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Professional negligence: limitation in 'midnight deadline' cases

Matthew and others v Sedman and others (2021) UKSC 19

This appeal concerned the calculation of limitation periods. The issue was whether, where a cause of action accrued at, or on the expiry of, the midnight hour at the end of a day, the following day counted towards the calculation of the limitation period.

The appellants were the current trustees of a trust (the "Trust"). They replaced the respondents, who were the trustees of the Trust until their retirement in 2014. The Trust had a shareholding in Cattles plc, a listed company. In 2007 Cattles plc published an annual report, in April 2008 this report was included in a rights issue prospectus. The Financial Services Authority later concluded that both the report and rights issues prospectus contained misleading information. Trading in Cattles plc's shares was subsequently suspended, and in February 2011, schemes of arrangement were approved in respect of Cattles plc and a subsidiary, Welcome Financial Services Ltd ("Welcome").

Because of the misleading information in the annual report and prospectus, the Trust had a claim against Cattles plc and Welcome under the schemes. A valid claim could have been issued up to midnight (at the end of the day) on Thursday 2 June 2011.

The respondents did not make a claim on or before 2 June 2011. The appellants therefore commenced proceedings in negligence and breach

IN BRIEF

The UKSC upheld the Court of Appeal's decision that in 'midnight deadline' cases the day following the expiry of the midnight deadline should be included for limitation purposes, as it is a whole day.

The appellant's claim form was therefore issued one day late and the claim was statute barred.

of trust against the respondents (the "Welcome Claim") by a claim form issued on Monday 5 June 2017. Under the Limitation Act 1980, actions brought in tort, contract, and breach of trust cannot be brought after the expiration of six years from the date on which the cause of action accrued. The respondents contended that the Welcome Claim was issued out of time and was therefore statute-barred.

The issue in this appeal was whether Friday 3 June 2011, the day which commenced immediately after the expiry of the midnight deadline for bringing a claim in the Welcome Scheme, counted towards the calculation of the six-year limitation period. If Friday 3 June 2011 was included, the limitation period expired six years later, at the end of Friday 2 June 2017. In that case, the Welcome Claim was brought out of time. If Friday 3 June 2011 was excluded, then the limitation period expired six years later, at the end of Saturday 3 June 2017.

However, in order to bring the Welcome Claim, a claim form had to be issued. That could only be done when the court office was open. The court office was shut at the weekend. The parties therefore agreed that if Friday 3 June 2011 was excluded, the final day on which proceedings could be brought was Monday 7 June 2017. In that case, the Welcome Claim was brought within the six-year limitation period and was not statute-barred.

The Court of Appeal held that Friday 3 June 2011 should be included in the limitation period. It accepted that in cases where a cause of action accrued part-way through a day, that day was ignored in the calculation of time for limitation purposes (e.g., personal injury cases). But a different rule applied where the cause of action accrued at, not after, midnight (a "midnight deadline case"). In a midnight deadline case, the day following the expiry of the midnight deadline should be included for limitation purposes, as it was a whole day. The Welcome Claim was therefore brought out of time.

Dismissing the appellant's appeal, the Supreme Court held that in a midnight deadline case, there was a complete undivided day following the expiry of the deadline, which should be included when calculating the limitation period. The Welcome Claim was therefore brought out of time.

The appellants primarily relied on four authorities to establish what they submitted was a long-standing rule that the day on which a cause of action accrued should be excluded from the calculation of a limitation period. On analysis, those cases indeed established a general rule that where a cause of action accrued part-way through a day, that day was excluded for limitation purposes. However, none of them considered the position in relation to midnight deadline cases, where in practical terms the day of accrual was a complete undivided day.

The only midnight deadline case was *Gelmini v Moriggia (1913)*, in which the High Court held that as a cause of action could be brought throughout the day following the expiry of the midnight deadline, that day should be included for limitation purposes. *Gelmini* was correctly decided and to the extent it was disapproved in later cases, it ought to have been distinguished as laying down an exception to the general rule.

The reason for the general rule that the day of accrual of the cause of action should be excluded from the reckoning of time was that the law rejected a fraction of a day. The justification for that rule was straightforward; it was intended to prevent part of a day being counted as a whole day for the purposes of limitation, thereby prejudicing the claimant and interfering with the time periods stipulated in the Limitation Act 1980. However, in a midnight deadline case, even if the cause of

action accrued at the very start of the day following midnight, that day was, for practical purposes, a complete undivided day. Realistically, there was no fraction of a day. The justification in relation to fractions of a day therefore did not apply in a midnight deadline case.

The effect of excluding a full undivided day in a midnight deadline case from the calculation of time would be to give the claimant the benefit of a limitation period of six years and one complete day. That would distort the six-year limitation period laid down by Parliament, and would prejudice the defendant by lengthening the statutory limitation period by a complete day. Accordingly, here, because Friday 3 June 2011 was a whole day, it should be included in the calculation of the limitation period.

Ross Baker of BLM, a member of the FOIL Professional Indemnity Sector Focus Team, said *“the decision handed down by the Supreme Court is an entirely pragmatic one and it should be welcomed by the insurance industry for its clarity. The judgment considered the prejudice that defendants would face if limitation periods were artificially extended to include an additional whole day. This clarity will no doubt assist insurers and policyholders when considering limitation in midnight deadline cases.”*

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