While parties are encouraged to take pre-action steps to resolve their disputes without recourse to the courts (and many are able to), there may come a point in a dispute where no progress is being made and you need to consider commencing formal legal proceedings. But how do you go about this, and how long do you have to do it?

Here we look at the basics of limitation, and commencing proceedings.

**What is limitation?**

Limitation is a potential defence to a legal claim, on the basis that the claim has not been brought in time. Legislation prescribes limitation periods within which a legal action must be brought. If a claimant does not bring an action within the relevant limitation period, they run the risk that a defendant will argue any claim is out of time (also referred to as "statute-barred" or "time-barred").

**How long is the limitation period/how long do I have to bring a claim?**

There are various limitation periods prescribed by legislation. These vary according to the type
of legal action being brought. For instance, negligence, personal injury and defamation claims each have their own specific limitation periods. The table below shows the limitation period for some common causes of action in commercial claims.

<table>
<thead>
<tr>
<th>Cause of action</th>
<th>Limitation Period</th>
<th>When does period start? (see explanation below)</th>
<th>Statutory provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breach of contract (simple contract)</td>
<td>Six years</td>
<td>Date of breach</td>
<td>s.5 Limitation Act 1980</td>
</tr>
<tr>
<td>Breach of a contract (deeds)</td>
<td>12 years</td>
<td>Date of breach</td>
<td>s.8 Limitation Act 1980</td>
</tr>
<tr>
<td>Tort (including negligence, but excluding personal injury / death)</td>
<td>Six years</td>
<td>When damage is suffered (with protections for latent damage and knowledge – see main text)</td>
<td>s.2 Limitation Act 1980 (and s.14A &amp; B)</td>
</tr>
<tr>
<td>Contribution claims (by a defendant against a third party who was also responsible)</td>
<td>Two years</td>
<td>Usually date of judgment or settlement</td>
<td>s.10 Limitation Act 1980</td>
</tr>
</tbody>
</table>

**When does the limitation period start to run?**

The limitation period starts to run when the cause of action 'accrues' to the claimant, i.e. when all of the legal elements are present to enable the claimant to make a claim. When a cause of action accrues will therefore depend on the nature of the claim being brought and the necessary legal elements of that claim. For example:

1. **In a claim for breach of contract**, the claimant’s cause of action accrues as soon as the defendant breaches the contract, and so the claimant's time to bring a claim starts to run at this point.
2. **In a claim for negligence** however, the claimant's cause of action accrues not when the
defendant commits a wrongful act, but only when the claimant suffers loss or damage as a result. In some cases loss may be suffered immediately when the wrongful act occurs, but in others actual loss may be suffered at a later date.

Therefore even where two types of action have the same limitation period, that period may start to run at a different time in each case. In some circumstances, that can mean that one type of action remains open to a claimant even when another is statute barred. It is common, for example, for a claimant to bring a claim against a professional for both breach of contract and negligence because, although both causes of action have a limitation period of six years, it is possible in some circumstances for a negligence claim to be brought later than one for breach of contract.

There are also some additional protections for claimants in some cases which may effectively extend the time to bring a claim:

- **Negligence** - in actions for negligence, a claimant may not become aware of the facts giving rise to a claim until after the cause of action accrued. To cater for this, limitation expires on the later of (a) six years after the cause of action accrued; or (b) three years after the claimant knew (or ought to have known) the facts necessary to bring the claim. It can, however, sometimes be difficult to pinpoint exactly when the claimant attained (or should have attained) the requisite knowledge to bring an action. To provide some certainty, there is therefore also a longstop - an action must be brought at the latest 15 years from the negligent act.

- **Fraud, mistake or concealment** - where an action is based on fraud, mistake or where the defendant has deliberately concealed facts relevant to the cause of action, then the limitation period does not start until the claimant discovers (or could reasonably have discovered) the relevant fraud, facts or mistake.

**Can parties agree a different limitation period?**

Yes. Parties are free to agree a different limitation period than that prescribed by legislation. Most commonly, this will be to reduce the statutory limitation period and further restrict the time in which a claim must be brought (although such agreements may be subject to the reasonableness test under unfair terms legislation). So ensure you check any contract to see if it alters the time in which you can bring a claim. You should also check if the contract between the parties has any requirements as to giving notice of potential claims. These provisions are common for example in corporate sale documents, and failing to adhere to any requirements, as to the timing and form of notice, may act as an effective contractual bar to bringing a claim, even if the claim is within statutory limitation.
What does a claimant have to do by the limitation date?

