

# Limitation periods in Ireland

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An overview of limitation periods under the Statute of Limitations 1957 in Ireland focusing on the limitation periods most relevant for corporate, commercial and finance matters.

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## Scope of this note

### Importance of limitation periods

### Statutory basis

- Primary legislation governing limitation periods

- Other sources of limitation periods

- Examples of limitation periods

### When does a limitation period start?

- Examples of accrual of cause of action

### Limitation periods in contracts

- Payment for works and services

- Guarantees and indemnities

### Limitation periods in tort

- Professional negligence

### Standstill agreements

### Risk of issuing legal proceedings prematurely

### Extension of time for acknowledgement

- What is an acknowledgement?

### Extension of time for part payment

### Insolvency and examinership and limitation periods

- Company in liquidation

- Examinerships

### Effect of fraud on limitation periods

### Mortgage debts

### Enforcing a money judgment

### Deeds

### Extension of limitation periods in equity

### Limitation periods and arbitration

## Impact of COVID-19 restrictions on limitation periods

### Scope of this note

This note gives an overview of the law relating to limitation periods in Ireland in relation to corporate, commercial and finance transactions. It focuses on the principal statutory basis for limitation periods, the *Statute of Limitations 1957* (SOL 1957). It then looks at some specific limitation periods considering when they commence, together with examples of accrual of various causes of action.

The note considers the limitation period for contracts in relation to payment for works and services, guarantees and indemnities. Limitation periods for torts are considered with emphasis on the limitation periods for professional negligence, and damage suffered and contingent liability.

The note also looks at the status of standstill agreements in Ireland and how limitation periods can be extended and the effect of fraud, insolvency and examinerships on limitation periods.

The note further considers the limitation periods for mortgage debts, enforcing a money judgement and how limitation periods can be extended in equity. In the light of the 2019 novel coronavirus disease (COVID-19) pandemic, the note also considers its impact regarding deeds and restrictions on limitation periods.

### Importance of limitation periods

Limitation periods fix the time limit within which legal proceedings may be brought. They are necessary to provide for finality and certainty and avoid persons and entities being faced with potential claims indefinitely.

Observing limitation periods is critical because if proceedings are not issued within the requisite limitation period, the claim will be statute barred, which will afford a full defence to the claim and bar recovery by a claimant.

Although limitation periods are absolute and the court has no discretion to waive or modify their operation on discretionary grounds, limitation periods are procedural rather than jurisdictional. This means that any limitations arguments must be raised by the defendant themselves and will not be raised by the court of its own motion. In practice, this means that the fact of the action being statute-barred must be pleaded in the defendant's defence. In *O'Reilly v Granville [1971] IR 90*, the court noted that:

"it has long been settled that the effect of these statutes [of limitation] is to bar the remedy and not to extinguish the right ... where the statute in question only bars the remedy and does not extinguish the right, the relief or defence given by the statute does not operate until pleaded".

This is also clear from the Supreme Court decision in *Clarke v O'Gorman [2014] IESC 72*.

In effect, this principle means that the SOL 1957 will not operate as an automatic bar to recovery, rather it must be raised by the defendant themselves. From a practical perspective, it is key that a party served with legal proceedings conduct an immediate preliminary analysis of the limitation period(s) applicable to each of the claims it is facing and calculate whether they have been made within time.

### Statutory basis

#### Primary legislation governing limitation periods

The main piece of legislation governing limitation periods in Ireland is the SOL 1957. It comprises a general code for the operation of limitation periods in Ireland. The limitation periods for a number of common causes of action appear in Part II of the SOL 1957. These include actions:

- In contract and tort (*section 11*).
- To recover land (*section 13*).
- In respect of certain tenancies (*section 17*).
- Against trustees (*section 43*).
- Against the estate or deceased persons (*section 45*).

The SOL 1957 is not a complete codification of limitation law in Ireland and does not set out limitation periods for all types of civil actions. Claims for which a period of limitation is fixed by any other limitation enactment are specifically excluded (*section 7(a)*).

