

PART I

INTRODUCTION

1. WHY DOES THE PRESENT LAW NEED REFORM?

1.1 Our Sixth Programme of Law Reform¹ recommended that “there should be a comprehensive review of the law on limitation periods with a view to its simplification and rationalisation.” We noted that the law is “uneven, uncertain and unnecessarily complex” as demonstrated by the following examples:

- (1) Adrian is injured when operating an unsafe electric mower. He seeks compensation for his injuries. If he sues the manufacturer in the tort of negligence, or the seller of the mower for breach of contract, he has three years from the date of the injury to bring his claim, subject to the courts’ discretion to extend time. If he sues the manufacturer under the Consumer Protection Act 1987 (so as to avoid having to prove negligence) he has three years from the date of the injury to bring an action, subject to the court’s discretion to disapply the period; but his right of action under the 1987 Act is extinguished entirely if he does not sue within 10 years from when the mower was first bought.
- (2) Barbara was sexually abused by her uncle, Colin, from a young age until she was 14 years old. She is now 25 and suffers from a depressive illness and personality disorder. She has recently come to realise that her illness and disorder can be attributed to Colin’s abuse. But her action against Colin for trespass to the person will be time-barred (the limitation period being six years after she was 18). In contrast, if she sues her mother, Dorothea, in the tort of negligence for failing to take reasonable steps to stop the abuse, which she knew about, Barbara will have three years from when (after the age of 18) she knew that her illness and disorder could be attributed to the abuse; and that period could be disapplied at the discretion of the courts.
- (3) Fred has an extension built to his home. Several years later, it starts to crack because some of the materials used were inadequate. If he sues his builder for breach of contract in using inadequate materials, his action is barred six years² after the house was built, even though he could not reasonably have known of the breach of contract by then.
- (4) Gillian is a name at Lloyd’s. Her underwriting agent has negligently exposed her to unacceptable risks so that she has suffered economic loss. She is allowed six years from the date of the loss, or three years from when she knew of the negligence or the loss, if later, to sue for negligence, subject to a long-stop of 15 years from the date of the negligence. If her agent has deliberately concealed facts from her, the running of time will be postponed. The House of Lords has recently decided what happens when

¹ Law Com No 234.

² If the contract was made by deed, the limitation period would be twelve years.

the facts were concealed by the defendant after the loss has been caused rather than before.³ One of the majority, Lord Nicholls, accepted that the decision produced absurdity (although, in his view, less absurdity than the alternative favoured by the dissenting Law Lords and by the majority in the Court of Appeal!).

- 1.2 The present law on limitation therefore lacks coherence. This reflects its development in an ad hoc way over a long period of time. The limitation period applicable to actions for personal injury will depend on whether that injury is inflicted deliberately or negligently.⁴ The traditional rule for actions in tort now applies to only a minority of tort actions because so many exceptions have been grafted on to it: actions for personal injuries, defamation, and consumer protection among others, are all governed by separate and different regimes.⁵ And deliberate concealment can stop a period running but cannot suspend it once it has started to run.⁶ Closely linked to the law's 'unevenness' is its needless complexity. At a general level, to have so many different regimes can present a trap for the unwary and renders the law largely unintelligible to lay people. More specifically the provisions on, for example, breach of trust⁷ and on the meaning of "knowledge" in personal injury and latent damage and under the Consumer Protection Act 1987⁸ are very complicated. Simplification is both necessary and achievable. In some areas, the law also lacks certainty. For example, the scope of certain causes of action which are provided for in the Limitation Act 1980, such as actions for sums due under an enactment,⁹ is unclear. The correct interpretation of the provisions on conversion and on breach of trust is open to argument.¹⁰ One can also argue - although this is an issue on which we shall be seeking consultees' views - that the reliance on a judicial discretion to override a limitation period (as in an action for personal injuries and defamation or malicious falsehood)¹¹ renders the law too uncertain. The existence of this discretion means that the defendant in such cases is exposed to the risk of legal proceedings for an indefinite period.
- 1.3 In addition to its being 'uneven, uncertain and unnecessarily complex' the present law on limitation can be criticised for at least three other reasons. First, it is unfair. While there has been a move towards protecting plaintiffs who have suffered 'latent damage' from losing their cause of action before they could reasonably have known of it, the latent damage provisions are confined, outside the sphere of non-deliberate personal injuries, to the tort of negligence and to claims under the

³ *Sheldon v RHM Outhwaite (Underwriting Agencies) Ltd* [1996] AC 102. See paras 8.17 - 8.20 below.

⁴ See paras 3.30 - 3.36 below.

⁵ See paras 3.12 - 3.117 below.

⁶ See paras 8.17 - 8.20 below.

⁷ See Part IV below.

⁸ See paras 3.38 - 3.65, 3.94 - 3.98, 3.102 below.

⁹ Section 9 of the 1980 Act; see paras 7.10 - 7.21 below.

¹⁰ See paras 3.110 - 3.115 and Part IV below.

¹¹ Sections 33 and 32A of the Limitation Act 1980; see paras 3.66 - 3.76; 3.105 - 3.107 below.

Consumer Protection Act 1987.¹² They do not extend to other torts or to breach of contract. In contrast, the lack of a long-stop in personal injury actions may be regarded as unfair to defendants, who can never be sure that they are free of claims. Secondly, the law is in some respects outdated. Some of the periods laid down may be thought to reflect assumptions about what time limits were reasonable from an age before computers, when methods of communication and retrieval of information were slow and cumbersome. The most familiar limitation period of six years originated in the Limitation Act 1623. The Limitation Act 1980 does not naturally apply to the newly-recognised law of restitution founded on unjust enrichment.¹³ Moreover, the law has perpetuated traditional distinctions which have lost any relevance they once had. Examples include the restriction of the concept of acknowledgements to liquidated claims,¹⁴ and that actions on a contract executed by deed have a twelve year limitation period, while actions on a simple contract have a six year period.¹⁵ Thirdly, the present law wastes costs. Complex and uncertain law necessitates expensive legal advice and encourages litigation. Giving the courts discretion to disapply limitation periods in personal injury cases has engendered a huge number of cases; and yet that costly approach has recently been re-enacted in respect of defamation and malicious falsehood.¹⁶ To give defendants no long-stop means that in respect of some potential claims, for example, personal injury claims, they must retain records for many years, for fear that they may be exposed to claims many years after the act or omission in question.

- 1.4 Not surprisingly, therefore, the present law has been subjected to criticism¹⁷ and there have been calls by the senior judiciary for us to look at particular problems. For example, Sir Ralph Gibson has suggested that we should examine the interrelation of the limitation provisions for intentional and non-intentional injury, and the absence of any long-stop provision for personal injury claims and disabled plaintiffs.¹⁸ In the same case Millett LJ said that the differing limitation regimes applicable to intentional and non-intentional personal injury claims, and particularly the fact that the latter can be extended indefinitely (rather than for the

¹² See paras 3.87 - 3.92, 3.101 - 3.104 below.

