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## FOIL UPDATE 17<sup>th</sup> May 2022



# Section 41 of the Consumer Protection Act 1987 and Limitation: Some clarity for Manufacturers but the door may still be ajar for Commercial Claimants

### IN BRIEF

The High Court has ruled that s.41 Consumer Protection Act cannot be used by an individual claimant, to circumvent the 10 year limitation longstop on actions being brought.

#### Introduction

Individual consumers of products are not able to circumvent the limitation longstop restricting claims for damages being brought under the Consumer Protection Act 1987 ("the CPA") more than 10 years after the product is first put into circulation.

In the case of *Wilson v Beko* [2019] EWHC 3362 (QB) the Claimant attempted to use s.41 of the CPA to circumvent the longstop. However, the High Court ruled against this approach.

The ruling had a significant effect on product manufacturers and their insurers who feared the elimination of the longstop for individual Claimants could have opened the floodgates to new and historic claims.

#### Background

The Claimant argued that they could bring their claim for a breach of statutory duty under s.41(1) of the CPA (Part II) despite the 10-year longstop imposed by Part I of the CPA which had expired.

The Defendant argued that the use of s.41 would be contrary and inconsistent with the Product Liability Directive and CJEU case law.

## **Judgment**

Mr Justice Julian Knowles ruled that an action under s.41 could not be used to circumvent the 10-year longstop imposed under Part I of the CPA. The Judgment was not appealed to the Court of Appeal.

## **Comment**

The verdict in this case was important for all practitioners who work in the field of Product Liability. Had the High Court ruled in favour of the Claimants the case could have had far reaching effects for manufacturers.

The limitation longstop under the CPA has always provided manufacturers and producers of products with certainty. However, had the longstop been removed in its entirety by s.41 this could have led to historic cases, which had been presumed to be statute barred, being reignited as well as imposing a significantly more onerous and potentially open-ended obligation for the entire life of a product.

However, there may still be a role for s.41. The claimant in *Wilson* was out of time to bring a claim under Part I of the CPA so wished to bring a claim under Section 41 instead. The Court indicated that the Claimant fell within the class of persons who (but for the limitation period) could bring a claim under Part I and the Directive. To allow the Claimant to bring a claim outside Part I (i.e., under s.41) would allow him to bring a strict liability claim outside the 10-year limitation period, and that would be inconsistent with the directive. The Court therefore indicated that if a Claimant can bring a claim under Part I then he or she is not permitted to bring a claim under s.41 (paras 110-115 of the Judgment).

In other words, the court did not say the 10-year long stop applies to s.41. Rather it said the Claimant (as an individual) cannot bring a claim under s.41 at all. The Court noted that s.41 had only been used by commercial claimants previously.

Section 11A Limitation Act 1980 states it applies only to actions under Part I and it appears implicit from the judgment that the Court did not think the 10-year longstop applied to s.41.

Therefore, *Wilson* indicates that individuals cannot bring claims under s.41 because they already have Part I. However, commercial Claimants, who do not have a claim under Part 1, can still use s.41. That leaves the question as to what is the limitation period for s.41? There is no definitive case law on this issue currently but the point was at least explored in *Goodlife Foods Ltd v Hall Fire Protection Ltd [2017] EWHC 767 (TCC)* and the Court came close to endorsing a 6-year period (from the date the claimant is "affected").

## **Conclusion**

Whilst the decision was a blow for property insurers pursuing subrogated claims for individuals, product manufacturers and their insurers have been relieved by the High Court's ruling.

However, the position on limitation and s.41 for Commercial Claimants could still potentially allow for a lengthier limitation period than under Part 1 of the CPA. We will need to await further judicial decisions on this aspect before clarity can be drawn on the issue.

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