

Resetting the Clock: New Limits on Section 994 Petitions

By [Aaron Mayers](#)

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Introduction

1. The Court of Appeal has upended over forty years of established understanding regarding the applicability of limitation periods to section 994 petitions for unfair prejudice. Those who previously assumed that no limitation period applied to such claims now stand corrected.

“The received wisdom for over 40 years has been that unfair prejudice petitions are not subject to any periods of limitation. That was the assumption made, without the matter being argued... However,.. when that assumption is challenged, it can be seen that there is nothing to support it.” [LJ Snowden at paragraph 157]

Background

2. The claim in question revolved around Zedra Trust Company (Jersey) Limited's unfair prejudice petition against THG plc and several of its directors. Since it was issued, the petition underwent numerous amendments, with the latest alleging wrongful exclusion of Zedra from a bonus share issue. This exclusion, Zedra contended, was a result of the directors breaching their statutory duties by not acting lawfully, in good faith, for proper purposes, and fairly among shareholders during share allotment and profit capitalisation.
3. The key issue was whether the amended petition for relief under section 994 of the Companies Act 2006 had been brought in time.

Analysis

4. The Court of Appeal critically examined the application of the Limitation Act 1980 and the historical trend whereby parties involved in such petitions have not dealt directly with the question of whether (or which) limitation periods apply to section 994 claims. Such claims

were often thought to be immune to the constraints of time, resting on the principle that justice should not be bound by the clock when rectifying ongoing wrongs within a company's affairs.

5. However, the Court observed the inherent tension between this principle and the fundamental purposes of limitation statutes: to prevent the injustice of stale claims and to ensure legal certainty and fairness for both parties.
6. In this case, the Court found that:
 - i. the right of a member of a company to relief from unfair prejudice derives from statute, not common law or equity. Therefore, a petition for relief under section 994 could fall within the ambit of section 8 of the Limitation Act (i.e. a 12-year limitation period) [para 72]; and
 - ii. where (as in this case) the right to pursue the action is derived from statute, and the remedy sought involves monetary compensation, such claims squarely fall under section 9 of the Limitation Act 1980 (i.e. a six-year limitation period) [para 129].
7. Consequently, it followed that the unfair prejudice matters Zedra sought to raise by amendment were statute barred.

Impact of the Decision

8. This decision culminates in a rejection of the assumed status quo and aligns the treatment of unfair prejudice petitions with other statutory remedies for limitation purposes.
9. The practical implications of this decision are profound for directors, shareholders and lawyers. Directors and shareholders must now be acutely aware of the potential for limitation defences against claims of unfair prejudice, fundamentally altering the risk calculus. For lawyers, the judgment necessitates a recalibration of advice regarding the timing and strategy for pursuing or defending against section 994 petitions. No longer can parties assume the luxury of time when aggrieved by corporate conduct. The clock is always ticking.
10. Moreover, this decision invites a broader reflection on the balance between ensuring access to justice for wronged parties and maintaining the legal certainty and efficiency that limitation periods provide.

Takeaway Points

- The Court of Appeal has definitively ruled that section 994 petitions are subject to limitation periods, overturning longstanding assumptions to the contrary.
- This decision emphasises the importance of timely litigation in corporate disputes and realigns the approach to unfair prejudice petitions with broader legal doctrines on temporal limitations.
- Directors and legal practitioners must now navigate unfair prejudice petitions with a heightened awareness of the temporal constraints on asserting or defending against claims of unfair prejudice.

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Aaron Mayers

Barrister

3PB

01865 793736

aaron.mayers@3pb.co.uk

3pb.co.uk