¹³ See Part V below.

¹⁴ See para 8.32 below.

¹⁵ See para 3.1 below.

¹⁶ See paras 3.105 - 3.107 below.

¹⁷ See, eg, PJ Davies, "Limitations of the Law of Limitation" (1982) 98 LQR 249; D Morgan, "Limitation and Discretion: Procedural Reform and Substantive Effect" [1982] CJQ 109; MA Jones, "Latent Damage - Squaring the Circle" (1985) 48 MLR 564; A McGee, "Negligent Advice by solicitor: the limitation problem" [1988] PN 116; A McGee, "A Critical Analysis of the English law of Limitation Periods" [1990] CJQ 366; NJ Mullany, "Reform of the Law of Latent Damage" (1991) 54 MLR 349; A McGee "Trespass and Limitation" [1993] 109 LQR 356; WVH Rogers, "Limitation and Intentional Torts" (1993) 143 NLJ 258; MA Jones, "Accidental Harm, Intentional Harm and Limitation" [1994] 110 LQR 31; MA Jones, "Limitation Periods and Plaintiffs Under a Disability - A Zealous Protection?" [1995] CJQ 258; JRJ Allison, "Limitation of Actions in Child Abuse Cases" [1996] JPIL 19.

¹⁸ *S v W* [1995] 1 FLR 862, 867. See also *Headford v Bristol & District Health Authority* [1995] PIQR P180, P185.

six years proposed by the Tucker Committee)¹⁹ is “a matter deserving of the attention of the Law Commission for the law cannot be described as satisfactory”.²⁰ And Brooke LJ has suggested that we should examine the problems of interpretation caused by the definition of the date of knowledge which starts the limitation period running for personal injury claims.²¹

- 1.5 Although part of the purpose of this paper is to seek consultees’ views on the extent to which reforms are needed, we can say at the outset that, at this stage in our thinking, the case for a wide-ranging reform looks compelling. It would seem that only a comprehensive reform can produce a law of limitations that is coherent, certain, clear, just, modern and cost-effective.

2. THE BACKGROUND TO THE PRESENT LAW

- 1.6 The first “limitation periods” applied to various land-related actions. Before 1237 plaintiffs could not claim land on the basis of a seisin before the day in 1135 when Henry I died.²² Thereafter more recent dates were set for land-related claims with effect from 1237,²³ and 1275.²⁴ These dates were not changed until 1540, when for the first time limitation periods were set by reference to a fixed period of time rather than a fixed date.²⁵ Under the 1540 Act of Limitation, limitation periods of sixty,²⁶ fifty²⁷ and thirty years²⁸ were prescribed for land-related claims. The Limitation Act 1623 then provided that the period for writs of formedon should be limited to twenty years, and that no person should make entry into any lands later than twenty years after his right of entry accrued.
- 1.7 The limitation periods for land-related actions were reviewed by the Real Property Commissioners reporting to the House of Commons in 1829. Noting the multiplicity of remedies for land-related claims, and the equal variety of limitation

¹⁹ See para 1.13 below.

²⁰ [1995] 1 FLR 862, 866.

²¹ *Spargo v North Essex District Health Authority* [1997] PIQR P235, P245.

²² Sir F Pollock and FW Maitland, *The History of English Law before the time of Edward I* (2nd ed 1968), p 81.

²³ Under the Statute of Merton, 20 Hen III, c 8 (1235) a Writ of Right could not refer back to any time before Henry II’s coronation (1154); Writs of Mort d’auncestor, or Nativis and Entry could not refer to any time before “the last return of King John from Ireland into England”, and Writs of Novel Disseisin could not refer to time before Henry III’s first voyage to Gascony.

²⁴ Under the Statute of Westminster, 3 Ed I c 39 (1275), the earliest date which could be cited in a Writ of Right was moved forward to the coronation of Richard I (1189); for Writs of Mort d’auncestor, of Cousinage, of Aiel, of Entry and of Nativis the relevant date was changed to the coronation of Henry III (1216).

²⁵ See the Act of Limitation, with a proviso, 32 Hen VIII, c 2 (1540).

²⁶ For a Writ of Right.

²⁷ For Writs of Mort d’auncestor, Cousinage, Aiel, Writs of Entry or other possessory actions and avowries for rents or services, formedons in remainder and reverter and scire facias on fines.

²⁸ For claims based on the possession of the claimant.

periods applicable to them,²⁹ they recommended that the law be simplified “by giving all persons alleging that they are unjustly deprived of their estates the same time for enforcing their claims, with a certain indulgence to claimants under disabilities”. With respect to the length of the limitation period, they said:

Notwithstanding the anomalies to which we have adverted, the period of twenty years is the limitation which in this country is generally acted upon, and which, being established in some cases by statute, and found to suit the convenience of society, has been made the foundation of legal presumption, and the rule for affording or refusing equitable relief. We think that this should be retained, and with a few exceptions and qualifications made universal.³⁰

These recommendations were implemented in the Real Property Limitation Act 1833. The 20-year period was then reduced to 12 years by the Real Property Limitation Act 1874. This remains the relevant limitation period for most land-related claims.

- 1.8 Until the Limitation Act 1623 there were no limitation periods for other (that is, non-land-related) claims. This Act provided that a limitation period of two years should apply to actions on the case for words, a period of four years should apply to actions of assault and false imprisonment and for most other actions a limitation period of six years should apply. We have been unable to trace any information on the reason why the six year period was thought appropriate. No limitation period applied to contracts under seal (that is, specialties), actions of account between merchants, their servants or factors, actions brought for debt under a special statute, nor to actions brought on a record.³¹ These limitation periods were supplemented by the Civil Procedure Act 1833, which prescribed a limitation period of twenty years for actions on a bond or other specialty, a period of two years for actions to recover penalties, and extended the application of the six year period to actions of debt upon an award.
- 1.9 These limitation periods were reviewed by the Law Revision Committee, chaired by Lord Wright MR, in 1936.³² The report of that Committee noted that considerable problems were caused by different periods being laid down for different actions (not least because some limitation periods were set by reference to forms of action which had ceased to exist following the reforms made by the Common Law Procedure Act 1854 and the Judicature Acts 1873-75). The Committee noted that

²⁹ In some cases no limitation periods applied, as with claims for dower, escheat, waste - or any other action for which seisin did not need to be alleged. Further no statute of limitation applied to actions by the Church.

³⁰ First Report of the Real Property Commissioners, Parliamentary Papers, 1829, vol X, p 1, 40.