## Other sources of limitation periods

Certain limitation periods are set by individual pieces of legislation and care should always be taken to establish whether such a limitation period applies. Examples include:

- Applications for judicial review that are governed by Order 84 of the *Rules of the Superior Courts 1986* (RSC).
- Defamation actions, where the limitation period is set by the *Defamation Act 2009* (DA 2009).
- Planning and development litigation under the *Planning and Development Act 2000* (PDA 2000). In particular:
  - section 160 of the PDA 2000 sets a limitation period of seven years for enforcement action by way of injunction in respect of unauthorised development; and
  - section 50 of the PDA 2000 sets a time limit for instituting a judicial review in respect of a decision under the PDA 2000 of eight weeks from the date of the decision or the doing of an act by a planning authority or the Board.
- The *Liability for Defective Products Act 1991* (LDPA 1991) contains limitations periods for actions based on product liability and a "long stop" bar extinguishing any right of action under the LDPA 1991 on the expiration of the period of ten years from the date on which the producer put a product into circulation.

## Examples of limitation periods

There is no generally applicable limitation period in Irish law. Instead, limitation periods vary depending on the cause of action in question. The length of the limitation period can vary considerably depending on the type of claim in question. For example:

- One year (subject to a discretionary extension to two years) for defamation actions governed by the DA 2009 (*section 38, DA 2009*).
- Two years for personal injuries claims (*section 7, Civil Liability and Courts Act 2004*) (CLCA 2004).
- Six years for simple contract claims (*section 11(1), SOL 1957*). (For more information, see [Limitation periods in contracts](#).)
- Six years for actions in tort other than those to which specific limitation periods apply (*section 11(2), SOL 1957*). (For more information, see [Limitation periods in tort](#).)
- Twelve years for an action brought in respect of an instrument under seal (other than claims for arrears or rent, interest or recovery of the principal sum (*section 11(5), SOL 1957*). (For more information, see [Deeds](#).)
- Twelve years for an action to enforce a judgment (*section 11(6), SOL 1957*). (For more information, see [Enforcing a money judgment](#).)
- Thirty years for an action by a state authority to recover any land (*section 13(1)(a), SOL 1957*).
- Sixty years for an action to recover foreshore brought by a state authority (*section 13(1)(b), SOL 1957*).

## When does a limitation period start?

The general principle for when a limitation period starts is that it starts on "the date on which the cause of action accrued" (*section 11(1), SOL 1957*).

The concept of "date of accrual" is not explicitly defined in the SOL 1957. However, in this context, accrual means the date on which the cause of action is complete and it becomes possible to begin civil proceedings. For instance, in a breach of contract case, this would be the date on which the provision of the contract was breached. Using the "date of accrual" concept, no action or claim accrues until each element of the cause of action is present and can be proven. In tort, claims that are not actionable per se will include loss or damage.

Practically, it is important to consider that a claim may give rise to a potential cause of action in both tort and breach of contract. Often, those causes of action will be deemed to have accrued on different dates: if the action in tort includes a requirement to prove loss or damage, that may not occur until a subsequent date (for more information, see [Limitation periods in contracts](#) and [Limitation periods in tort](#)).

## Examples of accrual of cause of action

The date of accrual of the cause of action has been considered by the Irish courts on a number of occasions in various contexts. This has led to the emergence of certain principles that apply to specific classes of claims. These include the following:

- **Contract claims.** The cause of action accrues as soon as a breach of contract occurs whether or not damage has been suffered at that time (*Gibbs v Gould [1881] QBD 296* and *Minister for Agriculture and Food v Thomas Julian [2003] IEHC 144*). Where a breach of contract claim relates to the quality of goods supplied, time starts to run against the vendor from the time the goods were received and not when the defect becomes apparent (*Lynn v Bamber 1930 2 K.B 72*). This principle was reiterated by the High Court in *Murphy v O'Toole & Sons Limited [2014] IEHC 486*, where the Court held at para 46, "When time separates the

agreement for sale from the performance of the conditions in that agreement, the contract is not breached until it can be said that the contract was not fully performed or performed in compliance with the conditions on the part of the seller.”.

- **Debt collection.** The cause of action arises at the time when the debt could first have been recovered by action. The right to bring an action may arise on various events, but the statute runs from the earliest time at which an action could be brought (*Reeves v Butcher [1891] 2 QB 509*).
- **Demand loans.** In general, accrual of the cause of action will arise at the point at which a demand letter is issued by the creditor, subject to any terms or conditions to the contrary contained in the loan agreement (*AIB v Pollock [2016] IEHC 581*). However, it is important to be aware that the contents of the loan or contractual documents is key and may lead to different outcomes from case to case (*Irish Life plc v Dunne [2015] IESC 46*).
- **Failed investments.** In *Gallagher v ACC Bank [2012] 2 IR 620*, the plaintiff invested in a fixed term investment bond linked to the values of certain shares. The plaintiff claimed he had been negligently induced to invest by the defendant bank. He claimed that the product had been unsuitable from the outset on the basis that it was a "borrow to invest" product. The Supreme Court held that in a claim for financial loss based in tort, depending on the facts, the cause of action accrued:
  - in the case of immediate loss to the plaintiff, when the wrong was committed; and
  - in the case of a wrong which initiated a cause of action that later resulted in a loss, at the date the plaintiff suffered actual loss.

