

## Claims for payment – when is it too late?

One of the first things you learn as a law student is that the standard limitation period for claims in contract is six years in the UK. But when do the six years start running?

That is the question the court had to answer in *Hirst v Dunbar*. The construction works were completed in December 2012, payment demanded in March 2014 and legal proceedings issued in August 2019. Accordingly, limitation would be a problem if time started running when the work was completed but not if the six years ran from the date of the demand.

In the event, the claim failed because there was no contract in place. However, the court went on to consider the limitation point and give some helpful guidance on an issue that had not previously been ruled upon.

Mr Hirst relied on the Scheme for Construction Contracts, which set out a default payment mechanism when payment isn't expressly dealt with in a contract. Paragraph 6 of the Scheme says that the payment of the contract price is 30 days after the completion of the works or the making of a claim, whichever is later.

In turn, Mr Hirst said that his right to be paid arose under paragraph 9 of the Scheme, which was when a payment notice should have been issued five days after the due date for payment.

The court disagreed. The starting point is that the right to be paid arose when the works were completed and clear wording is required to displace this presumption. The

Scheme didn't amount to such wording. The situation would be different if the contract required a further condition to be satisfied before the entitlement to payment was satisfied, such as the issue of a certificate by a party appointed to administer the contract.

The Scheme didn't have this effect, particularly as the payment mechanism was only engaged following a claim for payment. It would be unfair to let the receiving party stop time running for limitation purposes by delaying issuing a claim.

For one reason or another, there is often a considerable delay pursuing claims for payment in a construction context. This case is a reminder that longstop date for doing so is likely to be six years after the work was done and that inventive arguments based on the Scheme are unlikely to assist.

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