³¹ See 21 Jac 1, c 16, s 3; Sir W Holdsworth, *A History of English Law* (7th ed 1956), vol 4, p 533.

³² Law Revision Committee, *Fifth Interim Report (Statutes of Limitation)* (1936) Cmd 5334.

these difficulties would vanish if the differences in the periods of limitation prescribed for the different classes of common law actions, were abolished. Moreover, apart from the difficulties, it appears to us desirable, for the sake of simplicity, that a single period should, if possible, apply to all such actions.³³

- 1.10 With this in mind, the Committee recommended that a single limitation period should apply to actions in simple contract, and actions in tort. This period was set at six years: “the period which at present applies to the majority of such actions and is familiar to the general public.” This abolished the separate periods prescribed for actions for trespass to the person and for slander by the Limitation Act 1623.³⁴ The only distinct limitation period the Committee thought it advisable to retain (apart from land-related claims) was a limitation period for actions on a speciality. This was justified on the basis that

there ought, we think, to be a method by which rights can be protected from the operation of the statutes of limitation for a considerable period. Money is frequently advanced on bonds or debentures or similar instruments, which is not expected or intended to be repaid for a long period and on which payment of interest is waived or suspended.³⁵

However, the Committee thought that the existing period of twenty years was too long, and recommended its reduction to twelve years. The Committee did not recommend any revision of the twelve month limitation period applying under the Public Authority Protection Act 1893 for claims against public authorities, deeming it inadvisable to challenge the policy of that Act.

- 1.11 The Limitation Act 1939, which implemented the recommendations of the Law Revision Committee, therefore enshrined the principles that limitation periods applied to identified causes of action,³⁶ were for fixed periods and that they were triggered when the cause of action accrued.
- 1.12 The limitation period of six years applicable to most claims under the Limitation Act 1939 was reconsidered by the Law Reform Committee in 1977.³⁷ The Committee acknowledged that the selection of a particular period was to some extent an arbitrary decision, and noted evidence that the six year period was “unnecessarily long” particularly in the field of commerce. They considered

³³ *Ibid*, para 5.

³⁴ The Law Revision Committee felt that a shorter limitation period might be justified for particular forms of action: “the desirability of a speedy trial is probably more obvious in cases of actions for personal injuries and actions for slander than in other actions.” (*ibid*, p 9). However, in the Committee’s opinion, the need for more uniformity took precedence.

³⁵ *Ibid*, p 9. The Committee also noted that “difficulties of evidence are less likely to arise where the action is upon a contract under seal than where it is upon a simple contract, which may not even be in writing.”

³⁶ Though using a far simpler classification of causes of action than that adopted by the earlier statutes of limitation which preceded the reforms made to civil procedure in the nineteenth century.

³⁷ Law Reform Committee, *Twenty-First Report (Final Report on Limitation of Actions)* (1977) Cmnd 6923.

whether a period of four or five years should be adopted instead.³⁸ No shorter period was considered because, as the Law Reform Committee noted, “Adoption of a substantially shorter period might ... cause difficulty unless English law were to abandon, as the normal terminus quo, accrual of the plaintiff’s cause of action.”³⁹ The Committee agreed that for most claims the six year limitation period was unnecessarily long - but felt that the rule had become familiar to the general public as well as to lawyers, and should not be changed unless it could be shown that there was a substantial advantage in doing so.

1.13 A shorter limitation period was introduced for personal injury claims in 1954. The Law Reform (Limitation of Actions, etc) Act 1954 reduced the limitation period for personal injury claims to three years from the accrual of the cause of action.⁴⁰ This followed the recommendations of the Report of the Committee on the Limitation of Actions (although without fully implementing them - the Committee preferred a limitation period of two years, extendible at the discretion of the court to six years).⁴¹ The Committee justified the reduction on the grounds that such actions “ought generally to be brought within two years from the accrual of the cause of action, whilst evidence is fresh in the minds of the parties and witnesses.”⁴²

1.14 The limitation period for personal injury claims was examined again after the Court of Appeal’s decision in *Cartledge v E Jopling & Sons Ltd*⁴³ demonstrated the injustice of the limitation period for such claims expiring before the plaintiff was aware of his or her injury. The Committee on the Limitation of Actions in Cases of Personal Injury⁴⁴ proposed that the limitation period for such claims should end on the later of the day three years after the cause of action accrued, or twelve months after the plaintiff knew the material facts. This recommendation was implemented in the Limitation Act 1963. The twelve month limitation period was recommended after consultation with the Trades Union Congress and the British Employers’ Confederation - both bodies considered it acceptable.⁴⁵ Seven years later, the Law Commission noted that there was no evidence to suggest that twelve months was insufficient for the plaintiff to institute proceedings (even taking into account the fact that under the Limitation Act 1963 the plaintiff could not merely

³⁸ *Ibid*, para 2.52. The Law Reform Committee noted that the five year period had been accepted in Scotland, and that a four year period had a measure of international support (being the limitation period prescribed by the UNCITRAL Convention on Limitation in the International Sale of Goods).

³⁹ *Ibid*, para 2.52.

⁴⁰ This applied to claims against all defendants - the special protection for public authorities was abolished.

⁴¹ *Report of the Committee on The Limitation of Actions* (1949) Cmd 7740, para 22 (chaired by Tucker LJ).

⁴² *Ibid*.

⁴³ [1962] 1 QB 189 (CA) This decision was affirmed, after the *Report of the Committee on Limitation of Actions in cases of Personal Injury* (1962) Cmnd 1829, by the House of Lords: [1963] AC 758.

⁴⁴ *Report of the Committee on Limitation of Actions in Cases of Personal Injury* (1962) Cmnd 1829.

⁴⁵ *Ibid*, para 35.

issue a generally endorsed writ, but was obliged to prepare an affidavit setting out when the plaintiff acquired the relevant knowledge, and exhibiting a draft statement of claim).⁴⁶ However, because of concern that courts might be unable to deal with a very large number of plaintiffs discovering that they had a reasonable prospect of success in a justified claim for damages, and to bring English law into line with the position in Scotland, the Law Commission recommended that the limitation period be extended to three years from the time the plaintiff had knowledge of the material facts.⁴⁷ This change was implemented in the Law Reform (Miscellaneous Provisions) Act 1971. The Limitation Act 1975 (which followed a further investigation by the Law Reform Committee)⁴⁸ amended the definition of the plaintiff's date of knowledge, and introduced a judicial discretion to disapply the limitation period in personal injury cases where the court found it equitable to do so. This scheme for personal injuries - three years from discoverability with a judicial discretion to disapply the period - was consolidated in the Limitation Act 1980 and remains the law today.

