

Majority Rules (For Now): *THG v Zedra* and the Future of Limitation in Unfair Prejudice Petitions

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In *THG Plc v Zedra Trust Co (Jersey) Ltd*,¹ the Supreme Court has, by a majority of 4-1, overturned the decision of the Court of Appeal² and restored the orthodox position that no limitation period applies to petitions brought under s.994 of the Companies Act 2006 (“CA 2006”).

The ramifications of the Supreme Court’s decision are likely to be felt well beyond the sphere of s.994 petitions. This is because, in holding that petitions under s.994 CA 2006 are not covered by the provisions of the Limitation Act 1980 (“LA 1980”), the Supreme Court has effectively overruled case law in relation to ss.8 and 9 LA 1980 and its predecessors that had been settled for decades.

Further, the effect of a split majority and the dissent of Lord Burrows is that, while the settled understanding of these provisions has been disapproved, what comes in their place is unclear. This is particularly the case in relation to s.8 LA 1980 (“*action upon a specialty*”), which the majority of the Supreme Court held – contrary to previous authority – does not cover any cause of action based purely on statute, but is instead limited to actions to enforce *obligations* created by statute. The majority was, however, divided on what statutory obligations would fall within the scope of s.8; while Lords Lloyd-Jones and Briggs were of the view that s.8 applies to non-monetary obligations created by statute, Lords Hodge and Richards considered that it would only apply to actions under statute to recover ascertained sums as debts. The majority ultimately declined to decide this issue, recognising that it was not necessary to do so in order to dispose of the appeal. Dissenting, Lord Burrows opined that the previous Court of Appeal authority was correct and that s. 8 LA 1980 applies to any cause of action based on a statute.

As a result of this decision, there is now considerable uncertainty as to what, if any, limitation period applies to a whole raft of statutory causes of action. This includes, for example, claims under ss. 238, 239, 339, 340 and 423 of the Insolvency Act 1986 which were, until the Supreme Court’s decision in *Zedra*, thought to be subject to either s.8 or s.9 LA 1980. Such uncertainty will doubtless lead to disputes.

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¹ [2026] UKSC 6

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Factual Background

In January 2019, Zedra Trust Company (Jersey) Limited (“**Zedra**”) – a minority shareholder in THG PLC (the “**Company**”) – presented a petition under s.994 of the Companies Act 2006 (“**CA 2006**”) against the Company and a number its former and current directors (together, the “**Respondents**”) alleging that the affairs of the Company had been conducted in a manner that was unfairly prejudicial to Zedra.

In June 2022, after all of the complaints made in the petition had been struck out or dismissed, Zedra applied for permission to re-amend the petition to plead that it had been wrongly excluded from a bonus share issue in July 2016 by which shares were allotted to four corporate shareholders with shares of the same class as those held by Zedra. Zedra alleged that (i) effect of this exclusion was to dilute Zedra’s shareholding and that it thereby lost the right to additional shares which it would have sold, and (ii) the allotment constituted a breach of duty by the Company’s directors. Zedra therefore sought to claim as relief under s.996 CA 2006 an order for equitable compensation to redress this alleged loss.

In January 2023, the High Court allowed Zedra’s application to re-amend its petition and in doing so rejected the Respondents’ argument that the claim in respect of the bonus share issue was time-barred under the Limitation Act 1980 (“**LA 1980**”).

The Respondents appealed to the Court of Appeal.

Decision of Court of Appeal

At the time of the appeal, the widely held view – which had prevailed for over 40 years – was that there was no statutory time limit for issuing an unfair prejudice petition. Instead, delay in issuing a petition was a factor relevant to the exercise of the Court’s discretion in deciding whether to grant relief.

