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Limitation Act

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Limitation Act 1980 (1)



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- 3 reasons for them:
- (1) reviving long dormant claims is inherently unjust;
- (2) a defendant may not be able to secure evidence to disprove a stale claim;
- (3) claimants should pursue their claims them with reasonable diligence.

Limitation Act 1980 (2)



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- Limitation starts to run when cause of action accrues. The day on which the cause of action arose is excluded (*Marren v Dawson Bentley & Co Ltd*). If the court office is closed on the last day of the limitation period, the time limit is extended to the first day on which it reopens (*Pritam Kaur v S Russell & Sons Ltd*).

Limitation Act 1980 (3)



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- Proceedings start: court issues claim form at the request of the claimant (CPR 7.2)
- Ensure you record the date the claim form was sent and received by the court.

Limitation Act 1980 (4)



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- Cause of action "accrues" when:
- there is in existence a person who can sue and another who can be sued ;
- when there are present all the facts which are material to be proved to entitle the claimant to succeed ;

Limitation Act 1980 (5)



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- cause of action for contribution does not arise until judgment has been given against the tortfeasor seeking contribution
- or, alternatively, payment in compensation for the damage has been made or agreed to be made (section 10). No claim to recover such contribution may be brought after the expiration of two years from the date on which that right accrued (Section 10(1)).

Limitation Act 1980 (6)



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- Where a cause of action-accrues on or after the date of death of a person and there is no executor and if the claim is for personalty (i.e. not land) time does not begin to run until the grant of probate is obtained.



- E.g. *TCD v Harrow Council* [\[2008\] EWHC 3048 \(QB\)](#), [2009] 1 FLR 719 claimant had knowledge of facts from time of attaining majority and she had known then that it was reasonable for her to begin to investigate whether she had a claim.

Limitation Act 1980 (8)



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- S 11(4) limitation period is three years from:
 - a) the date on which the cause of action accrued, or
 - (b) the date of knowledge (if later) of the person injured.

Limitation Act 1980 (9)



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- Section 14(2) of the Limitation Act 1980 provides that an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

Limitation Act 1980 (10)



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- Section 14(1) date of knowledge is the date on which C first had knowledge of the following facts:
- *"(a) That the injury in question was significant; and*
- *(b) That the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, ... or breach of duty, and*
- *(c) the identity of the Defendant;"*

Limitation Act 1980 (10)



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- Section 14(2) states that an injury is "significant" for these purposes *"if the person whose date of knowledge in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment"*.

Limitation Act 1980 (11)



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- Section 14(3) of the Limitation Act 1980 provides a person's knowledge includes knowledge which he might reasonably have been expected to acquire:
 - *"(a) From facts observable or ascertainable by him, or*
 - *(b) From facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek,"*



- Lord Hoffmann *A v Hoare* [2008] 2 WLR 311 at para.34:
- *"... entirely personal standard...whether a reasonable person with that knowledge would have considered the injury sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment."*



- *Adams v Bracknell Forest BC* [2005] 1 AC 76: the court should consider how a reasonable person in the position of the claimant would have acted, while disregarding aspects of character or intelligence peculiar to the claimant.

Limitation Act 1980 (14)



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- "significant" decided by reference to the seriousness of the injury and not by reference to its effect.
- E.g. *Furniss v Firth Brown Tools Ltd* [\[2008\] EWCA Civ 182](#), [\[2008\] All ER \(D\) 154 \(Mar\)](#): minor inconvenience in respect of hearing would not be expected seek expert advice.

Limitation Act 1980 (15)



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- "Attributable" for the purposes of section 14 means "capable of being attributed to", in the sense of being a real possibility, rather than caused by (*Spargo v N Essex District Health Authority* [1997] PIQR P235).



- Mechanism by which a Claimant may seek to have the statute bar lifted.



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- *"33 Discretionary exclusion of time limit for actions in respect of personal injuries or death*
- *(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—*
- *(a) the provisions of section 11 [or 11A] or 12 of this Act prejudice the plaintiff or any person whom he represents; and*



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- *(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents;*
- *the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.*



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- *(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—*
- *(a) the length of, and the reasons for, the delay on the part of the plaintiff;*
- *(b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 11 [, by section 11A] or (as the case may be) by section 12;*



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- *(c) the conduct of the defendant after the cause of action arose, including the extent (if any) to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;*
- *(d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;*



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- *(e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;*
- *(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.*



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- Section 33 therefore provides that if it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which the Claimant and the Defendant would be prejudiced, the court may direct the limitation bar be disapplied.
- The evidential burden is on the Claimant (*Clifford Sayers v (1) Lord Chelwood (Deceased) (2) Lady Chelwood* [2012] EWCA Civ 1715).



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- The Court's discretion is broad and unfettered (*A v Hoare* [2008] UKHL 6, [2008] 1 A.C. 844). This is important. It means that a Court may give more weight to one factor above others so long as it properly considers all the circumstances under s 33 (3).



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S 33 factors:

- Delay? (reason)
- Less cogent evidence?
- Conduct of D?
- Duration of any disability of C?
- C acted promptly/reasonably?
- Steps C took to obtain advice?