- 1.15 It took longer for a separate limitation period to be introduced for actions for defamation. The limitation period for all defamation actions was six years under the Limitation Act 1939. Previously actions for slander actionable per se were subject to a limitation period of two years under the Limitation Act 1623.⁴⁹ Although the Law Revision Committee,⁵⁰ which recommended the uniform six year period for defamation actions, appreciated that the desirability of a speedy trial was more obvious in the case of actions for defamation than other tort actions, it gave a higher priority to achieving, as far as possible, a single uniform period for all actions. This six-year period was reviewed by the Faulks Committee on Defamation.⁵¹ This committee recommended that the period should be reduced to three years from the date of publication. It was noted in particular that a libel might give rise to causes of action on several separate occasions as it was published through the distribution of the offending book or article.⁵² Further the Committee laid stress on the injustice to defendants "who have the anxiety, expense and inconvenience of a possible defamation action hanging over them for many years after the publication of the matter complained of."⁵³ It was also felt that the plaintiff should be ready to bring legal proceedings far sooner than six years after publication if sincere in the desire to vindicate the reputation alleged to

⁴⁶ Though it appears that the Law Society had represented that this period was insufficient - see Limitation Act 1963, Law Com No 35 (1970) Cmnd 4532, para 22.

⁴⁷ Limitation Act 1963, Law Com No 35 (1970) Cmnd 4532.

⁴⁸ *Twentieth Report (Interim Report on Limitation of Actions: in Personal Injury Claims)* (1974) Cmnd 5630.

⁴⁹ Actions for slander not actionable without proof of special damage were treated as actions on the case, and subject to the six year limitation period. See Preston & Newsom, *Limitation of Actions* (1st ed 1940).

⁵⁰ Law Revision Committee, *Fifth Interim Report (Statutes of Limitation)* (1936) Cmnd 5334.

⁵¹ See Report of the Committee on Defamation (1975) Cmnd 5909, chaired by Faulks LJ, ch 18.

⁵² *Ibid*, p 148.

⁵³ *Ibid*, p 149.

have been damaged.⁵⁴ The Committee recommended that where the plaintiff was ignorant of the relevant facts for some time after publication the period should be capable of extension to a time twelve months after the plaintiff became aware of the relevant facts. This led to the Administration of Justice Act 1985, amending section 4 of the Limitation Act 1980 accordingly.⁵⁵

- 1.16 By the Defamation Act 1996, following the recommendations of the Supreme Court Procedure Committee,⁵⁶ chaired by Lord Justice Neill, the limitation period for actions for defamation and malicious falsehood has been reduced to one year, subject to a general judicial discretion to disapply the period where equitable to do so. The Committee laid stress on the evidentiary problems likely to afflict the defendants if actions were brought after this time.⁵⁷ It was also noted that experience had shown that only in exceptional circumstances was the plaintiff justified in delaying for more than a year in bringing proceedings. These circumstances included the plaintiff's failure to discover the facts, or improved financial circumstances allowing the plaintiff to bring proceedings after a certain period. The Committee felt that the plaintiff could be adequately safeguarded by the existence of the court's discretion.
- 1.17 The applicable limitation period for contribution claims by one tortfeasor against another was reduced from six years to three years by section 4(2) of the Limitation Act 1963. In 1975, concern was voiced by the Law Commission that this period might still be too long, noting that the defendant to the contribution action might not hear of a claim against him for several years after the accident, after which time "he may have forgotten what really happened and may be unable to trace vital witnesses".⁵⁸ However, when the Law Reform Committee reviewed the limitation period for contribution actions in 1977,⁵⁹ it noted that this caused few problems in practice, and indeed that the limitation period was rarely in issue "because well-advised plaintiffs in practice sue all likely defendants, and if only one is sued, he is quick to suggest that others are really to blame."⁶⁰
- 1.18 A limitation period of three years running from the plaintiff's date of knowledge, or six years from accrual, (with a long-stop of 15 years) for non-personal injury latent damage in the tort of negligence, was introduced by the Latent Damage Act 1986. The Law Reform Committee recommending this reform recognised the benefit of having a period which was familiar as a substantial argument for adopting the six year period for latent damage cases.⁶¹ However, it also

⁵⁴ *Ibid*, p 149.

⁵⁵ The limitation period for malicious falsehood, however, remained fixed at six years.

⁵⁶ *Report on Practice and Procedure in Defamation*, July 1991.

⁵⁷ "Memories fade. Journalists and their sources scatter and become, not infrequently, untraceable. Notes and other records are retained only for short periods, not least because of limitations on storage." *Ibid*, para VIII 2.

⁵⁸ Contribution, Law Com Working Paper No 59 (1975).

⁵⁹ *Twenty-First Report (Final Report on Limitation of Actions)* (1977) Cmnd 6923.

⁶⁰ *Ibid*, para 3.34.

⁶¹ Law Reform Committee, *Twenty-Fourth Report (Latent Damage)* (1984) Cmnd 9390.

acknowledged that where the plaintiff knows - or ought to know of his cause of action - it was not unreasonable to impose a more stringent time limit on him.

- 1.19 A limitation period of three years running from the later of the plaintiff's date of knowledge or the date the cause of action accrued (with a long-stop of 10 years) was introduced for claims under the Consumer Protection Act 1987 claims by Schedule 1 of that Act.⁶²
- 1.20 The law on limitation is now largely contained in the Limitation Act 1980. This consolidated the Limitation Act 1939, the Limitation Act 1975 and the Limitation Amendment Act 1980 (which was a 'paving' Act and made a number of miscellaneous amendments to the limitation provisions on, for example, certain loans, theft and land-related claims). The 1980 Act has itself subsequently been amended to take account of reforms, mentioned above, on latent damage in the tort of negligence, on defamation and malicious falsehood, and on claims under the Consumer Protection Act 1987. The scheme of the 1980 Act is as follows. Part I of the 1980 Act sets out the basic periods of limitation. Essentially these are categorised according to the cause of action which is under consideration; they vary from one year in the case of defamation actions to sixty years in the case of certain actions by the Crown for the recovery of land. Part II of the 1980 Act deals with situations in which the periods provided by Part I may be excluded or the running of time may be postponed. As regards exclusion, sections 32A and 33 of the Act confer upon the court a discretion to exclude the normal time limits in the respect of personal injuries or death, defamation or malicious falsehood. Acknowledgement, part payment, disability, fraud, concealment and mistake automatically postpone the running of time. Part III contains a number of supplementary provisions, of which section 35, relating to new claims in existing actions, is perhaps the most important.
- 1.21 Three points of significance for our project may be drawn from this brief history of limitation periods. First, the law of limitations has been subjected to a wide range of ad hoc reforms, following the recommendations of reform bodies charged with recommending reforms of particular pockets of law. This accounts for much of the law's incoherence and complexity. Secondly, the traditional approach of limitation periods running from accrual of a cause of action has led to problems, which the Legislature has tried to solve either by moving to a discoverability starting date (as in the Latent Damage Act 1986) or by relying on a judicial discretion to disapply the limitation period (as in the Defamation Act 1996), or by using both approaches (as in the regime for personal injuries). Thirdly, in so far as the length of limitation periods has been changed, the trend has been to shorter periods. For example, land-related claims are subject to a twelve-year period rather than the twenty-year period that once applied. And a period shorter than six years applies to claims for personal injuries (three years), defamation and malicious falsehood (one year), and contribution claims (two years). Having said that, the six year period has proved remarkably durable. Although we have been unable to trace any specific reason why it was adopted in the Limitation Act 1963,

⁶² In compliance with the United Kingdom's obligations under the Product Liability Directive 85/374 of 25 July 1985.

it is fair to assume that it reflected conditions that are no longer applicable (not least because of far more rapid methods of communication). Perhaps its durability reflects nothing more than lawyers' familiarity with it.