Where a plaintiff claimed that they suffered damage by the very fact of entering into a transaction that was wholly unsuitable for them, the cause of action accrued on the date of entry into the transaction.

- **Property damage.** In *Brandley v Deane [2017] IESC 83*, the Supreme Court held that a cause of action in tort based on damage to property ran from the date that the damage is manifest, which in that context is the date on which the damage was capable of being discovered. The court took "manifest to mean that the damage must have been capable of being discovered and capable of being proved by a plaintiff".

## Limitation periods in contracts

### Payment for works and services

Presuming that works are provided under a contract (which does not contain a different contractual limitation period), an action for payment for services will be subject to a six-year limitation period commencing on the accrual of the cause of action; this is generally the date on which payment was originally due but not made.

The limitation period for payment for services is six years, which will generally start on the same date. Where payment for services over a longer period is sought in proceedings, then the "claim is, by reason of the Statute of Limitations, limited to work done during the six years before action" (*Cleary v Sibley [1912] 46 ILTR 25*).

This reasoning would also apply, by analogy, to claims for services rendered.

### Guarantees and indemnities

In the absence of a contrary provision in the contractual documents, a cause of action will generally accrue against a guarantor on the date of the principal debtor's default.

In *Parr's Banking Co Ltd v Yates* [1898] 2 QB 460, the court held that with regard to a continuing guarantee which did not require a written demand, the cause of action accrued as soon as each amount due on the principal debtor's account was not paid. The *Parr* decision was cited with apparent approval in Ireland in *Stapleford Finance DAC v McEvoy* [2018] IEHC 99, where it was also noted that under section 11 of the SOL 1957, "the limitation period for an action on foot of a guarantee is six years, and if the guarantee is of an existing debt, the cause of action will accrue as soon as it is given". ("On foot of" is a phrase peculiar to Ireland and means relating to, because of or by reason of.)

However, in the modern context it is much more common for guarantees to require a demand. If the guarantee provides that the guarantor is only liable once a demand is made on them, the cause of action will accrue on the making of that demand (*RA Cripps (Pharmaceutical) and Son Ltd v Wickenden* [1973] 1 WLR 944). It is also confirmed in *Allied Irish Banks plc v Flood* [2018] IEHC 272, that where the monies guaranteed became due on written demand, the limitation period ran from the date on which the demand was made (*at paragraph 87*).

However, a clause in a guarantee under which the guarantor irrevocably waives the right to interpose any defence based on any statute of limitations has been held to be valid in Ireland (*Cabot Asset Purchases Ireland (Ltd) v Boyle* [2019] IEHC 401).

In respect of claims under an indemnity, if the indemnity is set out in an agreement executed as a simple contract, the limitation period will be that applicable for breach of contract (that is, six years). If the agreement was executed as a deed, the limitation period will be 12 years (*section 11(5), SOL 1957*).

The limitation period may only begin to run from the date the indemnified loss is established. There is no authoritative Irish decision on this point. It is suggested that the decision in *Telfair Shipping Corp v Intersea Carriers SA* [1985] 1 WLR 553 would be persuasive in Ireland. There, the court concluded that there are three different categories of case that might arise in respect of when a cause of action on foot of an indemnity accrues:

- **Claims based on a breach of contract.** For these, time will run from the date of the breach. This may arise where a party is called on to provide an indemnity and fails to do so.
- **Claims based on an express indemnity agreement.** For these, accrual of the cause of action will depend on the wording of the indemnity clause. If it implies that it arises on the incurring of the liability, the cause of action arises at that point and time will start running from that date. If that is not implied in the indemnity clause, the cause of action will arise when the liability of the party to be indemnified has been established and ascertained. This may be a much later date.
- **Claims based on an implied liability.** For these, the cause of action will usually arise only when the liability has been established and quantified.