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- Sex abuse: *A v Hoare*
- Lord Hoffmann re “knowledge” under s 33
- *“Section 33 enables the judge to look at the matter broadly and not have to decide the highly artificial question of whether knowledge which the claimant has in some sense suppressed counts as knowledge for the purposes of the Act.” (Per Lord Hoffmann at [43-45])*



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- *The reasons for the delay are highly relevant to that exercise, as of course are the prospects of a fair trial. A fair trial can be possible long after the event and sometimes the law has no choice. It is even possible to have a fair trial of criminal charges of historical sex abuse. Much will depend upon the circumstances of the particular case." (Per Baroness Hale at [60])*



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- Equitable then that if the cause of the delay is in fact the Defendant's own act (here the psychiatric *sequelae* of the abuse creating a suppression of the facts by the Claimant themselves) that the bar should be lifted.



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- In clinical negligence claims, the date of knowledge runs as in all P.I. claims from when the claimant was aware of his/her injuries, and if it is suspected that his or her lack of awareness is due to the fault or failures of a medical practitioner that will help a claimant's s 33 application.



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- Limitation period may be extended if fair in all the circumstances of the case
- Exercised with caution so as not to prejudice the medical professionals involved.
- Assaults on patients by medical practitioners: prior to *A v Hoare* the limitation for an assault was 6 years.



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- if a doctor acts against the wishes of a patient and the court decides this is an assault, it will have discretion to extend the limitation period.



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- *Cain v Francis* [2009] 2 All ER 579 Smith LJ added further clarification
- length of the delay of itself cannot be a deciding factor. It is whether the defendant has suffered any evidential or other forensic prejudice
- To what extent has the defendant been disadvantaged in his investigation



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- reasons for the delay are good ones or not
- when the defendant knew that a claim was made against him, and the opportunities which he had to investigate



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- *McDonnell v Walker* [2009] EWCA Civ 1257, Waller LJ:
- *"If delay has caused forensic prejudice to the defendant, then one must consider the cause of the delay. If the delay was excusable and on balance it is still possible to have a fair trial then it may be fair and just to allow the action to proceed."*



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- Waller LJ in *McDonnell* stated that: "*the delay which is relevant is the whole period since the accident occurred*" (see also *Donovan v Gwentoy* [1990] 1 WLR 472, HL, at 478-9).



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- Proportionality is an important issue when considering whether a s 33 application should be granted. Where a claim is of relatively low value in comparison to the costs which would be incurred in pursuing it, this is a factor weighing against the exercise of the court's discretion (*Adams v Bracknell Forest BC* [2005] 1 AC 76 at paras.54-5).



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- *George Collins v (1) Secretary of State for Business Innovation & Skills (2) Stena Lane Irish Sea Ferries Ltd* [2014] EWCA Civ 717: dock worker with inoperable lung cancer caused by occupational exposure to asbestos delayed for 6 years despite being asked about his employment background when he was diagnosed.



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- *Malone v Relyon Heating Engineering Limited* [2014] EWCA Civ 904 it was held that even where there were two separate periods of injury (hearing loss in this case) a Court was entitled to take into account the earlier reason for delay (in other words the whole period of delay) when considering a s 33 application in relation to the later period.



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- *Davidson v (1) Aegis Defence Services (BVI) Ltd (2) Aegis Defence Services Ltd* [2013] EWCA Civ 1586: a C who faces losing the right to bring a claim against the D because his solicitors lost documents it is right to consider an action against his solicitors as second best but that the prejudice posed by having to resort to such a claim was something a Court could consider



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- *Patricia Melanie Nicholas (Executrix of the estate of Doris Timbrell, deceased) v Ministry of Defence* [2013] EWHC 2351 (QB) the Court held it was understandable that an elderly C with asbestosis would not pursue her claim allowing limitation to expire before her death. An application under s 33 by her estate was allowed.



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- *Davies & ORS v Secretary of State for Energy and Climate Change (As successor in title to the liabilities of the British Coal Corp)* [2012] EWCA Civ 1380: Cs failed. Delays of a decade and more. Broad merits test their cases likely to fail. Delay had serious impact on the cogency of the evidence. No good reasons were given for the delays.



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- *John Charles Roberts v Commissioner of Police for the Metropolis* [2012] EWCA Civ 799 a trial judge erred in refusing to disapply the statute bar in a claim for assault by the police as his conclusion was based on an assumption rather than evidence. There was nothing to indicate that police officer's memories of the incident would be affected. His conclusion that a fair trial was not possible was not justified.



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- *Ministry of Defence v AB & ORS* [2010] EWCA Civ 1317 claims by a number of nuclear test veterans who alleged they were harmed through exposure to radiation were held by the Court of Appeal to be statute barred as their date of knowledge was more than three years before the issue of proceedings and their claims were weak in terms of causation.



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- In *AB & ORS v Ministry of Defence* [2012] UKSC 9, nuclear test veterans lost their claims under s 33 on the grounds that it was a legal impossibility for a claimant to lack knowledge under s 14(1)(b) (that the injury was due in whole or in part to the act or omission which is alleged to constitute negligence/breach of duty) when they in fact issued proceedings.