

## CASE NOTE: S14A Limitation Act 1980 in the House of Lords

In *Haward v Fawcetts* [2006] UKHL 9, in which the Opinions have been delivered today, the House of Lords has considered the requirements of actual knowledge in s.14A of the Limitation Act 1980 for the first time. Five substantive speeches have been delivered and, although the case was determined by reference to the burden of proof and the particular approach to the evidence before the trial Judge, the discussion of the principles will be of general application, particularly to professional indemnity and clinical negligence claims.

The case is unusual in that constructive knowledge played no part.

Although reversing the Court of Appeal on its consideration of the facts, the majority appear to have approved of the account of the law provided by Jonathan Parker LJ. The other highlights include:

1. The general disapproval of the concession which led to the reasoning in *HF Pension Trustees v. Ellison* [1999] Lloyd's Rep PN 489. Payment out of funds is not necessarily "damage" (Lord Walker para 61; Lord Scott para 53; Lord Mance para 117).
2. The approval of the approach of the Court of Appeal in *Hallam Eames v Merrett Syndicates* [2001] Lloyd's Rep PN 178 (Lord Scott para 49; Lord Walker para 45; Lord Walker para 66; Lord Mance para 120).
3. Confirmation that the knowledge required is broad knowledge that it was possible to attribute damage to the matters complained of with sufficient confidence to justify embarking on pre-action preliminaries.

It is also possible to discern a continuing desire to abbreviate, rather than to extend, limitation periods where possible: Lord Nicholls para 2; Lord Scott para 54; Lord Brown para 91.

Lord Walker suggests that the need for specialised technical expertise, required to comprehend the basic facts rather than to detect negligence, may be a significant feature in cases in which the starting date has been delayed.

The case emphasises again the importance of considering the precise manner in which a claim which may face a statute bar is stated and pleaded.

Their Lordships' approaches to the disposal of the case on its facts differ. Thus while the applicable principles have been agreed the manner in which they have been applied may well generate ongoing practical difficulties as parties rely upon the differences in their application to *Haward's* facts.

Michael Pooles QC of Hailsham Chambers appeared for *Haward* in the Court of Appeal and the House of Lords.