## Limitation periods in tort

Claims in tort are generally governed by the six-year limitation period in section 11(2) of the SOL 1957. Some exceptions to this rule apply, such as the one-year limitation period applicable to defamation claims and the two-year limitation period applicable to personal injuries claims.

## Professional negligence

In general terms, a professional negligence claim is a claim in tort that is governed by the six-year limitation period for tort claims set out at section 11(2) of the SOL 1957.

The applicability of this six-year limitation period is acknowledged in:

- *Noble v Bonner [2019] IEHC 590*.
- *Irish Equine Foundation Ltd v Robinson and others [1999] 2 IR 442* in the context of architects and engineers.
- *Kirby v Giles J Kennedy and Company Solicitors [2005] IEHC 36* in the context of solicitors.
- *English v O'Driscoll [2016] IEHC 584* in the context of accountants.
- *Ulster Bank Ireland Ltd v Seán Coyne and Company Ltd and others [2019] IEHC 874* in the context of estate agents providing valuation reports.

### Nature of loss suffered and contingent liability

The date of accrual of the cause of action depends on the nature of the loss suffered and if a contingent liability arises.

In claims based on negligence seeking damages for pure economic loss, the traditional view is that the limitation period starts to run from the time the injury is sustained, regardless of a plaintiff's reasonable failure to become aware of the fact of the commission of the tort or of the damage caused.

In *Task Construction Ltd v Devine p/a BCM Hanby Wallace and Company [2009] IEHC 74*, the claim was based on alleged negligence in the execution of a deed in 1986. One of the plaintiffs claimed he had not seen the deed until 2006 (which would have meant he was unaware of, or had not discovered, the alleged negligence). The court found, at page 10 of the judgment that the tort was complete in September 1986 and rejected the plaintiff's attempt to:

to introduce a test of 'discoverability'. This is a concept that has been rejected by the courts in a number of cases ...". Similar arguments succeeded in terms of financial advice in *Elliott v ACC Bank plc [2017] IEHC 808* in which the plaintiffs issued proceedings in 2013 against an accountant and a solicitor, arguing that they had been negligent in failing to provide appropriate advice regarding an endowment mortgage entered into with the defendant bank in 2002. The plaintiffs argued that they did not know that they had entered into an endowment mortgage until 2008 and that the cause of action did not arise until the policy was "cashed out" in 2011.

The High Court found that the relevant date for accrual of the cause of action was the date when advice was either given by the second and third defendants, or (insofar as the alleged negligence was based on a failure to advise) the date when that advice could reasonably have been expected to have been given by them but was not. That meant that the cause of action had arisen in 2002 or, at the very latest, in 2004 when the loan had been re-financed. The "date of discoverability" of the alleged wrong was irrelevant in a tort case such as this.

A series of decisions in England and Wales (such decisions would usually be of persuasive but not binding authority in Ireland) mean that for the purposes of the SOL 1957, where a solicitor's acts or omissions wrongly expose the client to a risk of loss, "damage" accrues as soon as there is a risk of an untoward event occurring. For example, in *Bell v Peter Browne [1990] 2 QB 495*, it was held that in a claim for negligence in conveyancing, the plaintiff's

cause of action accrued on the date of the original transfer. This was because his interest in the property had been inherently less than it ought to have been from that point onward. This was despite the fact that the plaintiff did not know this until eight years later when the property was sold and the proceeds dissipated. Although there is an exception in unique cases where liability is purely contingent (*Law Society v Sephton & Co [2006] UKHL 22*), this general position may produce somewhat harsh results.

In Ireland, it does not appear that this principle applies in all instances. In *Smith v Cunningham [2018] IEHC 600*, the High Court held that in the context of an allegedly negligent conveyance, at page 7 paragraph 19, there was a:

"distinction between 'defect' and 'damage'. Whereas a 'defect' can occur at one point in time the resulting 'damage' can occur at another. Thus, in this case, the 'defect' occurred in July 2006, i.e. when the false certification of compliance was purportedly relied upon, but the 'damage' did not occur to the plaintiff until the contract for the sale of the property was rescinded in October 2008".

Although this decision is currently under appeal, if upheld it could have significant implications. The reasoning of the decision would appear to run contrary to *Bell* and arguably Irish cases such as *Gallagher v ACC*.

