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Insights

LIMITATION PERIODS FOR BREACH OF CONTRACT CLAIMS: WHERE TO BEGIN?

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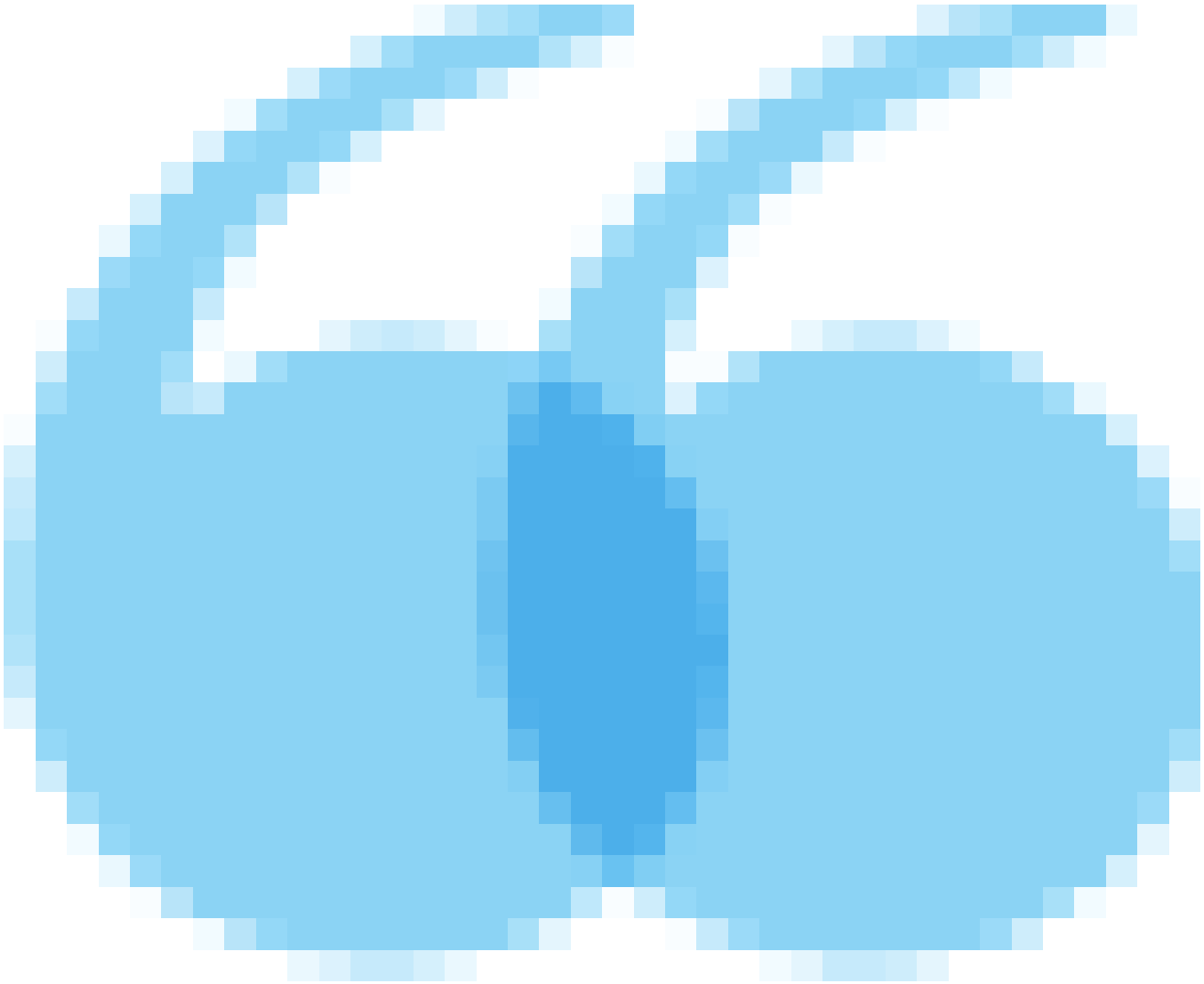
SUMMARY

On the face of it, the law of limitation seems fairly straightforward. The law in England and Wales specifies that anyone bringing a breach of contract claim has six years from the date of the breach in which to do so. This period is extended to 12 years from the breach of contract if the contract has been executed as a deed. But what happens when a provision such as the one below is added into the mix? Does this work to extend the limitation period? If not, what exactly does this provision, which I'll refer to as the Proposed Clause, mean?



No action or proceedings for any breach of this Deed shall be commenced against the Contractor after the expiry of 12 years following Practical Completion.

The importance of understanding both when time starts running and when it expires cannot be overstated. We are all aware of the serious consequences of getting it wrong: no matter how strong a claim is, if the limitation period has expired, the defendant has a cast-iron defence to that claim.