However, having surveyed the case law and the views of leading commentators, the Court of Appeal concluded that they had not been “*referred to any case in which the question of whether a limitation period*

applied to petitions under section 994 has actually been argued and decided”³ and that it had been “*received wisdom*” that unfair prejudice petitions were not subject to any periods of limitation.⁴

This conclusion was important since it meant that the Court of Appeal was not bound by prior decisions of the Court of Appeal where the proposition (that there was no limitation period applicable to s.994 petitions) had been assumed but not argued. This being so, the Court of Appeal was entitled to consider the issue afresh.

In considering the issue, the Court of Appeal posed itself the following key questions.

Is a petition under s.994 CA 2006 within the scope of the LA 1980 at all?

The Court of Appeal answered this question affirmatively:

- The LA 1980 imposes limitation periods in respect of different types of “*action*”, defined so as to include “*any proceeding in a court of law*”.
- The Court of Appeal stated that a petition initiating proceedings falls squarely within this definition, noting that this was the conclusion that had been reached in relation to winding-up petitions.
- The Court of Appeal therefore concluded that it is, in principle, possible for a s.994 petition to fall within the scope of the LA 1980.

Does s.8 of the LA 1980 apply?

The Court of Appeal concluded that s.8 could apply to s.994 petitions:

- Section 8 LA 1980 concerns the limitation period for “*an action upon a specialty*”. This includes actions based on a contract under seal but, importantly, also actions that can only be brought under statute.
- The Court of Appeal noted that a member of a company has no right to petition for relief from unfair prejudice apart from s.994 CA 2006 and

³ At [33]

⁴ At [20], [34]

therefore concluded that in principle a s.994 petition is subject to the 12-year limitation period in s.8 LA 1980, subject to any shorter limitation period prescribed by another provision of LA 1980.

Does s.9 LA 1980 apply?

The Court of Appeal also concluded that s.9 LA 1980 could apply to s.994 petitions:

- Section 9 LA 1980 provides the limitation period applicable to an “*action to recover any sum recoverable by virtue of any enactment*”. In contrast to s.8, the limitation period under s.9 is six years.
- The Court of Appeal noted that the scope of s.9 depends on the remedy being claimed, rather than the underlying cause of action. This would mean that, if s.9 were applicable to s.994 petitions, different limitation periods could apply depending on the relief being sought. If, for example, the petitioner sought an order regulating the affairs of the company in the future, that would not be a monetary remedy, and s.9 would not apply. If, by contrast, the petitioner’s claim was for compensation (as was the case in *Zedra*), that would be a monetary remedy and s.9 would apply.
- The Court of Appeal did not consider this to be objectionable, noting that the court had previously reached the same conclusion in relation to a variety of other statutory causes of action (including a number of causes of action under the Insolvency Act 1986) and that the Law Commission had, in their consultation paper on limitation of actions, noted that whether an action is governed by s.8 or s.9 LA1980 is determined by the nature of the relief sought.
- While recognising the force in *Zedra*’s arguments that the application of different limitation periods to s.994 petitions could create arbitrary distinctions and practical difficulties where a petition claimed a number of different remedies – some pecuniary and others not – the court noted that there were other situations (for example,

professional malpractice) in which the same facts may give rise to concurrent claims in contract and tort, each with its own limitation period. In such cases, it is for the claimant to choose how to frame its case.

- The Court of Appeal’s view was that a claim for a buy-out order – which is the most common form of relief sought by a s.994 petition and requires (usually) the majority shareholders to buy the shareholding of the petitioner – was not a claim for the recovery of money. Petitions seeking such relief would therefore be subject to the 12-year limitation period under s.8 rather than the six-year period under s.9 LA 1980.
- The Court of Appeal considered whether, if a 12-year limitation period applied to a s.994 petition, the court could nonetheless dismiss a petition brought within the limitation period on the ground of delay. Having emphasised the importance of avoiding the bringing of stale complaints under s.994, the Court of Appeal decided that this was a question that ought to be left to a future case in which it mattered.

Conclusion

In view of the foregoing, the Court of Appeal unanimously concluded that the matters which *Zedra* sought to raise by the amendments were statute barred and the judge had been wrong to allow them. The Respondents’ appeal was accordingly allowed.