3. WHAT SHOULD BE THE GENERAL POLICY AIMS OF THE LAW OF LIMITATIONS?

- 1.22 It seems appropriate to identify at the outset the purposes which the law of limitations should serve and the conflicting interests which it must balance. In general terms, limitation of actions is necessary in the interests of defendants and of the state. In formulating a limitation regime one must also ensure that it works fairly for plaintiffs.

(1) The Interests of Defendants.

(a) Evidentiary Reasons

- 1.23 It has long been recognised that evidence deteriorates over time, and that this might put the defendant under a disadvantage:

The legislature thought it right ... by enacting the Statute of Limitations [1623] to presume the payment of that which had remained so long unclaimed, because the payment might have taken place and the evidence of it might be lost by reason of the persons not pursuing their rights.⁶³

- 1.24 A key concern was that the defendant would have lost relevant evidence, and be unable to defend the case adequately. Due to the loss of vouchers or other written evidence, and the death or disappearance of witnesses it might be very difficult, if not impossible, for a defendant to meet a claim made after several years had gone by. Even where witnesses were still available they might have no memory - or an inaccurate memory - of the events in question.⁶⁴
- 1.25 This continues to be an important justification for limitation periods. Although written records may be more durable than the memory of a witness, they may still be lost, or deteriorate in quality over time. The improvement in our capacity to record and store information in retrievable form has increased the amount of documentary information available, but in order to keep the amount of

⁶³ *Thomson v Eastwood* (1877) 2 App Cas 215, 248 per Lord Hatherley. See also *Mountstephen v Brooke* 3 B & Ald 147, 106 ER 614, where Abbott CJ noted that "the statute was passed to protect persons who were supposed to have paid the debt, but to have lost evidence of such payment". This presumption has been alternatively described by Best CJ in *A'Court v Cross* (1825) 3 Bing 329, 130 ER 540, 542: "The legislature thought that if a demand was not attempted to be enforced for six years, some good excuse for the non-payment might be presumed."

⁶⁴ See Law Revision Committee, *Fifth Interim Report (Statutes of Limitation)* (1936) Cmnd 5334, pp 8 - 9. The significance of delay is reflected in some of the authorities on applications to dismiss the plaintiff's cause of action for want of prosecution. As Lord Salmon noted in *Birkett v James* [1978] AC 297, 327 "When cases (as they often do) depend predominantly on the recollection of witnesses, delay can be most prejudicial to defendants and to plaintiffs also. Witnesses' recollections grow dim with the passage of time and the evidence of honest men differs sharply on the relevant facts. In some cases it is impossible for justice to be done because of the extreme difficulty in deciding which version of the facts is to be preferred."

information handled to manageable levels, and to reduce storage costs, many institutions have implemented document destruction policies, whereby documents not required for immediate needs are destroyed after a set interval.

Experience teaches us, that owing to the perishable nature of all evidence, the truth cannot be ascertained on any contested question of fact after a considerable lapse of time.⁶⁵

- 1.26 It may be argued that this disadvantage affects both parties to the litigation equally and that, as the plaintiff will be unable to prove his or her case if the evidence has deteriorated beyond a certain point, the defendant does not need the protection of the limitation period to counter the deterioration of evidence. In reality, the defendant may be at a substantial disadvantage. The events giving rise to the plaintiff's claim may be one of a series of similar transactions (for example, where the defendant is being sued for the negligent supply of services), and the defendant may have no particular reason to recall them or to preserve any related evidence. The defendant may also in many cases be unaware that the plaintiff had any grounds for making a claim against him or her.

(b) Certainty for the defendant

- 1.27 The Statutes of Limitation⁶⁶ were intended to protect defendants who had changed their position in the belief that no claim would be made.

There is another ground which may be referred to as a sound reason for imposing a limit, and requiring that parties should pursue their rights with diligence, namely, the change of position between the parties who are sought to be affected by any such stale demands as this.⁶⁷

- 1.28 This function led to the Statutes of Limitation being described as “acts of peace”,⁶⁸ or “statutes of repose”.⁶⁹ After a certain period of time, the defendants ought to be able to feel with confidence that they can treat as closed an incident which might have given grounds for a claim against them. It has been said that “long dormant claims have more of cruelty than of justice in them.”⁷⁰ If there is a claim against the defendant, he or she is entitled to have that claim resolved without undue delay. Where defendants are subject to potential claims for an indefinite period, they may suffer uncertainty and stress. They may also incur considerable costs,

⁶⁵ First Report of the Real Property Commissioners, Parliamentary Papers, 1829, Vol X, p 1, 39

⁶⁶ That is, the Limitation Act 1623 and its successors (both the Real Property Limitation Acts 1833 and 1874 and the Civil Procedure Limitation Act 1833).

⁶⁷ *Thomson v Eastwood* (1877) 2 App Cas 215, 248 - 249. See also *A'Court v Cross* (1825) 3 Bing 329, 130 ER 540; *Battley v Faulkner* (1820) 3 B & Ald 288, 106 ER 668; *Rhodes v Smethurst* (1840) 6 M&W 351, 356, 151 ER 447; *Adnam v Sandwich* (1877) 2 QBD 485, 489.

⁶⁸ See *A'Court v Cross* (1825) 3 Bing 329, 130 ER 540; *Cholmondeley v Clinton* (1820) 2 Jac & W 1, affirmed 4 Blyth 1 (HL), 37 ER 527; *East India Co v Oditchurn Paul* (1850) 7 Moo (PC) 85, 13 ER 811; *Coburn v Colledge* [1897] 1 QB 702, 710, CA.

⁶⁹ *Doe d Duroure v Jones* (1791) 4 TR 300, 308, 100 ER 1031.

