



## Guidance for Construction Professionals on Time Limitations for Claims

If you are an architect, structural engineer, mechanical or electrical engineer, quantity surveyor or project manager we hope these notes will be of use to you.

### Your liabilities

You will all undoubtedly know that the Common Law in England & Wales imposes a duty on you to exercise reasonable skill and care in carrying out your services to your clients.

This duty operates whether or not you have a written contract with the client. The law expects you to undertake your responsibilities in a professional manner and “not to cause hardship” to the recipient arising out of your work/services.

It can, however, take many years for any mistakes that have been made in the construction of a building to come to light and the law allow certain time periods for a claim, or to give notice of a claim, to be brought by a third party against the design professionals and building contractors.

These time limits, or limitation periods, have been laid down by statute (primarily the Limitation Act 1980) to ensure equity for both claimant and defendant.

### Types of contract – what are the time limits?

The time limits for making a claim by a third party for alleged negligence are dependent on the terms of the contract exchanged between the parties:-

- 1) If no written contract exists or there is a simple contract between the parties, the time will usually run for 6 years from the date when the negligent act or omission occurred; or in a contract claim, the date when the contract was breached. This situation would be the case for most domestic builds and smaller commercial contracts
- 2) If the contract has been signed “Under Seal” – i.e. a Deed – then the time limit is extended to 12 years from the breach of the deed. Most large commercial contracts have this type of contract.



# Professional Indemnity

## So what's the problem?

As the time limits have been set down in the Limitation Act shouldn't the rules for making a claim within these time limits be pretty straightforward? Unfortunately not; it is possible to bring a claim outside the 6 year limitation period if the damage complained of was not discovered until after the expiry of the 6 year period. This is known as "latent damage" and was introduced by the Latent Damage Act 1986. Following the introduction of this Act claimants have a further 3 years to claim from either a) the date of knowledge of the loss or b) the date when the claimant ought **reasonably** to have known. This latter aspect is fraught with problems and very much depends on the circumstances of the claim. You will, however, be pleased to know that there is a 15 year long-stop date from the date of the alleged breach. Time limits will stop if court proceedings are issued and when the claim is received by the court. Quite often third parties will issue "protective proceedings" to preserve this position whilst negotiations between the parties take place.

## The case of collapsed drains

Our architect client designed and supervised the construction of a village hall in the late 90s. The final certificate was issued on 31 March 1998. During the construction there were various difficulties with the laying of the drains due to the topography of the site. However, despite problems between the architect and the contractor regarding the latter's workmanship re the drainage, all seemed to be in order on the date of handover.

In early 2013 both the architect and building contractor received letters from the trustees of the hall advising them that the drainage would need to be completely re-laid at a cost of £150,000 and that each of them should contribute 50% each for these costs.

The architect immediately reported the claim to their Professional Indemnity insurers who in turn, instructed solicitors to act for them.

The contract originally signed was a Deed and consequently the solicitors repudiated the claim on the basis that the 12 year time limit had expired and that any claim was "time-barred".

The trustees nevertheless argued that the Latent Damage Act should apply and that they should be provided with a further 3 years from the expiry of the 12 year time limit. Investigations took place with both the trustees and the building contractor and it was established that the building contractor had received a number of complaints over several years from them concerning the workmanship of the drainage – for which the architect was not party.



# Professional Indemnity

We argued that, in this situation, the Latent Damage Act could not apply as the trustees had been aware of a potential claim for some time.

Nothing further has been heard on the matter since the declinature of liability and as no proceedings have been issued and it is now over 16 years since completion, it is expected that no further action will be taken. The matter is still being dealt with by the building contractors.

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