While the Court of Appeal refused permission to appeal, permission was subsequently granted by the Supreme Court.

The decision of the Supreme Court

The Supreme Court overturned the decision of the Court of Appeal by a majority of 4-1, reasserting the established view that no limitation period applies to petitions brought under s.994 CA 2006.

However, the combination of a split majority judgment and the dissent of Lord Burrows means that the decision leaves open as many questions as it answers.

What has the Supreme Court decided?

The majority decision was given jointly by Lord Hodge and Lord Richards, with whom Lord Lloyd-Jones and Lord Briggs agreed.

Having considered the development of the common law since as far back as the 13th century, legislative developments since the 17th century, and case law relevant to limitation in both England & Wales and other common law jurisdictions, the majority held that:

Section 8, LA 1980

- The term “*action upon a speciality*” in s.8 LA 1980 applies to actions to enforce an *obligation* created by deed or statute.⁵
- The Court of Appeal’s decision in *Collin v Duke of Westminster*⁶ and the decisions that followed it that had extended s.8 to any claim which can only be brought under statute were wrongly decided.⁷
- Section 994 CA 2006 neither creates nor enforces substantive obligations, but rather exists to provide relief in respect of a state of affairs concerning a company that results in or constitutes unfair prejudice to one or more members.⁸ Accordingly, a petition under s.994 is not an “*action upon a speciality*” and s.8 LA 1980 does not apply to such petitions.⁹

Section 9, LA 1980

- Section 9 (“*any sum recoverable by virtue of an enactment*”) is not limited to ascertained statutory debts, but also includes claims under statute for unascertained sums and to monetary claims which are subject to the exercise of the court’s discretion.¹⁰
- A petition under s.994 CA 2006 is not a claim to enforce a liquidated or unliquidated obligation

arising under a statute but is a claim that the court should make such order as it thinks for giving relief in respect of the matters complained of. The court has the widest possible discretion as to the orders it may make and, although a petition will specify the orders sought, there is no entitlement for a particular form of relief; it is for the court to decide what it considers to be the appropriate orders to make, which it does by reference to the state of affairs existing when it gives judgment.¹¹

- Claims under statutory provisions which confer a wide discretion as to remedy are not claims to which s.9 applies. In reaching this conclusion, the majority disapproved a number of earlier decisions¹² which had held that s.9 could apply in such circumstances by adopting the ‘look and see’ approach, by which the court would examine the nature of the relief sought to determine whether monetary relief had been claimed. The majority emphasised that, consistent with jurisprudence in other common law jurisdictions, a limitation period should relate to a cause of action and not a particular remedy.¹³
- While the court’s order may provide for the payment of a specified sum by way of compensation or otherwise, that is not a sum “*recoverable by virtue of*” ss.994-996. The obligation to pay arises only by virtue of the court’s exercise of its very wide discretion.¹⁴ Accordingly s.9 LA 1980 does not apply to a s.994 petition.¹⁵

Having held that no limitation period applies to a petition brought under s.994, the majority nevertheless emphasised that delay in bringing a petition is something which the court can take account of in exercising its discretion to grant or refuse a remedy.¹⁶

⁵ At [115]

⁶ [1985] QB 581

⁷ At [77], [117]-[118]

⁸ At [116]

⁹ At [117]

¹⁰ At [135]

¹¹ At [137], [145]

¹² Namely, *Re Priory Garage (Walthamstow) Ltd* [2001] BPIR 144, *Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542, and *Rahman v Sterling Credit Ltd* [2001] 1 WLR 496

¹³ At [155]-[157]

¹⁴ At [146]

¹⁵ At [155]

¹⁶ At [170]

The unresolved question

While the majority was agreed that s.8 LA 1980 can only apply to statutory claims to enforce an obligation, there was disagreement as to the nature of the relevant obligation:

