



Limitation and professional negligence claims

If a client suffers financial loss as a result of negligent advice from a professional, then the general rule is that unless proceedings are issued within 6 years, the claim will be time barred (and therefore can not be pursued) if the professional raises a limitation defence.

Under the Limitation Act 1980 (“the 1980 Act”) in professional negligence claims this 6 year period begins to run from the date when more than minimal damage is suffered as a result of the negligent advice.

Problems can arise if the client is negligently advised but does not appreciate this at the time and only finds out that financial loss (and therefore damage) has been suffered as a result much later on. This was the situation in *Haward v Fawcetts*, a decision of the House of Lords in 2006. In 1994, Mr Haward bought a controlling interest in an agricultural machinery business. A business plan was prepared with the assistance of the Defendant firm of accountants, Fawcetts. Unfortunately, the business was not successful and required very large cash injections in order to continue to trade. Despite the introduction of this working capital, the business always traded at a loss and eventually failed in 1998.

In May 1999, Mr Haward began to wonder for the first time whether or not he had been properly advised by his accountants. Matters were then investigated but it was not until December 2001 that a claim in negligence was issued against Fawcetts.

Against this background, the Court had to determine whether or not Mr Haward’s negligence claim was time barred (since the original advice given by his accountants in connection with the purchase of the company had been given more than 6 years before the issue of proceedings). The House of Lords upheld the accountant’s limitation defence, which meant that Mr Haward could not bring his claim (even though it did appear that he had been negligently advised).

In reaching this decision, the Court considered whether or not Mr Haward could rely upon section 14 A of the 1980 Act. In summary, this section says that when a Claimant does not discover that he has been negligently advised until some time after the date of the original advice then an extended 3 year limitation period will apply, ie, the Claimant will have an additional 3 years within which to issue proceedings against the negligent advisor starting from the date when the Claimant first had both “*the knowledge required for bringing an action for damages in respect of the relevant damage*” and a right to bring the action (Section 14A (5) of the 1980 Act).

The question which the House of Lords considered in Mr Haward’s case was what was the degree of “knowledge required” in order for the extended three year limitation period to begin

to run? On the facts, Mr Haward's claim failed because he could not demonstrate to the Court that he only first began to suspect that the advice given by his Accountants might have been negligent only after December 1998 (ie, 3 years before the proceedings were issued). The date of "knowledge" was not when Mr Haward first knew, or was advised, that he might have a claim in negligence against his accountants. Rather the Court took the view that Mr Haward must have suspected well before December 1998 that there was at least a possibility that Fawcetts had been negligent in their advice, both in connection with the preparation of the business plan and the more general advice given as to whether the business was a good investment opportunity. The relevant date was, therefore, when Mr Haward had sufficient knowledge in order for him to at least begin to investigate the possibility that he had received negligent advice, such that his claim against Fawcetts was time barred.

The moral of this particular story is therefore that it is vitally important to seek legal advice as soon as it is first suspected that negligent advice has been given that has resulted in damage being caused. Otherwise, it may be too late to bring the claim.

Contact us

For further information please contact:

Kendal Litherland

DD 0845 055 6517

E kendal.litherland@berryman.co.uk

Berryman Park House Friar Lane Nottingham NG1 6DN

DX 10004 Nottm 1 **T** 0115 945 3700 **F** 0115 948 0234

W www.berryman.co.uk

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