

**From:** Peter Barham  
**Sent:** Tuesday, 4 February 2020 10:30 AM  
**To:** LSCSubmissions  
**Subject:** Submission on changes to Uniform Law: Recommendation 20

Dear Sir/Madam

The existing requirement whereby a legal practitioner has only 12 months to apply for assessment is wholly inadequate. However, the proposal in respect of recommendation 20, whilst an improvement, still misses the mark. The 12 month period is just too short. Three years would be acceptable, in my view.

As noted in the proposed submission, there are many good reasons for an application by a practitioner to be out of time, including extending the time for payment. Parties are often able to work out satisfactory arrangements between themselves given time. Forcing applications within 12 months unnecessarily pits barristers against their solicitor clients and pits solicitors against their own clients. It is antithetical to orderly business arrangements, creates unnecessary work for costs assessors and involves unnecessary work and costs for the parties.

Also, take, for example, a personal injury practitioner operating on a no win - no fee basis where the instructions are transferred. The case may not even be heard after 12 months, so the costs are not due and payable. But the 12 months begins to run when the practitioner sends the bill. If the practitioner were to apply for assessment it is premature, as no costs are due. Accordingly, a wise practitioner would not send a bill, but would merely advise what the outstanding fees are so that time does not commence to run, (or be forced to apply to assess a bill for costs which may never become due if the case is lost) and then hope to be informed of progress on the case. It is like something out of Kafka and is entirely unsatisfactory.

The riposte that the legal practitioner can simply sue is also unacceptable: the restrictions on suit in the legislation itself make it, quite deliberately, an unattractive proposition for any practitioner and certain costs consultants have advised on their websites against doing so.

Whilst extending to practitioners the option of seeking to apply for an extension of assessment is meritorious, it should apply after 3 years. Practitioners should not be forced to fracture their business relationships and should have some certainty after 12 months rather than having to go on bended knee in the hope that their actions in being reasonable towards their clients, or other reasons, are not met with rejection.

Relationships are part of our livelihood. So are fees. Sections 198(3) and (4) need to be amended accordingly.

Kind Regards  
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