- Lords Lloyd-Jones and Briggs were of the view that s.8 applies to non-monetary obligations created by statute.¹⁷
- Lords Hodge and Richards, by contrast, considered that s.8 is limited to actions under statute to recover ascertained sums as debts.¹⁸ While this would mean that no statutory limitation period applies to actions to enforce non-monetary statutory obligations, Lords Hodge and Richards considered that the risk of stale claims being brought was adequately dealt with by s.36 (2), which preserves the court's ability to apply laches and other bars based on delay to any claim for equitable relief (which would be relevant in such circumstances since any order to enforce a non-monetary obligation would be an order for specific performance or an injunction).¹⁹
- However, the majority expressly declined to decide this point since it was not necessary to do so for the purpose of the appeal.

Lord Burrows' dissent

In a forceful dissent, Lord Burrows agreed with the reasoning and decision of the Court of Appeal. He concluded that:

- *Collin* was correctly decided and, in the context of a statute, the relevant test for whether the action is on a speciality is whether the cause of action exists apart from the statute. Lord Burrows noted that it is hard to see any good reason why the law would draw a distinction between obligations created by statute and other causes of action created by statute, and that it is not at all clear how one distinguishes a cause of action that creates an

obligation from one that does not. In relation to the latter point, Lord Burrows observed that it is at least arguable that all causes of action can be analysed in terms of rights and obligations.²⁰

- Accordingly, s.8 LA 1980 applies to petitions brought under s.994 CA 2006.²¹
- Section 9 LA 1980 can also apply where the petition seeks a monetary order. In reaching this conclusion, Lord Burrows expressly endorsed the 'look and see' approach, noting that, while it is unusual for limitation periods to be determined by the remedy rather than by the cause of action, s.9 is clearly an exception to the general position because it is explicitly confined to the recovery of sums (under a statute) and not other remedies (under a statute). Like the Court of Appeal, Lord Burrows did not see any objection to having different limitation periods applying to the different orders that may be made.²²

Practical implications

The return to orthodoxy in relation to the (non) application of the LA 1980 to s.994 petitions is likely to come as a relief to shareholders and their advisers, avoiding, as it does, the practical difficulties, arbitrary distinctions and potential absurdities created by the Court of Appeal's decision.

Litigators more generally are, however, likely to be alarmed by the Supreme Court's rewriting of the settled understanding in relation to key aspects of ss. 8 and 9 LA 1980, particularly given the questions that have been left open.

The combined effect of the majority's conclusion that (a) s.8 LA 1980 applies only to actions to enforce *obligations* created by statute, and (b) s.9 LA 1980 does not apply to statutory provisions which confer a wide discretion as to remedy, means that there is now considerable uncertainty as to what, if any, limitation period applies to a whole raft of statutory causes of action. This includes, for example, claims under ss.

¹⁷ At [118], [124]-[128]

¹⁸ At [122]

¹⁹ At [123]

²⁰ At [195]-[201]

²¹ At [205]

²² At [214], [224]

238, 239, 339, 340 and 423 of the Insolvency Act 1986 which were, until the Supreme Court's decision in *Zedra*, thought to be subject to either s.8 or s.9 LA 1980. Such uncertainty will doubtless lead to disputes.

Disputes are also likely to be generated as a result of the majority's focus on *obligations* created by statute. As noted by Lord Burrows in his dissenting judgment, all causes of action can arguably be analysed in terms of rights and obligations, and this is likely to be fertile ground for argument for defendants looking to avail themselves of a limitation defence.

It is notable that both of the majority and minority judgments mentioned the possibility of legislative reform. The majority noted in conclusion that "*judges in more than one jurisdiction have drawn attention to the difficulties in interpreting provisions which have the same or substantially the same wording as sections 8 and 9 of the 1980 Act, because their true meaning lies deep in our legal history. If Parliament were to bring forward legislation to reform the rules of limitation, there may be a case for addressing the problems to which sections 8 and 9 of the 1980 Act have given rise by using clearer language to define their scope.*" It remains to be seen whether Parliament will see it as a priority to take up the invitation.

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