



FACT SHEET NO. 23

LIABILITY FOR DEBTS AND THE PRESCRIPTION AND LIMITATION (SCOTLAND) ACT 1973

WHAT IS THE PRESCRIPTION AND LIMITATION (SCOTLAND) ACT 1973?

The **Prescription and Limitation (Scotland) Act 1973** sets out the rules on how long a creditor has to take action against you for a debt (i.e. take you to court). The time limits are different depending on the type of debt you have.

This fact sheet outlines when you can use the Prescription and Limitation (Scotland) Act 1973 and includes a standard letter you can adapt if your debt fits into the rules.

When can I use The Prescription and Limitation (Scotland) Act 1973?

This depends on the type of debt you have. If the type of debt you have is not covered in this fact sheet, **phone us for advice**.

UNSECURED CREDIT DEBTS

This includes credit cards, store cards, bank and building society personal loans, catalogues, finance company loans etc. You may have had a debt with an ordinary unsecured creditor that you have not heard about for a very long time. You may have moved address or thought that the debt had been written off.

Out of the blue a letter arrives from the original creditor or a debt collection agency asking you to make a payment.

You can argue that the creditor is out of time or 'statute barred' from taking you to court for this debt: **if**

- the creditor has not already obtained a decree against you; **and**
- you or anyone else owing the money (on a debt in joint names) have not made a payment on the debt during the last five years; **and**
- you have not written to the creditor admitting you owe the debt during the last five years.

What should I do next?

You can use the sample letter at the end of this fact sheet to write back to the creditor telling them about The Prescription and Limitation (Scotland) Act and disputing that you owe the debt.



REMEMBER

Keep copies of any letters you send.

You are entitled to a copy of any file the creditor has containing the history of your account under the **Data Protection Act 1998**. A request for the file would not mean you are admitting the debt.

REMEMBER

If the creditor can prove that you wrote to them admitting the debt, or you or anyone else owing the debt made a payment, then the five year prescription/limitation period would start running from the date you last made contact or made a payment.

If you have started to make payments on a debt after the five year limitation period has run out then the debt is probably unenforceable. **Phone us for advice.**

OFFICE OF FAIR TRADING DEBT COLLECTION GUIDANCE

The Office of Fair Trading (OFT) has issued Debt Collection Guidance which looks at whether a debt is being collected fairly. They say:

- it is unfair to pursue the debt if you have heard nothing from the creditor for five years;
- the OFT thinks it is fair to keep trying to recover the debt if the creditor has been in regular contact with you during this time;
- it is unfair to mislead you by saying the debt is still legally recoverable when it is not;
- it is unfair to keep pressing for payment after you have told them you won't be paying the debt because it is statute barred.

If this is happening then you can complain to your local trading standards department in the council. They may take up your case for you. You may also complain to the OFT. Their address is at the end of the fact sheet. The OFT does not usually take up individual cases but their

Debt Collection Licensing Enforcement Team collects information that can be used to take action against problem creditors, who can even lose their consumer credit licence.

MISCELLANEOUS TIME LIMITS

In Scotland there is a time limit of five years or 20 years (depending upon the type of debt) on taking legal action to claim money owed.

Sheriff court decrees

If the creditor has been to court they will usually have up to 20 years to start 'enforcing' the decree and you cannot use the Prescription and Limitation (Scotland) Act to dispute you owe the debt.

The debt is likely to have been included in your credit reference file. A default will stay on your credit file for six years.

FACT SHEET

We have a fact sheet on 'Credit reference agencies', which may be of assistance to you. **Phone us for a copy.**

Overpayment of social security benefits

The Department for Work and Pensions (DWP) has six years to take action through the courts to recover benefit overpayments. The time starts running from the date of the decision that the overpayment was recoverable. However, if more than six years have gone by, it may still be possible to recover the overpayment from **another** benefit you receive as the DWP do not have to go through the courts to do this.