The claimant needs to have 'brought an action', i.e. commenced legal proceedings. In litigation, this means the court needs to have issued a claim form at the request of a claimant i.e.:

- The claimant delivers a claim form to court (physically or, in many cases now, electronically);
- The claimant pays the issue fee (which can be up to £10,000); and
- The court seals and 'issues' the claim form.

An action is generally deemed 'brought' on the issue date endorsed on the claim form by the court. However, if there is any delay between the court receiving the claim form from the claimant, and the court issuing that claim form then, for the purposes of limitation, proceedings are 'brought' when the claim form was received by the court office.

If the parties have agreed to submit their disputes to arbitration, then the claimant needs to have commenced arbitral proceedings by the limitation date. Arbitration is by its nature, a flexible consensual process, and so when arbitral proceedings are deemed to have commenced will depend on the rules of any arbitral institution the parties have chosen, or any other agreement the parties have reached. However, there is a default provision in s.14 of the Arbitration Act 1996 which provides that arbitral proceedings are commenced when a party serves notice requiring the appointment of an arbitrator.

Are counterclaims subject to limitation?

Yes. While it will usually be the claimant who is concerned to bring a claim by the limitation date, bear in mind that counterclaims are a form of claim, and limitation applies equally to them. So a party who has a claim which it sits on and raises only as a counterclaim in response to a claim brought against it, may find that counterclaim is time-barred.

What should I do if time to bring an action is running out?

If you believe you have a cause of action, but time to issue a claim is running out, then you should seek legal advice as soon as possible so that your advisers can investigate your claim and advise on limitation. If time to bring the action is very tight, then there are two common steps you can take:
- **Negotiate a 'standstill agreement'** - it may be possible to enter into a standstill agreement with the party you would be bringing a claim against. The effect of a standstill agreement is to 'stop the clock' for limitation, and so allow the parties further time to investigate claims, take any necessary pre-action steps and consider settlement before issuing a claim form. If, for example, the claimant has two weeks left until the end of the limitation period, the parties could enter into a standstill for three months. After the three months the standstill comes to an end, and the limitation clock starts again - at which point the claimant still has the two weeks it had prior to the agreement. While standstill agreements have become common, care must be taken to ensure that the agreement is drafted appropriately. Poorly drafted standstill agreements may be ineffective to stop limitation, meaning that a claimant may nevertheless lose the cause of action they were seeking to preserve.

- **Issue a protective claim form (or arbitration notice)** - while it will often be possible to enter into a standstill agreement, if you are really up against the limitation clock, then there may be insufficient time to negotiate one - particularly as a defendant may be reluctant to agree to extend time for you to bring a claim which is very nearly time-barred. In these circumstances, you may have to issue the claim form as a matter of urgency to 'stop the clock'. Once you have done that, you can consider your next steps. It may be that you now need to catch up on 'pre-action' steps, and/or draft detailed particulars of claim. These are steps which would ideally be completed before issuing the claim. However, it may be possible either to complete these steps before serving the claim form, or to commence proceedings and then seek an immediate stay to allow you to follow the pre-action protocol. Indeed some courts specifically provide that a party in this situation can dispense with pre-action protocols if limitation is in issue (see e.g. the Technology & Construction Court guide at 2.3.2).

Bear in mind that:

- Substantial fee increases in the last few years mean that the court fee for issuing a claim form can be up to £10,000 (this is the fee that applies to claims worth £200,000 or more). Issuing a protective claim form can therefore involve substantial financial outlay.

- While a claim form need only outline brief details of the claim (with full particulars to follow), it is important to be clear before commencing proceedings that you do have a claim (albeit one which may require further investigation and particularisation) and that you know who it is against. If you need to make substantial alterations to a claim (or the parties to it), then it may amount to a new claim and limitation may yet be a defence.

- Finally, once proceedings are issued, the court has the power to make costs awards, so the claimant is potentially "on the hook" for the defendant's costs from this point onwards.

While issuing a protective claim form may be necessary to preserve a cause of action, it is a
step which has consequences and is not one which should be taken lightly.

**Things to remember:**

- Don't sit on a claim - if limitation is in issue, seek legal advice as soon as possible, and take steps to preserve your claim by negotiating a standstill agreement or, as a last resort, issuing a protective claim form.
- Ensure that you are aware of and comply with any contractual restrictions on bringing claims - e.g. requirements for notices, or any reduction of the statutory limitation period.

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