The *Smith* decision has, however, been applied in a way that may narrow its applicability. In *Noble v Bonner [2019] IEHC 590*, the plaintiff sued under option agreements entered into in 2000 on which the defendant firm of solicitors advised. The High Court found that the earlier decision in *Gallagher v ACC* remained the relevant jurisprudence for pure economic loss claims and that as the claims were manifest and capable of being discovered and proved as of 2005, the claim was statute barred. It is difficult to see that there is a principled distinction between the *Smith* and *Noble* decisions that justifies this different approach, meaning that there is some uncertainty in this area.

The upshot of this series of decisions is that there is uncertainty on the correct position in relation to the accrual of damage in professional negligence actions. Practically, if a party is in doubt in terms of which classification applies to its case, it may be prudent to seek to issue a protective writ to stop the limitation period running. In most common-law claims such as in contract or tort, this can be done by issuing a plenary summons, which requires limited detail on the plaintiff's claim and can usually be drafted and issued relatively quickly.

## Standstill agreements

In the context of this note, a standstill agreement is one in which the parties agree to suspend or extend a limitation period.

Although there is a dearth of Irish case law on the point, the better view appears to be that a standstill agreement to suspend the SOL 1957 ought to be enforceable in Ireland. That is due to the nature of the SOL 1957 in Ireland which, as outlined above, operates as a defence to proceedings rather than an absolute bar to the proceedings such as would remove the jurisdiction of the court to hear the matter.

It is suggested that "individuals are free to agree that a longer period should govern any claim" (M Canny, *Limitation of Actions* (Round Hall, 2nd ed), 2016). English cases which recognise the enforceability of standstill agreements, such as *Braceforce Warehousing Ltd v Mediterranean Shipping Co (UK) Ltd [2009] EWHC 3839* and *Nomura International Plc v Granada Group Ltd [2007] EWHC 642 (Comm)* are relevant in that regard.

This conclusion is supported by the decision of the Supreme Court in *Doran v Thompson Ltd [1978] IR 223*. In this case, it was indicated that a defendant could be estopped from relying on the SOL 1957 when their conduct gave rise to a justifiable belief that the SOL 1957 would not be used to defeat the other party's claim.

In terms of practical considerations, it is worth noting that standstill agreements can be complex and take time to negotiate and agree. Therefore, parties are advised to open dialogue and begin the negotiation of a standstill agreement well in advance of the elapse of a relevant limitation period to avoid any danger that the limitation period could expire before the agreement was concluded.

## Risk of issuing legal proceedings prematurely

It is important that enough information is available to properly formulate a stateable claim. If a plaintiff were to issue proceedings prematurely, it is likely that they would be met with an application to dismiss the proceedings. This is on the basis that they disclose no reasonable cause of action, are bound to fail and/or that they constitute an abuse of process (under the court's inherent jurisdiction contained in Order 19, rule 28 of the Rules of the Superior Courts 1986).

*Moffitt v Agricultural Credit Corporation plc [2007] IEHC 245* concerned such an application. In that case, the English authority of *Barber v McQuaig [1900] 31 OR 593* was cited but not applied. On that basis, prematurity would be grounds for dismissal in the right circumstances, although the courts will only grant such a motion where the defendant can show the plaintiff has no prospect of success (*Barry v Buckley [1981] IR 306*).

## Extension of time for acknowledgement

Chapter 3 of the SOL 1957 addresses acknowledgement of a cause of action. Acknowledgement provides for a fresh accrual of cause of action and the meaning of acknowledgement is defined by reference to the type of cause of action. These relate to:

- Recovering land (*section 51*).
- A mortgagee recovering land (*section 52*).
- An encumbrancer claiming sale of land (*section 53*).
- Redeeming mortgaged land in the mortgagee's possession (*section 54*).
- A personal right over land (*section 55*).
- Recovering debt (*section 56*).
- Claiming against the estate of a deceased person (*section 57*).

Every acknowledgment must be in writing and signed by the person making the acknowledgement. An acknowledgment can be made by an agent or to an agent of either party (*section 58*).

## What is an acknowledgement?

What is an acknowledgement under the SOL 1957 was considered by the High Court in *Smith v Ireland and others [1983] ILRM 300* in the context of action to recover a debt. The plaintiff claimed the debt was not statute barred by virtue of acknowledgment in a letter from one of the defendants.

Finlay P, in rejecting this claim, quoted with approval, Lord Denning MR in *Good v Parry [1963] 2 QB 418*. He stated (*page 423*):

"in order to be an acknowledgment, however the debt must be quantified in figures or at all events it must be liquidated in this sense that it is capable of ascertainment by calculation or by extrinsic evidence without further agreement of the parties."

