

Limitation in a “midnight deadline” case starts to run at midnight, says the Supreme Court

In certain cases, limitation can turn on minutes rather than days. In *Matthew v Sedman* [2021] UKSC 19 the Supreme Court considered the approach to limitation in the limited class of cases where the time for doing an act expires on the stroke of midnight, and the failure to do that act gives rise to a claim in negligence or breach of contract. The unanimous conclusion was that the following day should be included in the calculation of the limitation period, so the claim was out of time.

Matthew concerned a failure by the professional trustees of certain will trusts to submit claims on behalf of the trusts under a court-sanctioned scheme of arrangement. Any claim had to be submitted “on or prior to the Bar Date” of 2 June 2011, which meant by midnight on that date.

The claim against the trustees was issued on Monday 5 June 2017, the first working day after 3 June 2017. It was common ground that if Friday 3 June 2011 was excluded from the calculation of the limitation period, as is the general rule where the cause of action accrues during the course of the day, the claim had been brought in time. The claimants argued that 3 June 2011 was “the day of the event” giving rise to the cause of action and should be excluded in accordance with the general rule. The defendants argued, however, that in a “midnight deadline” case, the cause of action accrued on the stroke of midnight and the following day should not be excluded from the calculation of the limitation period. The claim should therefore have been brought by Friday 2 June 2017 at the latest.

The Court of Appeal, upholding the decision of HHJ Hodge QC at first instance, agreed.¹ The cause of action had accrued by, not in, the first nanosecond on 3 June 2011.

From a philosophical standpoint, arguably that statement takes the matter no further, since 24.00 on 2 June 2011 and 00:00 on 3 June 2011 are the same moment. As a matter of practicality, however, the claimants had the whole of that day to begin proceedings.

In the Supreme Court, the Defendants argued i) that the cause of action in fact accrued on 2 June 2011 because of the midnight deadline, so that even if the general rule was applied, 3 June 2011 should be excluded from the calculation; and ii) that if that was wrong, in a midnight deadline case, the claimant had the whole of the day following the expiry of the deadline to bring a claim, so there was no justification for excluding the day of accrual from the calculation of the limitation period.

The Supreme Court accepted the latter argument and dismissed the claimants’ appeal. Whether the cause of action accrued on 2 June 2011 or 3 June 2011 made little difference in practical terms. The court agreed that there is a general rule that where a cause of action accrues part-way through a day, that day is excluded for limitation purposes. That was because the law rejects a fraction of a day; the reason for the rule was to prevent part of a day being counted for the purposes of limitation, thereby prejudicing the claimant and

¹ [2019] EWCA Civ 475.

interfering with the limitation periods laid down by Parliament. However, none of the cases relied upon by the Claimants considered the position in relation to midnight deadline cases, where in practical terms the day of accrual is a complete undivided day.

The effect of excluding a full undivided day in a midnight deadline case from the calculation 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. The case of *Gelmini v Moriggia* [1913] KB 549, the only midnight deadline case the parties had identified, was correctly decided, and should be understood as establishing an exception to the general rule in midnight deadline cases.

Significance

The decision clarifies when limitation starts to run in the specific circumstances where a midnight deadline is missed. Midnight deadline cases are an exception to the general rule that the law ignores a fraction of a day when calculating limitation.

It is unlikely, in the writer's view, that the exception will be further extended. It is clearly arguable that in terms of prejudice, there is little difference between having to start a claim at midnight and having to start it at, say, 12.05 am (unlikely in the contractual context, perhaps, but quite possible in a personal injury context). However, the courts are unlikely to be attracted to arguments that open up the possibility of having to weigh the question of prejudice in every case. The general rule, with an exception confined strictly to midnight deadline cases, has both logic and clarity.

As ever, the best advice for claimants is not to leave it to the last minute to issue a claim.

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