

## Dangers in delaying unfair prejudice petitions



Unfairly prejudicial conduct towards shareholders can often take place over a long period of time. If the shareholders wish to seek a remedy in this respect then they need to be aware of the time limits that apply.

### Unfair prejudice petitions

A shareholder may petition the court for relief under section 994 of the Companies Act 2006 on the basis that the affairs of a company are being, or have been, conducted in a manner that is unfairly prejudicial to the interests of its members. The conduct complained of must be both “unfair” and “prejudicial” and commonly encountered grounds emanate from breaches of the agreements between shareholders, or of a company’s articles of association, or of the directors’ fiduciary duties. Typical examples are the improper dilution of a minority’s shareholding, a failure to pay dividends to shareholders often coupled with excessive remuneration of directors, and mismanagement.

If the court finds there has been unfairly prejudicial conduct, it has a wide discretion to make any order to fix the relationship between shareholders, but it will most commonly order the purchase of the petitioner’s shares at a fair value (purchase order).

### Limitation and the doctrine of laches

Until recently, it was thought that unfair prejudice petitions were not the subject of a statutory limitation period. Limitation acts as time-bar to when a claimant must issue legal proceedings at court and provides a proposed defendant with a complete defence under the Limitation Act 1980 if it is missed.



Since it had been believed there was no limitation period, the courts had previously applied the equitable doctrine of laches in cases of unfair prejudice petitions. Laches prevented a shareholder from complaining about a breach by reason of his or her delay in complaining about it. The intended rationale was to discourage old grievances being dredged up in the courts.

Whilst every case is decided on its own facts, an example of a prior decision of the High Court on this point was a finding that the court should not countenance an unfair prejudice petition issued 9 years after the events complained of.

## The Court of Appeal judgment

The Court of Appeal, in the case of *THG Plc v Zedra Trust Co (Jersey) Ltd*, has now overturned 40 years of received wisdom by deciding that unfair prejudice petitions *are* subject to the time-bars in the Limitation Act 1980. Specifically, an unfair prejudice petition which seeks a purchase order must be presented to the court within 12 years of the cause of action, and petitions which seek only the payment of money (which are rarer) must be presented to the court within 6 years.

## Conclusion

Shareholders now know when too late really means too late for issuing unfair prejudice petitions.

Until another court settles the issue, there will be some uncertainty about the application of the doctrine of laches in unfair prejudice petitions. It is generally considered inappropriate for a court to dismiss a claim for inordinate delay if it is brought within an applicable statutory limitation period. It is therefore conceivable that the Court of Appeal's decision might come to the rescue of a tardy petitioner whose petition now brought within the correct limitation period might previously have been barred by the doctrine of laches, even if the court was keen to discourage this suggestion.

Whilst the decision is interesting as a reminder that received legal wisdom can sometimes be wrong, its impact may in fact be limited as in practice relatively few claims are raised so long after the events in question.

## How we can help

Shareholders should seek prompt legal advice to avoid their claims being time-barred. Current complaints and disputes are also more conducive to being resolved in a shareholder's interests. If you have a question or need advice about your rights as a shareholder, please contact our expert [commercial dispute resolution team](#).



[Justin McConville](#)



Managing Associate