



PUMP COURT

CHAMBERS

**Limitation and Practical Considerations:
Starting a Personal Injury claim**

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Limitation: key points

- S.11(4) Limitation Act 1980, in personal injuries claims:
 - Time runs from the date when the cause of action accrues – for example, the date on which the Claimant had an accident at work OR
 - The date of the Claimant’s actual or constructive knowledge of damage, whichever is the later
 - Limitation period is generally 3 years – calculate and record this date as soon as you are instructed
- Defendants must plead limitation to rely on it (burden then shifts)

Calculating time: start

- When does the clock start?

“... any part of a day (but not a whole day) happening after the cause of action accrues is excluded from the calculation of the limitation period” ***Matthew v Sedman*** [2021] UKSC 19 at para. 49

- So unless you are dealing with a “midnight deadline” case (see ***Gelmini v Moriggia***), the limitation period starts to run on the day after the accrual of the cause of action
- A question remains as to whether time runs from the date on which knowledge accrues, or the following day – play it safe

Calculating time: stop

- Time stops on the issue of the claim form, that being the date that proceedings are started – CPR r.7.2(1)
- The date on which the claim form was received by the court will be recorded by a date stamp either on the claim form held on the court file or on the letter that accompanied the claim form when it was received by the court
- The proceedings are issued on the date entered on the claim form by the court – CPR r.7.2(2)
- However, if the court receives the proceedings on a given date, but only issues the claim on a later date, the claim is “brought” for the purposes of the Limitation Act on that earlier date – PD7A r.5.1

Calculating time – extensions and delays

- If the claim form cannot be issued on the last day of the limitation period, because this falls on a weekend or bank holiday, when the court is closed, then the limitation period will be extended until the next day on which the court office is open – *Pritam Kaur v Russell & Sons* [1973] QB 336
- For minors, the limitation period does not begin to run until they reach the age of 18
 - The three-year period commences when they turn 18, thus expiring when they reach the age of 21
 - A minor Claimant is considered to be a person “under a disability” – see sections 28 and 38 of the LA 1980

Calculating time – date of knowledge

- “Knowledge” can be actual or constructive
- The limitation period will start on the date on which the Claimant first knew:
 - That the injury was significant
 - That the Defendant’s act or omission caused it, wholly or in part; AND
 - The identity of the Defendant - s.14(1) LA 1980
- A Claimant’s knowledge is deemed to include knowledge a Claimant might reasonably have been expected to acquire:
 - From facts observable or ascertainable by him/her
 - From facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him/her to seek
 - BUT a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice – s.14(3)

Date of knowledge – what to consider?

- Start with C's actual knowledge – s.14(1)(a) – (d)
- Consider what knowledge the hypothetical, reasonable person in C's shoes would have had at the time in respect of those same points – s.14(3)(a)
- Apply the knowledge of the reasonable person to the facts actually known to C
- What enquiries would a reasonable person in C's position have undertaken in light of the above knowledge, including any enquiries they would have made of relevant experts? s.14(3)(b)
- Which facts would those reasonable enquiries have disclosed, on the balance of probabilities?
- See ***AB v Ministry of Defence*** [2012] UKSC 9

If the expiry is fast approaching (i)

- Make sure that the court staff are aware of an imminent limitation expiry date
- Be sure to establish the date the proceedings were received by the court and make arrangements to record this date yourself
- Consider issuing personally at court, rather than relying on the post
- Try to always issue in good time

If the expiry is fast approaching (ii)

- Don't allow any settlement negotiations to deter you from issuing proceedings in time
- If appropriate, seek to enter into a standstill agreement in advance of the expiry of the limitation period, so that negotiations can continue
- If any assurances are given by the Defendant not to raise a limitation defence, ensure that an agreement is recorded in writing

Worked example A

- Katniss Everdeen was injured by President Snow at 2pm on 1 April 2019
 - The limitation period starts to run on 2 April 2019 and expires on 1 April 2022
- Ms Everdeen's solicitors deliver the proceedings for issue to the court on Friday 1 April 2022
- The court only gets round to stamping the claim form on Monday 4 April 2022
 - Although the claim form was stamped after expiry of the LP, the claim will be treated as if brought in time - PD7A r.5.1

Worked example B

- Jane Hopper, born on 8 September 1999, was injured during the course of a hospital procedure on 5 June 2012, when she was 12 years old
- She sought legal advice when she was 19 years old, and decided to bring a claim against the hospital trust
 - Her limitation period started to run on 8 September 2017, when she turned 18
 - The limitation period expired on 8 September 2020, when she turned 21

s.33 – is it available?

- If your limitation period has expired, it is worth considering whether s.33 LA 1980 can come to the Claimant's aid
- This section allows the court to extend the limitation period at its discretion
- General factors / principles:
 - Length of, and the reasons for, the delay on the part of C
 - Prejudice and effect of delay particularly on cogency of evidence
 - Burden is on C to show that their prejudice would outweigh that to D
 - Burden is on D to show that evidence adduced or likely to be adduced by them is less cogent because of the delay
 - Proportionality
 - Following correct procedures and giving good notice

Exceptions / bear traps

- Watch out for personal injury claims with different limitation periods, e.g.:
 - Abroad – prima facie the relevant foreign limitation period applies
 - Aircraft / airports – two years (if the Warsaw Convention or the Montreal Convention applies, and this cannot be extended)
 - Armed forces overseas actions - incidents after 30 June 2021 – absolute 6 year limit
 - Accidents on boats – it depends!
- If you have an unusual claim involving a minor, also check if they can wait until their 18th birthday before the clock starts
- Avoid risk by paying the right court fee – although there is leniency
- ***Croke v Secretary of State for Communities and Local Government*** [2019] EWCA Civ 54 – what not to do

Other practical considerations (i)

- Make sure that the injuries for which damages are sought remain consistent:
 - At the outset – instructions
 - CNF (if applicable)
 - Expert medical report – clarify early
 - Schedules of loss
 - Witness statements
- Identify and name the Defendant/s correctly
- Make sure the Claimant is fully informed before they sign any statement of truth
- Fundamental dishonesty issues

Other practical considerations (ii)

- Make applications in good time, and in compliance with Part 23
- Enquire into the future availability of experts before directions hearings take place
- Keep costs, and possible costs budgets, in mind
- Plan for stumbling blocks – difficulties obtaining instructions or getting statements of truth signed / the need for translation services / fee earner illness or other absence from the office / delays at court
- Schedule key dates to ensure no deadlines are missed
- Share limitation dates and other key documentation with other fee earners



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