

# Establishing the grounds for a professional negligence claim

Knowing who to turn to in the event you have sustained financial loss caused by professional negligence is the essential first step in recovering your losses.



Here at Oratto, we know that having the right legal guidance is the fundamental ingredient to ensuring justice, and by talking to us you can be assured that you will be connected with the specialist professional negligence lawyer who is right for your case.

The professional negligence claim process can sometimes be a bewildering experience. By having the advice of a specialist, you can have peace of mind that your case is in safe hands and that you have the best possible chance of receiving a damages award from the negligent professional's indemnity insurance.

## DUTY OF CARE, BREACH AND LOSS

In order to establish a viable claim for professional negligence the claimant must prove that on the balance of probabilities the professional owed a duty of care, that there was a breach of this duty and that this breach resulted in financial loss – without proven loss there can be no grounds for compensation.



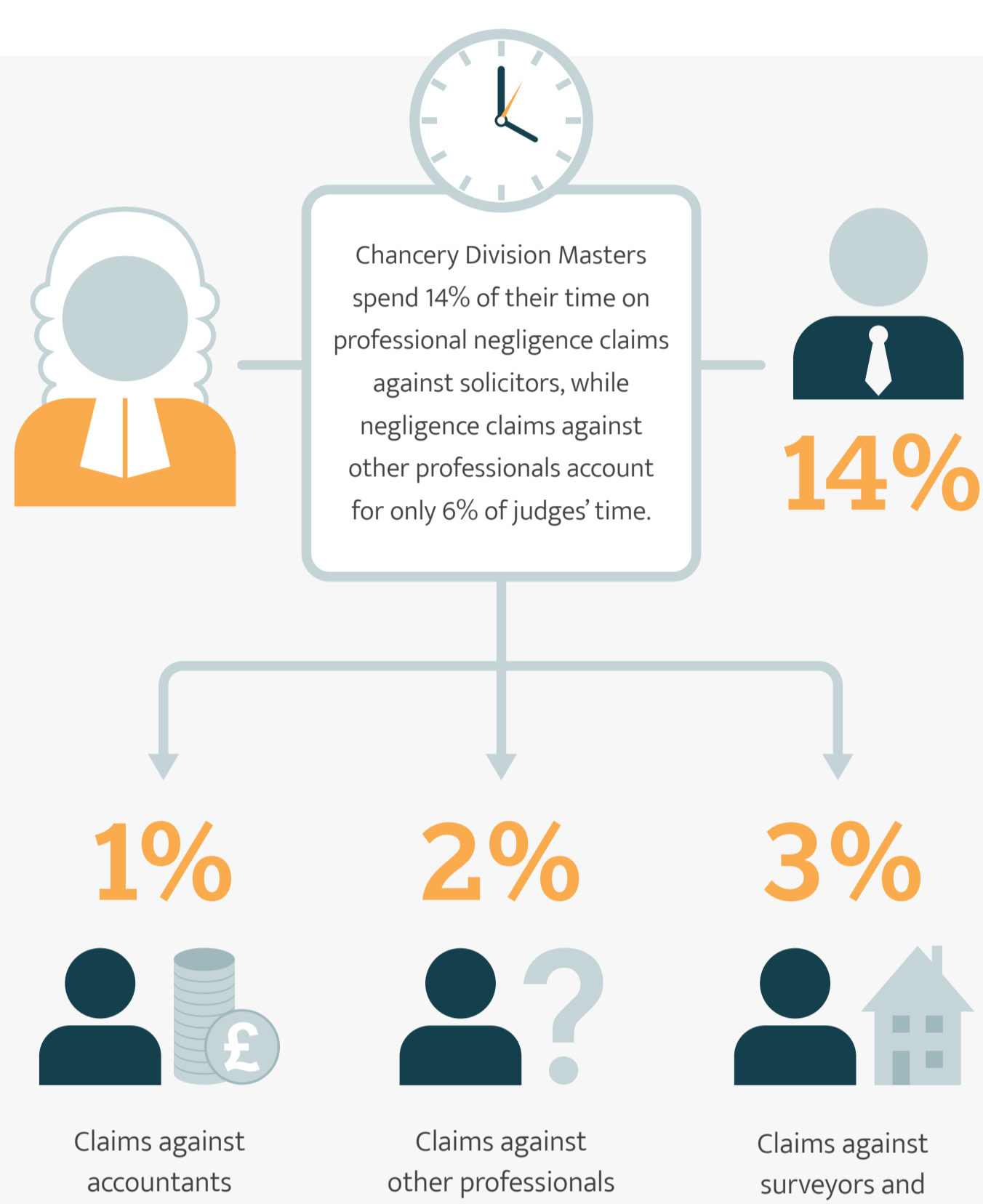
## THE LIMITATION ACT 1980



6 YRS

Under the Limitation Act 1980 there are six years available to claim - commencing from the date on which the breach of contract or incident of negligence occurred. The exception to this is where a claimant was not aware of the negligence until much later; in instances such as this the limitation period runs for three years from the date on which the claimant became aware of the negligence and the loss it caused.

Determining which limitation period applies is likely to require advice from a professional negligence specialist. Incorrect advice may result in a claim becoming time-barred.



Source: 2013 Chancery Division statistics

## OTHER PROFESSIONALS COMMONLY IMPLICATED IN NEGLIGENCE CLAIMS



**2009** The peak year for professional negligence claims heard in the London Chancery and Queen's Bench Divisions

## PRE-ACTION PROTOCOL FOR PROFESSIONAL NEGLIGENCE CLAIMS

The Pre-Action protocol imposes certain obligations before court proceedings can be issued. It encourages both early exchange of information and the use of alternative dispute resolution procedures.