⁷⁰ *A'Court v Cross* (1825) 3 Bing 329, 332 per Best CJ, 130 ER 540, 541.

particularly where a defendant is obliged to maintain liability insurance for years after the events in question (and even after retirement).⁷¹ In some cases, liability insurance may only be available for a limited period after the events in question. As we have already noted, defendants may also incur additional storage costs in maintaining relevant records for an indefinite period.

(2) The Interests of the State

- 1.29 One of the earliest justifications for limitation periods was concern that after several years it would not be possible to give a fair trial to disputes. The preamble to the Act of Limitation, with a Proviso⁷² opened:

Forasmuch as the time of limitation appointed ... extend and be of so far and long time past, that it is above the remembrance of any living man, truly to try and know the perfect certainty of such things, as hath or shall come in trial, or do extend unto the time and times limited by the said laws and statutes, to the great danger of mens' consciences that have or shall be impanelled in any jury for the trial of the same

- 1.30 It has been recognised that the state has an interest in a term being set on possible litigation.⁷³

Interest reipublicae ut sit finis litium, is a favourite and universal maxim. The public have a great interest, in having a known limit fixed by law to litigation, for the quiet of the community, and that there may be a certain fixed period, after which the possessor may know that his title and right cannot be called into question.⁷⁴

- 1.31 It is desirable that claims which are brought should be brought at a time when documentary evidence is still available and the recollections of witnesses are still reasonably fresh. This is the best way to ensure a fair trial and thus to maximise the chance of doing justice. It also ensures that public money is not wasted in the hearing of claims that cannot be dealt with properly. Apart from this, the state has an interest in promoting legal certainty. Not only potential defendants, but third parties need to have confidence that rights are not going to be disturbed by a long-forgotten claim. Financial institutions giving credit to businesses, for example, have an interest in knowing that a borrower's affairs will not be damaged by the revival of years old litigation. Buyers who want to purchase land or goods held by a potential seller want to know that their title cannot be disturbed by a third party to the deal.

- 1.32 On the other hand, the interests of society will not be served if plaintiffs are obliged to bring proceedings before they have had an opportunity to explore the

⁷¹ As is frequently the case with professional indemnity insurance.

⁷² (1540) 32 Hen VIII c 2.

⁷³ Recognised in the preamble to the Limitation Act 1623: "an act for the limitation of actions and for avoiding suits in law".

⁷⁴ *Cholmonderley v Clinton* (1820) 2 Jac & W 139, 37 ER 527, 577.

possibility of settlement, which could equally waste judicial resources. As the Committee on Limitation of Actions in Cases of Personal Injury noted:

We have not, however, forgotten the very pertinent observation of Sellers, LJ in *Cartledge v E Jopling & Sons Ltd.*⁷⁵ ‘The courts have discouraged delay in seeking redress and so has legislation; but on the other hand, there has been no encouragement for precipitate litigation. It is undesirable for workmen to be encouraged to keep their eyes on the courts’.⁷⁶

- 1.33 The possible consequences of setting a limitation period which is too short should also be considered. At least in the short term, this will increase the number of plaintiffs whose claims are time-barred. In a number of cases, the plaintiff may in consequence have a claim for negligence against his or her solicitor. The trial of that negligence action will require the court to examine, at second hand, the plaintiff’s chance of success in the original action. A significant increase in the number of such actions would strain judicial resources.
- 1.34 In the case of land-related claims, there are additional specific reasons, in the interests of society generally, for barring claims after a certain time limit has passed. It has been suggested that imposing a limitation period on claims to recover land helps to encourage the productive use of land, by rewarding the person who takes possession of unused land which would otherwise lie abandoned or under-exploited for years.⁷⁷ It also assists, in the case of unregistered land, in creating a marketable title to the land, as the squatter who has been in adverse possession of the land for the prescribed number of years is then granted rights in the land by the operation of the Limitation Act 1980, which can be sold. The statutes of limitation have also served to facilitate conveyancing in unregistered land, reducing the amount of time for which title has to be proved by the purchaser.⁷⁸ By extinguishing the plaintiff’s title where no claim has been made before the expiry of the limitation period, the statutes act as a form of guarantee of security of title. They promote legal certainty, serving the interests of third parties, who, after the passage of a certain period of time, can rely on the apparent title of the possessor.⁷⁹

(3) The Interests of Plaintiffs

- 1.35 The statutes of limitation have often been seen as a means of encouraging plaintiffs to act swiftly to protect their rights.

⁷⁵ [1962] 1 QB 189, 195.

⁷⁶ *Report of the Committee on Limitation of Actions in Cases of Personal Injury* (1962) Cmnd 1829, p 9.

⁷⁷ See M Dockray, “Why do we need Adverse Possession” [1985] Conv 272, 276.

⁷⁸ *Ibid*, and see First Report of the Real Property Commissioners, Parliamentary Papers, 1829, vol X, pp 1, 39 - 41. This justification for limitation periods has decreased in importance as more land has been registered.

⁷⁹ This factor is as important when title to goods rather than real property in question.

We apprehend that the law of limitation is designed to encourage plaintiffs not to go to sleep on their rights, but to institute proceedings as soon as it is reasonably practicable for them to do so.⁸⁰

But it has been recognised that the limitation period must also afford to the plaintiff a reasonable opportunity to pursue his or her claim:

But if the law of limitation is principally designed for the benefit of defendants, it would nevertheless be a mistake to lose sight of the interests of injured persons. A plaintiff who has lost the right to claim damages before he can know of the existence of that right must, in our view, inevitably feel that he has suffered injustice.⁸¹

1.36 Plaintiffs naturally wish to have as long a time as possible in which to bring an action. The limitation period should be sufficiently long to allow plaintiffs to recognise and consider their cause of action, to take legal advice on their case, and to attempt to negotiate a settlement with defendants. The plaintiff should also have sufficient time to prepare his or her case (though this element should not be exaggerated - it could be argued that it is unfair to the defendant if the limitation period is to be designed to allow the plaintiff enough time to prepare his or her case fully, before defendants need hear that there is a possible claim against them). A limitation period which leads to the plaintiff's claim becoming time-barred before the plaintiff is, or could reasonably be, aware of the existence of a claim is unjust to the plaintiff. In certain circumstances, where the plaintiff is disabled, or the cause of action has been deliberately concealed by the defendant, the limitation system should be capable of affording the plaintiff additional protection.

1.37 It should also be remembered that it is in the interests of the plaintiff as well as the defendant that the limitation period should be certain, so that the plaintiff knows how much time is available before his or her claim must be brought against the defendant if it is not to be lost. If a plaintiff does not know when the limitation period will expire, the plaintiff will feel obliged to bring the claim as soon as possible to avoid becoming time-barred. Though this may appear to be a desirable result⁸² this could also lead to the plaintiff's case being weakened because there has been insufficient time to prepare it, or to the plaintiff being obliged to bring proceedings where the case could have been settled if the plaintiff had had more time for negotiations with the plaintiff.

