

Six years is no limitation for directors in breach of fiduciary duty



This article has been reviewed and is up to date as of 10 June, 2020.

Directors may not be able to rely on the standard six year limitation period if they are in breach of their duties to their company.

Under the Limitation Act 1980 ('the Act') most legal claims become "statute barred" after 6 years. This means that they can no longer be pursued by court proceedings. However, there are certain exceptions within the Act.

One of these is contained in s.21 of the Act and applies to claims relating to fraudulent breach of trust by a trustee. It has been long established that directors of a company can be trustees for these purposes but there has been some doubt as to how far this extends.

The February 2017 Court of Appeal case of *First Subsea Ltd v Balltec Ltd & others* has now clarified that it essentially applies to any fraudulent breaches of fiduciary duty by a director. What this means is that if a breach can be categorised as fraudulent then companies can potentially bring claims against directors long after the event.

In this respect, fraudulent does not have the same meaning as in the criminal context. It means a deliberate act where there was an absence of honesty or good faith, and that can include where the director was reckless as to the consequences of his actions.

To summarise, companies and directors should not assume that potential claims for breach of fiduciary duty are



statute barred after six years. If the breach was dishonest, in bad faith or reckless then a longer period may well apply.

Written by



[Ed Weeks](#)

Partner