



MFB

Time waits for no-one - a short overview of charterparty time limits

Introduction

All charterparties contain time bars, whether expressly referred to or incorporated by statute. Time-bars require parties to do something within a certain time-frame (e.g. notify a claim or commence arbitration proceedings). Failure to take the necessary action can have severe consequences, including being an absolute bar on recovery.

It is therefore essential to be aware of the applicable time bars when dealing with any case (not just those involving charterparties). The aim of this guide is to set out the most common time bars that Claims Handlers are likely to encounter in charterparties, with practical recommendations to minimise the chances of them being inadvertently overlooked.

Law and jurisdiction

This guide is only based on an English law analysis. If a charter is governed by foreign law, advice from local lawyers will be required.

Limitation Act 1980

The Limitation Act 1980 is relevant to all charterparties.

The general rule is that parties have six years to bring a claim from the date on which the cause of action first accrued.

The first step in determining when the cause of action accrued is to establish whether a claim is being brought in contract or tort.

Contract

The position for contractual claims is generally straightforward: the cause of action accrues on the date of the breach of contract (e.g. a failure to pay hire under a time charter or freight under a voyage charter).

Tort

The position for tort claims is more complicated. The general rule (excluding claims for latent damage and personal injury/death) is that the cause of action accrues on the date that the damage occurs.



The time limit for claims in negligence for latent damage (i.e. damage that is not immediately apparent) is the later of: (i) six years from the date when the loss/damage occurred; or (ii) three years from the date when the claimant knows or ought to have known about the claim (subject to a long-stop date of 15 years from the negligent act/omission).

The time limit for claims for personal injury is three years from: (i) the date when the personal injury occurred; or (ii) the date of knowledge of the person injured (whichever is later). The time limit for claims for death is three years from (i) the date of death; or (ii) the date of the personal representative's knowledge (again, whichever is later).

Clause(s) Paramount

If a Clause Paramount is incorporated into the charter it will need to be carefully reviewed. It may be in the printed clauses or a rider clause.

A Clause Paramount incorporates a cargo liability regime into the charterparty (most often the Hague Rules or the Hague-Visby Rules).

Incorporation of the Hague / Hague-Visby Rules will, by reference, have an impact on time bars for cargo claims, as explained below.

Time bar

The Hague Rules and the Hague-Visby Rules both apply a one-year time bar for cargo claims. Article 3, Rule 6 states:

"... the carrier and the ship shall be discharged from all liability whatsoever in respect of goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered..."

If no cargo was delivered (e.g. because the cargo has been lost overboard) the claimant will need to identify when the cargo would have been delivered for the purposes of calculating when time starts and ends.

If the cargo was delivered damaged, time starts to run from the date of delivery (usually when the cargo is discharged from the ship).

Inter-Club Agreement (ICA)

The ICA only applies to cargo claims.

If the ICA has been properly incorporated into the charterparty then it requires an additional step for either Owners or Charterers (depending on which party incurred the initial liability to the cargo interests) when pursuing their indemnity action against their contractual counterparty.

Clause 6 of the ICA states that:

Recovery under this Agreement ... shall be deemed to be waived and absolutely barred unless written notification of the Cargo Claim has been given within 24 months of the date of delivery of the cargo or the date the



cargo should have been delivered...” (unless the Hamburg Rules apply – note that the Hamburg Rules are not covered in this guide).

The notification requirement should usually (at a minimum) contain a clear description of the cargo claim, the amount claimed and details of the underlying contract of carriage.

The normal six-year time bar applies following notification (see above).

Demurrage claims

Voyage charterparties often have their own separate time bar regime for demurrage claims (e.g. 90-days from completion of discharge). These need to be very carefully reviewed, in order to ensure compliance.

Demurrage time bar clauses typically require certain documents to be provided in support of a claim and are generally strictly enforced by Courts and arbitration tribunals. It is therefore crucial to carefully review the clause and fully comply with any documentary requirements (with particular emphasis on providing Notices of Readiness and Statements of Facts).

General average

General average time bars can be complex and will often require reference to the York-Antwerp Rules (YAR).

The YAR are a set of maritime regulations governing general average that may be expressly incorporated into a charterparty.

Under the various versions of the YAR, time limits for recovery actions against cargo interests can vary from one year to six years after the date on which the general average adjustment was published.

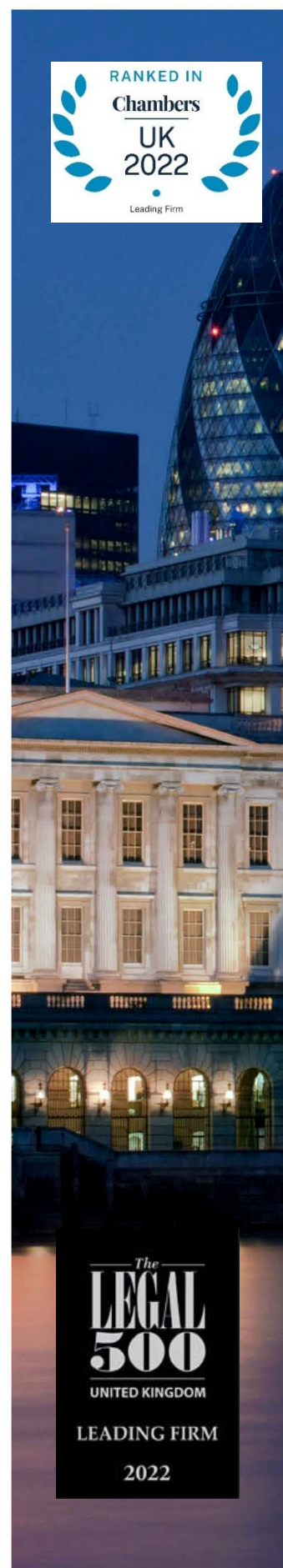
It is necessary to carefully consider which version of the YAR has been incorporated into the charter and apply the appropriate time bar.

Recommendations

When any new matter comes in, we recommend adopting a three- step system of: (1) reviewing the charterparty to identify possible time bar clauses; (2) checking to see whether they are relevant to the facts of the case; and (3) if so, diarising effectively so they are not missed.

When reviewing a charterparty, it can be helpful to use optical character recognition (OCR) to make it searchable (this may be done using Adobe Pro DC). This is, however, no substitute for a careful clause-by-clause review to ensure that nothing of relevance is inadvertently overlooked. Experience shows that time bars can crop up in unexpected places.

Most IG Clubs have a sophisticated claims system for diarising relevant time bars, with automatic reminders. If not, we would suggest (at a minimum) creating diary reminders a week, a month and a year before the time bar in question is due to expire, in order to avoid being caught out.



This guide is not exhaustive and is not intended to constitute legal advice.

For more information regarding charterparty time limits please contact Oliver McGaw (omcgaw@m-f-b.co.uk) or your usual contact at MFB.



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