⁸⁰ *Report of the Committee on Limitation of Actions in Cases of Personal Injury* (1962) Cmnd 1829, para 17, a statement endorsed by the Law Reform Committee in their *Twentieth Report (Interim Report on Limitation of Actions: in Personal Injury Claims)* (1974) Cmnd 5630. The courts have recognised the value of the maxim "*Vigilantibus et non dormientibus succurrit lex*" in connection with limitation periods. See *Cholmonderley v Clinton* (1820) 2 Jac & W 1, 139 - 141, 37 ER 527, 577 - 8, *R B Policies at Lloyd's v Butler* [1950] 1 KB 76, 81 - 2.

⁸¹ *Report of the Committee on Limitation of Actions in Cases of Personal Injury* (1962) Cmnd 1829, para 17.

⁸² One of the functions of the limitation period, mentioned above, is to encourage the plaintiff to bring an action within a reasonable time, and the plaintiff should certainly not be encouraged to delay right to the last possible moment before the limitation period expires when the claim could have been brought earlier.

1.38 Though limitation periods have been presented over the ages as being necessary to protect the defendant and as being in the interests of the state, it would be more accurate to say that any limitation system must balance the interests of the defendant, the state and the plaintiff. It is essential to have a limitations system, for the reasons set out above. However, it must be recognised that any limitation system will involve some injustice either to the plaintiff who does not have sufficient time to bring a claim, or to the defendant, who is asked to defend a claim after several years of the plaintiff's inaction. Any limitation system must attempt to minimise this injustice, and reconcile, as far as possible, the conflicting interests involved. The need to achieve a balance between the interests of plaintiffs, defendants, and the state must constantly be borne in mind when considering how the present law should be reformed.

4. THE SCOPE OF OUR REVIEW

1.39 This review will examine the law on limitation periods for civil actions. The prosecution of criminal offences is outside our remit. We also do not consider in this paper limitation periods for public law remedies - that is, time limits for judicial review applications - because we recently reviewed that area, and made recommendations accordingly, in our Report on Administrative Law: Judicial Review and Statutory Appeals.⁸³ Nor do we deal with time limits for appeals.⁸⁴

1.40 We should emphasise that, although intended to be wide-ranging, we have not sought, with one major exception explained below, to deal with what may loosely be termed "purely procedural" aspects of the law.⁸⁵ That is, we have not sought to deal with areas that are dealt with by Rules of Court or under the courts' inherent jurisdiction to determine matters of practice and procedure. We therefore do not deal with applications to extend the period for which a writ is valid;⁸⁶ matters which must be specifically pleaded;⁸⁷ the general rules governing the amendment of pleadings;⁸⁸ dismissal for want of prosecution;⁸⁹ and applications to strike out an action for abuse of process.⁹⁰

⁸³ (1994) Law Com No 226, paras 5.23 - 5.30.

⁸⁴ We considered time limits for statutory appeals in (1994) Law Com No 226, paras 12.20 - 12.22.

⁸⁵ The label "procedural" is not a straightforward one to use in the context of limitation periods because, on one view, all the law relating to limitation periods is a matter of procedure. This is why we have used the term "*purely* procedural".

⁸⁶ RSC O 6 r 8. It will be especially difficult for a plaintiff to establish that there is good reason to extend the validity of a writ where the effect of the extension will be to deprive a defendant of an accrued limitation period. See, eg, *Chappell v Cooper* [1980] 1 WLR 309; *Kleinwort Benson Ltd v Barbrak Ltd* [1987] AC 547; *Waddon v Whitecroft Scovill Ltd* [1988] 1 WLR 309.

⁸⁷ RSC O 18 r. 8.

⁸⁸ RSC O 20.

⁸⁹ See, eg, O 25 r 1(4). Prima facie an action will not be dismissed for want of prosecution if the limitation period applicable to that action has not expired, except in exceptional circumstances (*Birkett v James* [1978] AC 297, *Department of Transport v Chris Smaller (Transport) Ltd* [1989] AC 1197 *James Lazenby & Co v McNicholas Construction Ltd* [1995] 1 WLR 615) as the plaintiff would then be able to issue a fresh writ in respect of the same

- 1.41 Although, plainly, there are aspects of these procedural rules that are directly relevant to limitation issues, we consider that any reform of such procedural rules should be considered in a wider context than limitation. We are also conscious that Rules of Court are presently being rewritten in line with Lord Woolf's review of civil procedure.⁹¹
- 1.42 The one major exception, or quasi-exception, is that we shall be considering, albeit briefly, the rules governing new claims in existing actions. We make this exception for two reasons. First, this area is largely governed by section 35 of the Limitation Act 1980 and cannot be reformed without legislation. Secondly, we are aware that difficulties have been, and continue to be caused, by section 35 and its accompanying Rules of Court.⁹²

5. THE STRUCTURE OF THIS PAPER

- 1.43 This Consultation Paper is hereinafter divided into three main sections, which examine the current law on limitations, the law on limitations in other jurisdictions, and the options for reform.
- 1.44 In Section A, we examine the current law on limitation by dividing the main issues into three. First, and most importantly, we consider (in Parts II - VII) the four linked issues of: the starting date of a limitation period; the length of the limitation period; whether there is a judicial discretion to disapply the limitation period (as there is in actions for, for example, personal injuries, death, defamation and malicious falsehood); and whether, in addition to a (primary or initial) limitation period, there is an overriding long-stop (as there is, for example, in the case of latent damage in the tort of negligence and actions under the Consumer Protection Act 1987). We also include reference here to situations where there is no limitation period (most importantly, certain actions for, or relating to, a breach of trust). Secondly, in Part VIII, we examine the factors which postpone the running of time; for example, disability, acknowledgement and deliberate concealment. Thirdly, in Part IX, we consider a number of additional issues, such as the effect of the expiry of a limitation period, the burden of proof, the equitable doctrine of laches, and new claims in existing actions.
- 1.45 In Section B (Part X), we review comparative law on limitation periods by reference to the jurisdictions of Scotland, Ireland, Australia, New Zealand, Canada, the United States, France and Germany.
- 1.46 In Section C of the Paper we review the options for reform of the current regime. In Part XI, we discuss the problems with present law in detail, and summarise our main provisional recommendations. In Part XII we provisionally propose a new "core" regime. Part XIII examines the range of this regime. Part XIV reviews the

action. See also *Halls v O'Dell* [1992] 1 QB 393; *Rath v C S Lawrence & Partners* [1991] 1 WLR 399; *Trill v Sacher* [1993] 1 WLR 1379.

⁹⁰ RSC O 18 r 19.

⁹¹ Lord Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (1996); *Access to Justice: Draft Civil Proceedings Rules* (1996).