Today, I will be looking at the impact our Proposed Clause has on claims for breach of contract but (spoiler alert!) the impact this type of clause has on claims in tort may be the subject of another blog very soon.

Statutory limitation periods

As soon as a potential dispute arises, one of the first things to check is that any action is not time-barred. An action must be commenced within the relevant limitation periods that are set out in the Limitation Act 1980. The most relevant causes of action for our purposes today are:

- Six years for actions in respect of simple contracts and certain actions in tort (sections 5 and 2, respectively); and

- 12 years for actions on a specialty, for example, for breach of an obligation contained in a deed (section 8).

The starting point for the running of time is usually the day on which the breach occurs, although for certain situations, time does not start running until the date of discoverability.

For construction contracts, the breach of contract is deemed to have occurred on practical completion (Coburn v Colledge). The rationale being that there is generally an obligation for a contractor to "carry out and complete" the works. If the contractor fails to properly complete the works by the date for completion, this is when the cause of action accrues. It is only at the point of practical completion that the works can be assessed as being defective.

Extending the statutory limitation period

- Unfortunately, it is not safe to simply assume that the limitation period under your contract will be either six or 12 years. It is possible for parties to contract out of the limitation regime or agree a different limitation period, so long as clear wording is used (Ice Architects Ltd v Empowering People Inspiring Communities).

- It is becoming increasingly common to see clauses in contracts that lengthen or shorten the periods in which a claim can be made. Indeed, one of the most common clauses seen is the Proposed Clause above. But does this clause do exactly what parties think it does?

In the case of Oxford Architects Partnership v Cheltenham Ladies College, the court considered a similar provision, albeit in the context of an architect's appointment. The particular clause in that case stipulated that proceedings could not be brought after the expiry of six years from practical completion.

The court held that this clause operated as an additional contractual limitation on the ability of the claimant to bring a claim. It did not deem any cause of action to have arisen on practical completion, nor did it limit any right of the defendant to rely on a statutory limitation defence. It merely acted as a longstop date within which to bring a claim. The cause of action in contract accrued when the fault alleged to constitute the cause of action took place. The clause did not have the effect of extending the limitation period to six years after practical completion where it would have otherwise expired sooner.

Of course, our Proposed Clause arises in the context of a construction contract rather than a professional appointment and the courts might draw a distinction between such contracts. However, it is difficult to see the basis for the distinction in this context and the courts are likely to construe our Proposed Clause as a longstop date.

For construction contracts that are executed as a deed, this is unlikely to be too problematic as the statutory limitation period would expire 12 years after practical completion regardless. However, this

Proposed Clause could act to limit any claims which may accrue after practical completion, for example for a failure to rectify defects during the limitation period.

The main difficulty for construction contracts will arise when the works have been completed in sections. Does time start to run on practical completion of the whole of the works, even where some sections of the works had been completed before that date? Or does time start to run on practical completion of each section of the works?

The answer will, of course, depend on the circumstances and the way in which each contract is drafted. However, if it is the latter, this could result in a situation where different limitation periods start running at different times. It would then be essential to understand precisely which section the defective works fall into and when time starts running in each case.

Practical Tips

The key takeaway here is that it is a mistake to assume that you have 12 years from practical completion within which to bring a claim. Provisions such as the one contemplated in this blog, can give a false sense of security as these types of clauses do not necessarily reflect the limitation period that would otherwise apply at law. They act to limit, but not extend, the statutory limitation period.

For completed projects, it would be prudent to check that the contracts were properly executed as deeds and do not contain any clauses which seek to vary the limitation period. The practical completion certificate(s) should also be located in order to work out when time started to run. It would be wise to keep in place an adequate reminder system to ensure that any relevant steps are taken before the limitation period expires. This will be particularly important where a contract contains clauses that vary the usual statutory limitation period.

Contracting parties should remember to look out for clauses that shorten or lengthen the normal limits imposed by the Limitation Act 1980 and ensure that they understand the consequences of amending these periods. If the intention is to amend the statutory limitation period, the limitation clauses should be carefully drafted using clear and unambiguous wording.

When dealing with sectional completion, it might be worth amending the standard wording to make it clear that any claims under the contract may be brought up to 12 years from practical completion of the last section. This would have the effect of aligning the limitation periods for all sections.

If this is not done, it is important to clearly define each section of the works. It can sometimes be uncommonly difficult to work out which particular section the defective works fall into. This is significant if the limitation periods start running at different times.

Finally, it is worth noting that the limitation date is likely to be different for contractual and negligence claims. So if you have missed the boat on the contractual limitation period, all is not lost

and it might still be possible to pursue a claim in tort. While this may be better than nothing, pursuing a claim in tort can have an impact on the amount of damages the claimant is entitled to claim. However, this is a blog topic for another day.

This article first appeared on the Practical Law Construction blog dated 23 March 2021.

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