SQUIRE PATTON BOGGS

Pensions Quick Guide

Limitation Periods

What Is a Limitation Period?

Different time periods, called "limitation" periods, are allowed for various types of claims. If the relevant limitation period is missed, it provides an absolute defence to a claim on the grounds that it is time-barred, irrespective of the strength of the underlying claim.

Mistakes and errors in relation to pension schemes may lay undiscovered for many years. Even once identified, they may not be acted upon before a limitation period has passed. If this happens, the potential for an employer, trustee or member to be compensated for such mistakes or errors may be lost. This quick guide:

- Identifies the key issues to think about if a potential claim is contemplated
- Highlights the need to move quickly to protect that potential claim
- Explains when it may be appropriate to abandon a potential claim

Note: This quick guide provides an overview only of the key issues. Limitation is a complicated area of law. If you think you have the potential to bring or be defending a claim then it is important for you to seek legal advice as soon as possible to ensure your position is adequately protected.

What Are the Frequently Used Limitation Periods?

Each type of claim (e.g. contract, negligence, breach of trust) has its own limitation period and triggers that start the limitation period clock running. On the next page is a summary of the types of claims frequently brought, together with their trigger start point and duration (i.e. their limitation periods).

The circumstances of a claim may involve more than one "type of claim" (e.g. there may have been a breach of contract and negligence). In these situations, there will be more than one limitation period to consider when deciding what action to take and when.

Note that a claim by a member against a pension scheme trustee for arrears of pension arising from a breach of trust is not subject to a statutory limitation period, but the specific rules of the scheme would need to be examined in each case in order to determine whether forfeiture or any other limitation might apply. Where a forfeiture provision does apply (whether or not it is discretionary), it typically applies in relation to benefits that are more than six years overdue.

Claims Involving Fraud/Deliberate Concealment/Mistake

Where a claim involves an element of fraud, deliberate concealment of facts or mistake, the trigger start point is postponed until the date on which the person has (or could with reasonable diligence have) discovered the fraud, deliberate concealment or mistake.

How Can You Stop a Limitation Period Expiring?

Simply considering a potential claim or complaint, raising it with the person who has committed the potential breach or giving them written notification of it is not sufficient to prevent the time within which to bring a claim from expiring. Limitation periods only stop running when proceedings are issued at court.

As an alternative to issuing proceedings, it may be possible to enter into an agreement (known as a "standstill agreement"). In a standstill agreement, the parties agree to pause the limitation clock for a defined period (known as the "standstill period") to allow investigations into the potential claim and any defences to be carried out and negotiations to take place over possible resolutions of the issue.

Once the standstill period expires, the limitation clock starts running again from where it left off and proceedings must be issued before the limitation period expires, to prevent the claim becoming "time barred". It is often possible to extend the initial standstill period by agreement if further time is required to investigate issues or carry out negotiations between the parties.

If a potential defendant is unwilling to enter into a standstill agreement, the only way to stop a limitation period expiring is to issue proceedings at court. However, if further investigations are desirable before proceeding further with a claim then it is possible to ask the court to put the proceedings on hold (known as a "stay") whilst those investigations or negotiations are carried out. Court proceedings used in this way are known as "protective proceedings".

What About Pensions Ombudsman Complaints?

Member complaints and disputes are most commonly dealt with through a scheme's internal dispute resolution process (IDRP) and The Pensions Ombudsman. See our #How2DoPensions quick guide on how to deal with an IDRP for more information.

Following an IDRP process does not stop a limitation period running in respect of any subsequent court claim or complaint to The Pensions Ombudsman.

In order for The Pensions Ombudsman to consider a complaint or dispute, it must be received within three years of either:

- The act or omission complained of
- The earliest date that the complainant knew or ought reasonably to have known that the act or omission had occurred (if later)

The Pensions Ombudsman has a discretion to handle complaints or disputes out of time, but this is rarely exercised. In addition, save for in relation to complaints of "pure maladministration", The Pensions Ombudsman must give effect to any valid defences based on limitation. This means that potentially valid complaints or disputes may not succeed, even if they are submitted to The Pensions Ombudsman within time, if they would be time barred if they had been brought before a court.

Overpayments and The Pensions Ombudsman

Particular issues arise as regards limitation periods in respect of recovery of overpayment cases considered by The Pensions Ombudsman. In these circumstances, the limitation period stops running when a scheme brings its claim to recover the overpayment, which is usually when its response to a member complaint is received by The Pensions Ombudsman's office.

If the recovery of the overpayment is sought by way of equitable recoupment (i.e. a reduction in future payments to reflect past overpayments), the six year limitation period does not apply.

The Pensions Ombudsman is currently considering how to deal with overpayment complaints in light of recent court decisions on these points.

Type of Claim	Trigger	Duration
Breach of contract	Date of the breach of contract (even if the breach is undiscovered)	Six years
Breach of deed	Date of the breach of deed (even if the breach is undiscovered)	12 years
Negligence – where damage suffered is known at the time it is caused	Date on which the damage attributable to the negligent act or omission is suffered	Six years
Negligence – where damage suffered is not known at the time it is caused	Date on which a person had a broad knowledge* of: • The act which caused the damage • The fact that the damage was attributable to the negligent act or omission • The identity of the negligent person	The later of: • Six years from the date the damage was suffered • Three years from date of knowledge Both of which are subject to a **longstop date** of 15 years from the date of the negligent act or omission
Breach of trust	Date on which the breach of trust occurred (save in cases of fraud, recovery of trust property from a trustee or when beneficial entitlement has not yet vested)	Six years
Unjust enrichment (e.g. overpayments)	Date on which the benefit was received (but with the potential for an extension until the mistake is uncovered)	Six years
Breach of statutory duty (e.g. failure to pay a section 75 debt)	Date of the breach of the statutory duty	Six years

*Knowledge = actual knowledge and/or the knowledge a person could have reasonably been expected to acquire.

Some Practical Points

Do…	Don't…
Do seek legal advice (without delay) as soon as you think you might want to investigate making or defending a claim.	**Don't** forget to consider and act on limitation issues just because time is required to consider/investigate the matter, negotiate with opponents etc.
Do think about using equitable recoupment as a way to recover overpayments.	**Don't** think your position is protected simply because you have notified the other side of a complaint.
Do use standstill agreements or protective proceedings where appropriate to preserve limitation periods.	**Don't** let limitation periods expire accidentally whilst you are concentrating on other matters – diarise dates so you can act on them in advance.
Do seek legal advice if you are undertaking a guaranteed minimum pension or other benefit rectification exercise and there are underpayments, in case there are forfeiture provisions that need to be considered.	**Don't** automatically treat a provision in the scheme rules that allows trustees to apply unclaimed monies after six years as a forfeiture provision – take legal advice.

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