⁹² RSC O 15 r 6(5) - 6 (and O 20 r 5(3) and 5(5)).

options for reform in respect of a number of additional issues. The final Part summarises our provisional recommendations and consultation issues. The Appendix contains the Limitation Act 1980, as amended.

6. AN OUTLINE OF OUR MAIN PROVISIONAL PROPOSALS

(1) A Core Regime⁹³

1.47 We provisionally propose a core regime. The central features of the core regime would be as follows:-

- (1) There would be an initial limitation period of three years that would run from when the plaintiff knows, or ought reasonably to know, that he or she has a cause of action. (But on this most fundamental of questions, we should stress at the outset that we seek consultees' views on whether they would prefer one of four other main options for reform).
- (2) There would be a long-stop limitation period of 10 years, or in personal injury claims of 30 years, that would run from the date of the act or omission which gives rise to the claim.
- (3) The plaintiff's disability (including supervening disability) would extend the initial limitation period (unless, possibly, there is a representative adult other than the defendant). Adult disability would not extend the long-stop limitation period (and we seek views as to whether minority should do so). Deliberate concealment (initial and subsequent) would extend the long-stop. Acknowledgements and part payments should start time running again but not once the initial or long-stop limitation period has expired.
- (4) The courts would *not* have a discretion to disapply a limitation period.

(2) The Range of the Core Regime⁹⁴

1.48 We provisionally propose that the above core regime would apply (without any qualification) to the following actions:

- (1) The majority of tort actions (including negligence claims, trespass to the person (including sexual abuse), defamation and malicious falsehood);
- (2) contract claims (on both simple contracts and specialties);⁹⁵
- (3) restitutionary actions;⁹⁶
- (4) breach of trust and related actions, including actions in respect of the personal estate of a deceased person;

⁹³ See Part XII below.

⁹⁴ See Part XIII below.

⁹⁵ But for actions for a contractual indemnity or contribution see paras 13.93 - 13.98 below.

⁹⁶ But for actions for a restitutionary contribution or indemnity, see paras 13.84 - 13.92 below.

- (5) actions on a judgment or arbitration award; and
- (6) actions on a statute.

1.49 We also provisionally propose that the core regime would extend, but with some qualifications, to the following actions:

- (1) Actions under the Law Reform (Miscellaneous Provisions) Act 1934 and the Fatal Accidents Act 1976;
- (2) Conversion;
- (3) Actions by a subsequent owner of damaged property;
- (4) Actions for a contribution or an indemnity;
- (5) Actions to recover land and related claims (a fundamental qualification here being that the initial limitation period would not apply to actions to recover land).

1.50 We further provisionally propose that actions against public authorities should not be subject to special (shorter) limitation periods; that the core regime should apply to applications under section 459 of the Companies Act 1985; that where the core regime applies to common law remedies for a cause of action, it should also apply to equitable remedies for that cause of action; and we set out a number of options for the treatment of the doctrine of laches. Subject to a few exceptions, we do not propose to alter specific limitation periods laid down in enactments other than the Limitation Act 1980. We provisionally propose to include a “sweeping-up” provision, under which the core regime would apply to all actions unless excluded by another provision of the proposed Bill (or any other enactment).

(3) Additional Issues⁹⁷

1.51 We provisionally propose that:

- (1) Subject to the normal rules on the validity of contractual terms, parties would be free to alter the length or the starting date of initial limitation period by contract. (We seek consultees’ views as to whether they should be able to extend the long-stop or change the long-stop starting date).
- (2) As under the present law, the limitation period would stop running when proceedings were issued by the plaintiff.
- (3) Plaintiffs would be able to add new claims in existing actions where they were sufficiently related to the original cause of action, even where the limitation period had expired since the proceedings were started.
- (4) With one exception relating to conversion, no change should be made to the present law on the effect of the expiry of the limitation period.

⁹⁷ See Part XIV below.

- (5) Where the plaintiff's right to sue is subject to a restriction, the running of time for the purpose of the initial limitation period and the long-stop, should be suspended from the date the plaintiff has done all that he or she could do to lift that restriction.
- (6) In general, the burden of proof on limitation should continue to be on the plaintiff.
- (7) Our provisionally proposed legislation should apply to causes of action accruing before the legislation commences, except where the cause of action has been barred by the expiry of a limitation period by the provisions of a previous Act, or proceedings have been instituted in respect of a cause of action before the commencement of the provisionally proposed Act.

7. ACKNOWLEDGEMENTS

1.52 The law on limitations has been the subject of considerable investigation by law reform bodies in other jurisdictions. The high quality, and wide-ranging scope, of the reports of these bodies has been of great assistance to us in formulating our own proposals.⁹⁸ We are grateful to Professor Andrew McGee, Professor of Business Law at the University of Leeds for preparatory work done in relation to this Consultation Paper; and to Donald Bishop, Tony Blackler, Professor Phillip Capper, Frances Paterson, Jennie Price and the Construction Industry Council for giving us their views on the limitation problems encountered in the construction industry.⁹⁹ We are also grateful to the following for their help: Sir Brian Neill; Michael Brindle QC, Peter Goldsmith QC, Lord Goodhart QC, Michael Lerego QC, Kim Lewison QC, Peter Scott QC, Andrew Smith QC, Nicholas Underhill QC, Stephen Moriarty, Marcus Smith; the Civil Litigation Committee of the Law Society, Tim Archer of Richards Butler, Lindsay Marr of Freshfields, David Natali of Herbert Smith, Anthony Pugh Thomas and Haydn Puleston Jones of the City of London Law Society; Morys Davies, Legal Adviser and Solicitor to the Crown Estates Commissioners, Gisela Davis, Ministry of Agriculture, Fisheries and Food, James Furber, Solicitor to the Duchy of Cornwall, SM Jones, Deputy Solicitor to the Church Commissioners, Gwyneth Hughes, Ministry of Defence, MK Ridley, Duchy of Lancaster Office, and the Treasury Solicitor's Department.

⁹⁸ See in particular Alberta Law Reform Institute, *Limitations*, Report No 55 (1989) (the recommendations of which have now been enacted in Alberta's Limitation Act 1996 c L-15.1 (yet to be proclaimed)); New Zealand Law Commission, *Report No 6, Limitation Defences in Civil Proceedings*, NZLC R6 (1988); Law Reform Commission of British Columbia, *Report on the Ultimate Limitation Period: Limitation Act, Section 8* (1990); Ontario Limitations Act Consultations Group, *Recommendations for a New Limitations Act, Report of the Limitations Act Consultation Group* (1991); and Law Reform Commission of Western Australia, *Report on Limitation and Notice of Actions*, Project No 36 - Part II (1997).

⁹⁹ See especially paras 12.17, 12.106, 12.151 - 12.153, 13.84 - 13.98 below.