



# Fatal Claims and The Limitation Act – New Case Law

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The case of *Shaw v Maguire (re Preliminary Issues) [2023] EWHC 2155 (KB)* has confirmed that there is now no bar to Section 33 of the Limitation Act being used if the limitation period expired prior to the deceased person's death.

## What does this really mean for clients?

The Limitation Act 1980 is one of the most important statutes for personal injury and clinical negligence solicitors (and Claimants) to be mindful of. Section 11 of the Act makes clear that injured claimants have only three years from the date of their accident, or date of knowledge, to bring their claim.

Section 14 of the Act defines the date of knowledge as the date on which a claimant:

1. Becomes aware that a significant injury has been sustained;
2. Becomes aware that the injury is a result of the act or omission of someone who owed them a duty of care; and,
3. Knows the identity of the Defendant.

Failure to bring their claim within three years of the accident or date of knowledge will mean that the claim cannot continue without the authority of the Court.

Where limitation has passed, a Claimant can apply to the Court to use Section 33 of the Limitation Act, which provides the Court with the discretion to override a limitation period and allow a Claimant to bring their claim if they consider it is reasonable to do so.

## What about fatal claims?

The Fatal Accidents Act 1976 (“FAA”) allows the dependents of an injured person to bring a claim after their

death. Dependents tend to be the spouse, civil partner or children of the deceased, though it can also be their parent or grandparent. Their claim will generally be for dependency that they have lost as a result of the death, typically loss of financial support the deceased would have provided to them had they not died. Successful Claimants may also be entitled to a fixed award for bereavement damages, subject to their relationship to the deceased. In accordance with the Limitation Act, this claim must be brought within three years of the date of the person's death or within three years of the date of knowledge, whichever is later.

The critical point of the Limitation Act with fatal claims is section 12(1), which states that section 33 cannot be used to bring a claim under the FAA when, at the time of the person's death, the limitation period has already passed. For example, the theory is that if a Claimant was involved in a car accident in July 2015 and failed to bring a claim by July 2018 and then subsequently died, his dependents would be unable to bring a claim under the FAA.

## How does the law deal with this?

Prior to the case of *Shaw v Maguire*, there was no case that the Courts could refer to and help sort out this problem.

This case concerned a widow attempting to bring a claim under following the death of her husband in January 2014 from metastatic melanoma. He was seen by the defendant in October 2007 but was told the biopsy samples were benign, and he was discharged without further treatment. He returned to the Defendant in 2009 when a lesion on his back returned and was subsequently advised in November 2009 that it was malignant and that this should have been identified back in 2007.

Court proceedings were not issued until August 2022, much more than three years since the date of death. The question, therefore, is: can the case proceed and can section 33 of the Limitation Act be used to override limitation?

There was a legal argument about the deceased's (and widow's) date of knowledge, with the Defendant arguing it was 13 November 2009 when he was advised the sample was malignant. This would mean that legal proceedings should have been issued by 13 November 2012 at the latest, within three years of the date of knowledge. In that regard, the Defendant relied on section 12(1) of the Limitation Act 1980 to suggest that no claim could be brought under the FAA where the limitation period had already elapsed prior to the deceased's death.

The Claimant's position was that the limitation period began at the earliest on 9 January 2014 when the deceased died, meaning proceedings should have been issued by 9 January 2017. The widow also argued that her date of knowledge was later than her husband's death, which would have provided for an even later limitation period. Her legal team argued that the 3-year limitation period had not, therefore, elapsed prior to the death in January 2014, and proceedings could still proceed at the discretion of the Court under section 33 of the Limitation Act.

The Judge, in deciding this issue, expressed surprise that this matter had not been considered before. He sided with the Claimant and found that section 33 could be used to override the limitation period even if it had expired prior to the deceased's death.

The Judge found the date of knowledge was actually June 2013. This meant that the limitation period expired in June 2016, after the death of the Claimant's husband, and therefore, section 33 of the Limitation Act could be used to seek the discretion of the Court to allow the proceedings to continue even though they were issued, essentially, out of time.

The link to the judgment can be found here – [Shaw v Maguire \(Re Preliminary Issues\) \[2023\] EWHC 2155 \(KB\) \(25 August 2023\) \(bailii.org\)](#)

At Lester Aldridge, we have experience in handling claims on behalf of dependents of deceased individuals who have suffered serious [personal injury](#) or have been the victims of [clinical negligence](#). If you feel you may have a claim and want to discuss it with a member of our team, please do not hesitate to get in touch with us at [online.enquiries@LA-law.com](mailto:online.enquiries@LA-law.com) or 0344 967 0791 for an opinion free of charge and without obligation.

Civil litigation brief article – [FATAL ACCIDENTS AND LIMITATION: THERE IS NO BAR TO SECTION 33 BEING USED IF THE LIMITATION PERIOD EXPIRED PRIOR TO DECEASED PERSON'S DEATH – Civil Litigation Brief.](#)