## Extension of time for part payment

Chapter 4 of the SOL 1957 addresses the effect of part payment. Part payment provides for a fresh accrual of cause of action and therefore extends the limitation period.

Part payment is defined by reference to the following types of cause of action:

- A mortgagee recovering land (*section 62*).
- An encumbrancer claiming sale of land (*section 63*).
- Redeeming land in the mortgagee's possession (*section 64*).
- Recovering debt (*section 65*).
- Claiming against the personal estate of a deceased person (*section 66*).

A payment can be made by, or to, an agent of either party (*section 67*). The SOL 1957 provides specific rules for apportionment of payment where there is more than one debt, or one or more of the debts are statute barred (*section 69*).

## Insolvency and examinership and limitation periods

### Company in liquidation

A claim against a company in liquidation that is not statute barred as at the date of winding-up will not become statute barred during the liquidation by virtue of the SOL1957.

This principle was confirmed in *Re Money Markets International Stockbrokers (In Liquidation)* [2012] IEHC 214. In that case, the court confirmed the application of the principles set out in *Re General Rolling Stock Co Ltd* [1872] L.R. 7 Ch. App. 646 where it was held that any claim in the liquidation of a company, which is not statute barred on the commencement of a liquidation, will not subsequently become barred by statute. The court had to consider whether the claim was one in the liquidation or one outside the liquidation and therefore subject to the usual rules of the SOL 1957.

Money Markets held shares on behalf of another company and arranged a sale to a purchaser as a broker. The sale was never completed and no money changed hands. During the liquidation, the liquidator sold the shares and the purchaser claimed that he was entitled to the proceeds of the sale but at the price he contracted (being a lower sum). The court held the purchaser's claim was against the vendor and not Money Markets and so the claim was outside the liquidation and the six-year time limit for contracts applied.

Another matter to be considered when dealing with a company in liquidation are sections 678 and 1332 of the *Companies Act 2014* (CA 2014). Under these sections, where an order has been made winding up a company, no

action or proceedings can be proceeded with or commenced against the company in respect of any debt of the company except by leave of the court and subject to the terms as the court may oppose.

This means that where a company is in liquidation following a court ordered winding-up, a plaintiff will require leave of the court to issue the proceedings. If that leave is not obtained and as a result the cause of action becomes statute barred, there is a risk that the claim would fail on the basis that the plaintiff failed to obtain leave of the court before issuing proceedings.

## Examinerships

Once a petition for the appointment of an examiner has been granted by the court, a company is placed under court protection for 70 days from the date of presentation of the petition, with the option to extend for a further 30 days.

There is a prohibition against issuing proceedings against the company or proceedings against any person (other than the company) liable to pay all or part of the debts of the company (*section 520, CA 2014*). However, proceedings can be commenced against the company with leave of the court.

If the scheme of arrangement is approved by the court and the examinership is successful, pre-petition liabilities will be addressed by the scheme of arrangement. If the scheme of arrangement were to fail, then the period of court protection would end and the company would be wound up. Therefore, to protect a creditor's interest, it is important that leave of the court is sought to issue proceedings against the company. In addition, this might need to be with an undertaking not to advance the proceedings during the period of protection, if there is a risk that the cause of action could become statute barred during the period of protection (that is, 100 days from the date of presentation of the petition).

There is no provision for the SOL 1957 being suspended as is the case with compulsory wind-ups. It is likely that English authority relating to companies in administration would be followed by an Irish court (for example, *Re Leyland Printing Co Ltd (In Administration) [2010] EWHC 2105 (Ch)*).

For more information the examinership process in Ireland see *Practice note, Examinership: overview (Ireland)*.

## Effect of fraud on limitation periods

Section 71(1) of the SOL 1957 addresses the postponement of limitation periods in the case of fraud. It states:

"Where, in the case of an action for which a period of limitation is fixed by this Act, either

(a) the action is based on the fraud of the defendant or his agent or of any person through whom he claims or his agent, or

(b) the right of action is concealed by the fraud of any such person,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or could with reasonable diligence have discovered it."

The meaning of fraud for these purposes was considered extensively in two cases.