The usual time limit of five years applies to overpayments of Housing Benefit and Council Tax Benefit. **Phone us for advice.**

Council Tax/Community Charge

Arrears of Council Tax and Community Charge can be recovered for up to 20 years. This time limit runs from the date of the final demand, or from the last time that the debt was acknowledged by you (or an agent acting on your behalf). If there was a 'prolonged and unexplained delay' in recovery, it may be possible to challenge the action. **Phone us for advice.**

There is a two year rule for new liabilities for Community Charge. This means that if you had not been on the Community Charge register but it was later found that you should have been, you can argue that you only owe up to two years Community Charge before your name was put on the register. **Phone us for advice.**

Income tax and VAT

There are no time limits which stop HM Revenue and Customs from collecting tax once the initial assessment has been made.

FACT SHEET

We have a fact sheet on 'Business debts', which may be of assistance to you. **Phone us for a copy.**

Mortgage shortfalls

If your mortgage lender is chasing you for a debt left over when your house was repossessed or sold, there are time limits on claiming money owed, which vary according to the nature of the debt.

When the money owed is a mixture of the 'capital' part of the mortgage and the 'interest' part, the time limits for each are different. There is a 20 year limit to recover the capital part and a five year limit to recover the interest part.

FACT SHEET

We have a fact sheet on 'Mortgage shortfalls', which may be of assistance to you. **Phone us for a copy.**

Student loans

Student loan agreements are simple contracts and this gives the Student Loans Company (SLC) five years from the date you last paid or acknowledged the debt to go to court to enforce the agreement. There are two sorts of student loans and different rules apply depending upon when you took out the loan.

Old style 'mortgage' student loans are consumer credit act agreements. Payments cannot be automatically deducted from your wages. The SLC has to go to court before they can enforce the debt against you. This means that the time limits can apply if you have not paid or acknowledged the debt for over five years.

WARNING

Asking for the loan to be deferred could count as acknowledging the debt and start time running again.

From **September 1998** new style or 'income contingent' student loans include rules to say that repayments will be automatically deducted directly from your wages or through your tax return if you are self-employed. This means that the SLC are still allowed to take money from your wages for a loan over five years old as they do not have to go to court to do so.

USEFUL ADDRESSES

Office of Fair Trading

Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Tel: 0845 7224 499

www.oft.gov.uk

Office of the Information Commissioner

Complaints Department
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Tel: 01625 545 745

www.dataprotection.gov.uk

Scottish Public Services Ombudsman

4 Melville Street
Edinburgh
EH3 7NS

Tel: 0870 011 5378

www.scottishombudsman.org.uk

SAMPLE LETTER

THIS LETTER IS DESIGNED TO HELP YOU DISPUTE LIABILITY FOR A DEBT WHERE A CREDITOR HAS NOT CONTACTED YOU FOR OVER FIVE YEARS AND YOU HAVE NOT MADE A PAYMENT OR WRITTEN ACKNOWLEDGING THAT YOU OWE THE DEBT DURING THIS PERIOD.

(Your home address)

Date _____

To: _____

'Without Prejudice'

Dear Sir/Madam

Account No: _____

You have contacted me/us regarding the account with the above reference number, which you claim is owed by myself/ourselves.

I/we would point out that under **The Prescription and Limitation (Scotland) Act 1973 Part I Prescription Section 6:**

“If after an appropriate date, an obligation (an appropriate debt) has subsided for a continuous period of five years:

- (a) without any relevant claim having been made in relation to the obligation, and
- (b) without the subsistence of the obligation having been relevantly acknowledged;

then as from the expiration of that period the obligation shall be extinguished...”

I/we would also point out that the Office of Fair Trading (OFT) say under their Debt Collection Guidance on statute barred debt that:

“It is unfair to pursue the debt if the debtor has heard nothing from the creditor during the relevant limitation period”.

The last **written acknowledgment/payment** of this debt was made over five years ago and no further acknowledgement or payment has been made since that time. Unless you can provide evidence of payment or written contact from me/us in the relevant period under **Part I Section 6** of the above Act, I/we suggest that you are no longer able to take any court action against me/us to recover the alleged amount claimed.

The OFT Debt Collection Guidance states further that:

“continuing to press for payment after a debtor has stated that they will not be paying a debt because it is statute barred could amount to harassment”.

I/we await your written confirmation that no further contact will be made concerning the above account and confirmation that this matter is now closed.

I/we look forward to your reply.

Yours faithfully

(Your signature)



REMEMBER

To keep a copy of all letters you send to your creditors.

Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone 0808 808 4000 Website www.nationalebtline.co.uk

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