

# Limitation Periods

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## Introduction

In this note we summarise the limitation periods encountered most in construction projects.

## What is limitation?

By the word limitation we mean the time limit for starting legal proceedings in relation to a claim.

## Is it important?

Yes it is, because once that deadline has passed, the right to start proceedings is permanently lost to the claimant. It is “time-barred”.

## Starting legal proceedings

In litigation the date of starting proceedings is that on which the court receives the Claim Form for issuing. In arbitration it is when a party serves a notice requiring the appointment of an arbitrator. Starting an adjudication does not stop the limitation clock.

## Standstill Agreement

If a limitation deadline is or may be approaching, the parties are able to enter into a standstill agreement, which will set out an agreement to suspend or extend time for starting proceedings.

## Protective Claim Form (or Arbitration Notice)

If there is no time to negotiate a Standstill Agreement, a protective claim form (litigation) or arbitration notice can sometimes be issued instead and then the proceedings stayed.

## Limitation Act 1980

The Limitation Act 1980 contains much of the law on limitation periods.

## Civil Liability (Contribution) Act 1978

When a defendant is found liable to a claimant, the defendant may seek to recover a contribution to that liability from another party also liable to the claimant for the same damage. It does so via this Act. The defendant has 2 years to start proceedings for that contribution, either from the date when its liability is ordered (eg by a Court), or when it is conceded by the defendant if earlier.

## Breach of Contract

The limitation period starts on the date of the breach of contract. The period is then 6 years for breach of a simple contract and 12 years where the contract is a deed.

For contracts of works, the breach is invariably deemed to occur at completion of the works: sectional where that occurs, otherwise completion of the whole of the works.

In services contracts (eg design), the breach invariably occurs when the services are completed, again either in terms of a distinct part (eg of the design), otherwise of the whole.


## Negligence (in tort)

The limitation period for negligence claims begins when material (ie not insignificant) damage is suffered by the claimant, which can sometimes be a long time after the negligent act or omission occurred that caused it. As in breach of contract, the limitation period is again 6 years.

## Latent Damage

Latent damage refers to the situation where at the date that the damage is suffered, the claimant does not yet have access to all the material facts to be able to start proceedings. A common situation is where a property defect and the damage it has caused, have not yet manifested themselves. This does not apply to damage in the form of personal injury.

In this situation, the negligence limitation period, but not the contractual period, is extended by providing alternative limitation periods to the claimant:

1. the standard 6 years from date of material damage suffered OR
  2. 3 years from when the claimant has all the material facts available to it BUT
  3. subject to a long-stop date of 15 years from the date of the defendant's negligent act or omission
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## Fraud, mistake and concealment

Where a claim is based on fraud or deliberate concealment by a defendant, or is based on relief from a mistake, the limitation period is postponed in that it does not commence until the claimant has discovered the fraud, concealment or mistake, or could with reasonable diligence have done so.

## Defective Premises Act & Building Safety Act 2022

The limitation periods under the DPA have recently been extended by the BSA.

S.1 DPA relates to work in the provision of a dwelling. S.2A DPA relates to work to an existing dwelling. In both cases there is a duty in relation to such work to ensure that it is done in a workmanlike or, as the case may be, professional manner, with proper materials and so that the dwelling will be fit for habitation when the work is completed.

The limitation period for bringing a claim for breach of the S.1 duty, that accrued before the BSA came into force this year, is now 30 years (ie retrospective). For claims accruing after the Act came into force, under S.1 and 2A, it is now 15 years (ie prospective).

## Contracting out of the Limitation Act 1980

It is widely accepted that parties can agree by contract to alter a limitation period.

*This e/paper is a summary of the issues only and does not constitute legal advice and no reliance is intended nor should be placed upon it. Please consult a lawyer at Ridgemont for specific legal advice.*







