallaw.com/topic1-103-1203>)

Liquidation (<http://uk.practicallaw.com/topic1-103-1260>)

Miscellaneous: Legal Concepts (<http://uk.practicallaw.com/topic9-200-1625>)

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Remedies (<http://uk.practicallaw.com/topic8-103-1214>)

Responding to a Claim (<http://uk.practicallaw.com/topic7-381-7646>)

Warranties, Indemnities and Transaction Issues (<http://uk.practicallaw.com/topic9-103-2067>)

### Practice note: overview

Damages for breach of contract: an overview (<http://uk.practicallaw.com/topic6-533-8545>)

Pension trustees' duties of care and skill (<http://uk.practicallaw.com/topic4-422-5206>)

Responding to a claim: key action points (<http://uk.practicallaw.com/topic0-382-2321>)

### Practice notes

Contracts: agreed remedies (<http://uk.practicallaw.comtopic9-582-2885>)  
Damages in tort: an overview (<http://uk.practicallaw.comtopic7-535-0565>)  
Equitable remedies: overview (<http://uk.practicallaw.comtopic3-107-4866>)  
Leases: Yield up clauses (<http://uk.practicallaw.comtopic4-384-3152>)  
Limitation periods in claims against insolvent companies (<http://uk.practicallaw.comtopic0-616-0285>)  
Limitation: practical considerations (<http://uk.practicallaw.comtopic7-503-7368>)  
Redemption of mortgages, clogs, collateral advantages and consolidation (<http://uk.practicallaw.comtopic6-107-3950>)  
Remedies: restitution (<http://uk.practicallaw.comtopic5-107-4865>)  
Restrictive covenants affecting land (<http://uk.practicallaw.comtopic3-107-4475>)

#### **Standard documents**

Letter to a potential claimant advising on limitation (<http://uk.practicallaw.comtopic3-520-0771>)  
Letter to a potential defendant advising on limitation (<http://uk.practicallaw.comtopic5-521-8746>)  
Particulars of claim: negligent misstatement (<http://uk.practicallaw.comtopic6-518-5316>)  
Standstill agreement (limitation periods): an example (with drafting notes) (<http://uk.practicallaw.comtopic1-384-0683>)  
Strike out on basis of abuse of process: case study (<http://uk.practicallaw.comtopic4-519-0168>)

#### **Checklists**

Collateral warranty or construction third party rights (<http://uk.practicallaw.comtopic8-378-7521>)  
CPR time limits (<http://uk.practicallaw.comtopic1-503-0911>)  
Length of limitation periods (<http://uk.practicallaw.comtopic1-503-5739>)

#### **Glossary**

Limitation period (<http://uk.practicallaw.comtopic6-107-5727>)

#### **Legal update: archive**

Meaning of knowledge in limitation case (Supreme Court) (<http://uk.practicallaw.comtopic2-518-4597>)  
"Ask the Team": What limitation period applies to a summary application to enforce an arbitral award as if it were a judgment? (<http://uk.practicallaw.comtopic0-384-2630>)  
Ask the team: Is there a limitation period for enforcing a money judgment? (<http://uk.practicallaw.comtopic5-505-6193>)  
Legal FAQs: FAQs about indemnities (<http://uk.practicallaw.comtopic3-503-4692>)

#### **Legal update: case report**

1950's claims are time-barred for limitation purposes (Supreme Court) (<http://uk.practicallaw.comtopic4-518-5591>)  
Guidance on approach to late amendments under CPR 17.4(2) (High Court) (<http://uk.practicallaw.comtopic7-581-1185>)

#### **Book**

Law of Limitation (<http://uk.practicallaw.comtopicB-000-1621>)

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