

# Protecting partner assets: insurance is not enough (Part 4)

This is the fourth article in a short series looking at situations where even the best insurance cover enjoyed by solicitors in England & Wales may not protect law firms, their partners or staff.

The first two articles looked at the scope of cover and some exclusions. Part 3 looked at some aspects of the duration of cover, including retirement. This article will address the question, 'For how many years will you need cover?'

In order to answer that, we need to look first at the legal time limits for claims, and then at what happens in practice. The next one will look at the risks of personal liability attaching to partners and staff. Remember that cover is on a 'claims made' basis, as explained in Part 3.

This is not the place for a complete review of the law of limitation. In outline, the time limit in contract is six years from the breach, while in tort (such as negligence) it is six years from when the cause of action accrues, so time does not start running in tort until the claimant suffers loss. The time limit in tort is subject to Section 14A of the Limitation Act 1980, which allows a claimant three years from discovery of the relevant facts, with a 15 year longstop.

Time does not run against a claim in a number of circumstances - fraud, or deliberate concealment of the cause of action, trust claims when the interest has not vested, and where the claimant is a person under a disability (a child or mental patient).

However, the letter of the law does not paint the full picture. While the time limits are the same for all professions, solicitors may be more exposed in practice, for example, by acting for children on personal injury claims, and in trust cases, where time may not even start running for many years; they act in conveyancing work, where a title defect may not be discovered until sale many years later. They also take appointments as executors and trustees.

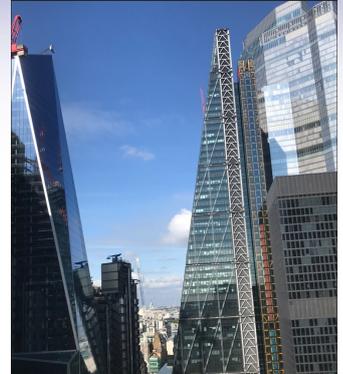
A report by Willis Towers Watson for the Solicitors Regulation Authority consultation *Post six year run-off cover and the Solicitors Indemnity Fund* noted that '[the] maximum reporting delay is 19 years'. The recent decision in *McClean & Others v Thornhill* [2022] EWHC 457 (Ch) involved a claim against a Queen's Counsel by third parties relating to advice provided on a tax scheme in 2003; the claim form was not issued until 2018. (The writer suspects the claim was made some years before that, however, but it is not apparent from the judgment).

Having looked at some of the gaps in insurance protection, the following parts in the series will look at what solicitors can do to protect themselves.

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*This article is a general guide. It is not a substitute for professional advice which takes account of your specific circumstances and any changes in the law and practice. For previous articles in the series and other articles on law firm risk and compliance, see our [website](#).*

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## Further information

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