

## Facts

Following refurbishment works, the claimant was left with a leaky basement, which caused damage to the building, due to the negligence of various parties, including the structural engineers. The parties involved, including the structural engineer, devised a remedial scheme to fix the problem in 2002. The remedial scheme proved defective causing additional damage to the building. Between 2002 and 2008, damp patches appeared. By 2008 water had begun to accumulate under the floor. However, the claimant did not commence a claim against the construction team until 2010. The defendants then asked the court to strike the claim out. The defendants argued that proceedings had not been commenced within the 6 years permitted under the Limitation Act 1980, therefore should not be permitted.

## Key Points

Section 2 Limitation Act 1980 (the "Act") states that claims for breach of a duty of care, in this case the duty to not act negligently, must be commenced within six years of the damage being suffered. In this case the damage occurred at the point the defective remedial works had been completed in 2002. The claim was not commenced until 2010. In accordance with section 2 of the Act, the claimant was not entitled to bring its claim as it only did so after over 6 years from the date on which the damage occurred had elapsed.

However, section 14A of the Act states that in negligence claims, where facts relevant to the claim are not known at the date on which the damage occurs a different time limit on bring claims can apply. Instead, a claimant will be able to bring a claim within the longer of six years from the date of damage, or three years from the date on which the claimant has both the knowledge and right to commence the claim.

In Renwick, a previous case was followed which explained that a person has the "knowledge required for bringing an action" when they appreciate in general terms that a particular act (or failure to act) caused damage and that they must have "more than merely a suspicion". Any claim concerning the original negligence was not permitted as it fell outside the usual six year period. However, the judge would not rule out a second claim for the negligent advice given by the engineers concerning the remedial work under s14A. The claimant had brought this claim within 3 years of becoming aware it had a claim for defective remedial works.

## Implications for Engineers

- Highlights the potential difficulties engineers can get themselves into when assisting with remedial works.
- Illustrates that even six years after works are finished, limitation will not necessarily protect a negligent party from being liable for damages resulting from latent defects.

Click here for the judgment on [Baillii](#):

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Their partners and lawyers have gained experience in private practice, in-house at surveying practices and within the claims departments of insurers, which gives them a real breadth of experience not available to many others when considering claims. For further information please contact Tom Green on 020 3060 6536.

Howden Insurance Brokers have operated in the Engineering Sector for over 15 years and look after the Professional Indemnity insurance requirements of over 400 engineering firms. If you wish to discuss your insurance requirements please contact Joanne Robinson or Taurai Ushe on 020 7648 7210 / 020 7645 9312 or by email <mailto:jrobinson@howdengroup.com> / <mailto:tushe@howdengroup.com>.

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