In *Komady Ltd and another v Ulster Bank Ltd [2014] IEHC 325*, Peart J confirmed that the meaning of fraud in section 71(1)(b) is not to be confused or elided with "fraud" in the conventional or ordinary sense, which itself is provided for in section 71(1)(a).

In defining the meaning of fraud under section 71(1)(b), Peart J quoted, with approval, Lord Denning in *Kitchen v Royal Air Force Association [1958] 1 WLR 563* where he stated (*at page 573*) that it is:

"clear that the phrase covers conduct which, having regard to some special relationship between the parties concerned, is an unconscionable thing for the one to do towards the other".

In *O'Dwyer v Daughters of Charity of St Vincent De Paul and Others* [2015] IECA 226, Hogan J further clarified that section 71(1)(b) would cover "concealment of facts which, if disclosed, would have brought to light a cause of action may, also amount to a concealment by fraud" (at paragraph 38).

Where a defendant is found to have committed an act of fraud as defined in section 71(1)(b), the cause of action will stand suspended until the plaintiff discovered the fraud or could have done so with reasonable diligence. In both *Komady* and *Daughters of Charity*, the court found that the defendants' conduct was not sufficient to amount to a concealment by fraud.

## Mortgage debts

For debts relating to the principal sum in a mortgage, a 12-year time limit applies from the date when the right to receive the money accrued (section 36, SOL 1957). With regard to interest, a six-year time limit applies from the date on which the interest became due (section 37, SOL 1957). Actions for the recovery of property or enforcing rights property are treated separately.

The 12-year limitation period in section 36 of the SOL 1957 was considered in *AIB v Norton* [2018] IEHC 628 and *AIB v Sloan* [2019] IEHC 270. The defendants argued that where the property secured by the mortgage had been sold, the six-year time limit for simple contracts should apply in respect of the unsecured balance owing under the mortgage. The court in both cases confirmed that the 12-year time limit applied even though the plaintiffs were not suing under the mortgage deed.

The issue of when the right to receive the money accrued will be determined based on the facts of the case and the wording of the mortgage or charge. In *ACC Bank plc v Malocco* [2000] IEHC 13, the court held that the cause of action accrued when the facility was withdrawn and the debit balance which became repayable was demanded. In *Bank of Ireland v Matthews* [2018] IEHC 335, the defendant, an executor, argued that the bank's claim was statute barred where the debt accrued before the date of death of the testator and proceedings were not initiated within two years of the death (this being the limitation period for actions against the estate of a deceased person). The court held that based on the wording of the mortgage, the cause of action did not accrue until a demand was sent. In *Allied Irish Banks plc v Flood and another* [2018] IEHC 272, the court held that the date of accrual of cause of action was the date of demand.

In *Malocco*, the court also clarified the interaction between sections 36 and 37 of the SOL 1957 with respect to interest. It held that section 36 applies only to an action to recover the debit balance, including capitalised interest, as at the date of accrual of the cause of action. Recovery of any interest that accrued after that date is subject to the six-year time limit in section 37 of the SOL 1957.

In summary, an action to recover the principal sum under a mortgage must be brought within 12 years of the time when the right to receive the money accrued. This is usually 12 years from the date of demand. Any related claim for interest must be brought within six years of the date the interest became due, again usually the date of demand.

## Enforcing a money judgment

An action cannot be brought against a money judgment after the expiration of 12 years from the date on which that judgment becomes enforceable (section 11(6), SOL 1957). No arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

In practice, time runs from the date of perfection of the order, which is the date of preparation of the order or judgment by the Court Registrar. If a party is seeking to enforce a judgment after a period of six years, they will need to apply to court for the renewal of the judgment and will be required to explain why enforcement has not taken place.

Where the judgment is an order for costs, time does not begin to run until the amount of costs has been ascertained (this is where costs have been agreed or taxed) (*Harte v Horan* [2013] IEHC 410).

## Deeds

The limitation period for an action grounded on a deed executed under seal is 12 years (*section 11(5)(a), SOL 1957*).

If a cause of action is under a document executed under hand, the limitation period for a simple contract of six years would apply, unless there is a specific provision in the SOL 1957 to the contrary. For example, in an action under a mortgage (*section 35 or section 36, SOL 1957*) or an action to recover land (*section 13(2), SOL 1957*), which attract a 12-year limitation period.

## Extension of limitation periods in equity

There is a line of Irish authority that provides an equitable remedy to a party whose claim would otherwise be statute barred by virtue of the SOL 1957. This takes place as an equitable estoppel of the defendant asserting their rights under the SOL 1957.