The protocol applies for claims of breach of contract, breach of fiduciary duty, and negligence. However, it does not apply to claims for construction negligence or claims of negligence involving a healthcare provider. In the former type of claim, claimants and their solicitors should look to use the Pre-Action Protocol for Construction and Engineering Disputes.

THE CIVIL PROCEDURE RULES (CPR) 1998 IS THE INSTRUMENT BY WHICH BOTH PRE-ACTION PROTOCOLS WERE INTRODUCED.

Professional negligence claims can be funded via any of the following:

- Private retainer
- Third party funding
- Conditional fee agreement
- An insurance product
- Fixed fee
- A damages-based agreement

## THREE STAGES TO A PROFESSIONAL NEGLIGENCE CLAIM

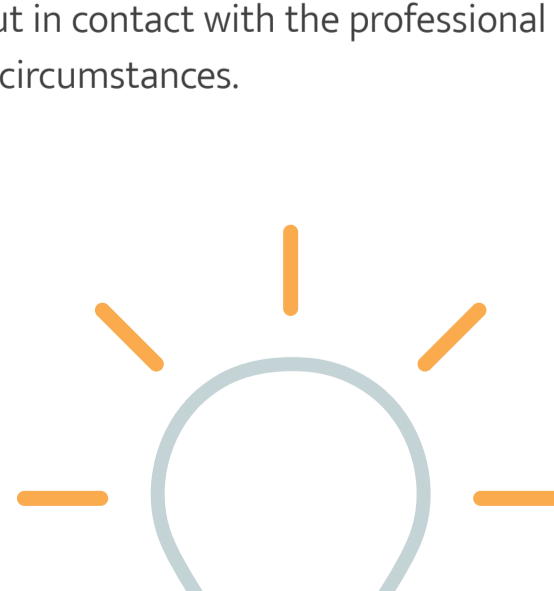
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- Pre-action Protocol** - compulsory procedure to precede litigation, aimed at encouraging out-of-court settlement
- Alternative Dispute Resolution (ADR)** - mediation, arbitration, conciliation - methods to settle a dispute through negotiation
- Court Proceedings** - generally thought of as a last resort, representation by a professional negligence solicitor is a must!

## PROFESSIONAL NEGLIGENCE CLAIMS ADVICE AT THE TOUCH OF A BUTTON

If you are considering your possible entitlement to professional negligence compensation or are looking to pursue an existing claim with superior legal representation, Oratto can make sure you are put in contact with the professional negligence lawyer that is right for you and your circumstances.

Our member solicitors are specialists in this complex field and can bring their expertise to your benefit whether you are making a claim against a solicitor, financial advisor, surveyor or other professional. Our priority is ensuring you are represented by the solicitor best-suited to your case, with suitability depending on such factors as complexity, value and personal circumstances.



We can help you immediately by recommending suitable solicitors from our list of members or you can choose to browse through the list of solicitor profiles and choose the specialist you would like to make contact with.

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