*Doran v Thompson* [1978] 1IR 223 is the leading case. In that case, there had been correspondence between the plaintiff's solicitors and defendant's insurer in relation to investigation of an accident and the examination of the plaintiff by the defendant's doctor.

The Supreme Court (Henchy J) held that the equitable doctrine of estoppel can prevent a party relying on the SOL 1957 if:

- The defendant has engaged in words or conduct from which it is reasonable to infer, and from which it was in fact inferred that liability will be admitted.
- The words or conduct are unambiguous and capable of only one interpretation.
- As a result of this conduct or representations the plaintiff had not commenced proceedings in time.

The court felt it would be "dishonest or unconscionable" for a defendant to escape liability in these circumstances.

However, the Supreme Court rejected the plaintiff's claim as there was no representation sufficient to show that the defendant induced the plaintiff to believe that he would not plead the SOL 1957.

This was developed further in the case of *Ryan v Conolly* [2001] 1 IR 627, where Keane CJ added a further limb to the test in effect. He said that it must be reasonable for the plaintiff to have construed the words of the other party in that way.

The issue was considered by Supreme Court again more recently in *Murphy v Grealish* [2009] 3 IR 366. In that case, there had been an admission of liability, protracted correspondence and a letter requesting confirmation that

a cheque would be sent by the insurance company in relation to the special damages aspect of the claim. Geoghegan J stated at page 373 paragraph 19 that:

"It clearly could not be the law that merely because there was an admission of liability a plaintiff could ignore the Statute of Limitations with impunity."

However, in ruling in the plaintiff's favour, he held, at page 376 paragraph 30, that:

"This case history involves a combination of conduct which can reasonably be construed as an implied representation combined with a consequence that in all the circumstances it would be unconscionable to resile from the implied representation arising from the conduct."

These cases show that, while there is an equitable line of authority under which a plaintiff can be estopped from pleading the SOL 1957, it is applied stringently by the Irish courts.

## Limitation periods and arbitration

Without an agreement to the contrary by the parties, the SOL 1957 applies to arbitration in the same way as it applies to actions taken in the courts (*section 75*). Accordingly, the limitation periods applicable to causes of action in the courts will apply to disputes referred to arbitration.

For the purposes of calculating whether a reference of a dispute to arbitration is made in time, the arbitration will be deemed to have been commenced:

- When a party serves written notice requiring appointment of an arbitrator.
- Where the arbitration agreement designates the arbitrator, when written notice requiring that the dispute is submitted to that nominated arbitrator.

(*Section 74, SOL 1957*.)

Where a dispute is governed by alternative dispute resolution such as arbitration, mediation or expert determination, it is important to review the applicable agreement at the outset to establish whether a shorter limitation period has been agreed which will usurp the normal statutory limitation periods and govern the dispute.

## Impact of COVID-19 restrictions on limitation periods

The effects of the COVID-19 pandemic may impact on limitation periods in several ways. These include:

- Difficulties in obtaining instructions from clients to prepare and issue proceedings or get an affidavit signed.
- Solicitors being ill or unavailable at short notice and unable to progress work on a file.
- Difficulties in getting claim forms issued at court.

Therefore, it is important to be particularly aware of limitation periods and to ensure that this information is documented and shared with other relevant parties.

It may be good practice to leave extra time in which to issue a claim. Consideration may be given to entering into a standstill agreement which has the effect of suspending or extending a statutory or contractual limitation period (see *Standstill agreements*).

Although the court offices remain open by appointment only and facilitate filing court documents including new proceedings by post, there is legal authority to the effect that limitation periods are stayed or frozen when the court offices are not open.

In the case of *Poole v O'Sullivan* [1993] 1 IR 484, the time limit on an action had expired resulting in the plaintiff being barred from bringing his action. The Central Office of the High Court was not open on the day the statute expired, which in this case fell on a weekend. The summons was issued on the following business day. The court held that since the plaintiff was unable to set the action in motion that the period in the SOL 1957 should be interpreted as ending "on the next day upon which the offices of the court are open and it becomes possible to do the act required".

New amending legislation is the only way to ensure legal certainty around time limits during the current crisis. For now, this judgment provides some guidance whereby it provides that should a court office closure become an obstacle in bringing an action during the limitation period, the SOL 1957 should be construed as pausing and only running on days where the office is open.

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