Information:
limitation periods
Limitation periods for debts are important. This is because if the creditor has run out of time, you may not have to pay the debt back.

What is a mortgage shortfall?
In some situations where you have had your home repossessed, or handed back the keys to your mortgage lender, you may later be told you still owe money. This happens when the amount your home is sold for is not enough to pay the outstanding mortgage and any secured loans.

Money you still owe to your mortgage or secured loan lender in this situation, is called a ‘mortgage shortfall’.

Sometimes the debt includes the monthly instalments and interest added to the debt while your home is being sold. Until the house is sold, you are liable for these costs, as well as legal and estate agents’ fees.

How long can I be pursued for a mortgage shortfall debt?
The legal position under the Limitation Act

The Limitation Act 1980 sets out the rules on how long a creditor (who you owe money to) has to take certain action against you to recover a debt. If, by law, your creditor has run out of time the debt is ‘statute-barred’.

There has been some confusion in the past about mortgage shortfalls and the Limitation Act. However, the Court of Appeal has now decided that the following limitation periods apply to mortgage shortfall debts.

If you owe mortgage capital

Mortgage capital is the money you originally borrowed. For this part of a mortgage shortfall debt, the lender has 12 years to use court action to make you pay. This is under section 20 (1) of the Limitation Act.
If you owe interest

Mortgage interest is the interest you were charged to borrow the money. Your lender may also charge interest after your home is sold. For this part of a mortgage shortfall debt, the lender has **six years** to use court action to make you pay. This is under **section 20 (5)** of the *Limitation Act*.

**Information:**

**your debt will probably be capital**

The money from the sale of your house will usually be taken by your lender to pay interest before capital. So, unless the sale price is not enough to cover the outstanding interest, the shortfall debt will be all capital. This means that the 12 year limitation period will apply.

**Extra advice:**

**use of bailiffs**

If your lender took you to court within the limitation period, and a county court judgment (CCJ) was made for the debt, you cannot use the *Limitation Act*. If your CCJ is more than **six years old**, and the creditor wants to use bailiffs or High Court Enforcement Officers, they must first get permission from the court. **Contact us for advice.**

**When does the time limit start running?**

Whether the limitation period is **six** or **12 years**, it is important to understand exactly when the time limit started. Under the *Limitation Act*, time starts to run from the 'cause of action'. This is not the same for all types of debt, so be careful. In this fact sheet, we only look at the cause of action for mortgage shortfall debts. If you have another type of debt, **contact us for advice.**

**Capital**

The *Limitation Act* says that where you owe mortgage capital, the cause of action is when the lender is entitled to be paid in full. Under the terms of most mortgages, this is usually after two or three missed payments.

**Interest**

The *Limitation Act* says that where you owe mortgage interest, the cause of action is when the interest becomes due for payment.

**See our fact sheet:**

*Time limits for recovering debts.*

**Extra advice:**

**payable on demand mortgages**

Some mortgages have terms that say the debt is 'payable on demand'. This can make it more difficult to use the *Limitation Act*. If you think this applies to you, **contact us for advice.**
What if I handed back the keys?

If you handed back the keys and were not in arrears with your mortgage, the time limit probably started running when you gave your lender the keys. If there were arrears at the time, then the time limits above will apply.

Acknowledgement and payment

Payment

Payments toward interest do not extend the time period for the creditor to claim any other interest that is owed. They are treated as payments toward the capital part of the debt. This means that any payment you, or any joint owner such as your partner, make within the 12 year limitation period will cause that time limit to start running again from the beginning.

Acknowledgement

The time limit, either six or 12 years depending on whether it is capital or interest, will start running from the beginning again if you write to the lender, admitting or agreeing you owe the debt. This is known as ‘acknowledgement’. The rules are different if you owned the house jointly with someone else. See Joint debts later in this fact sheet.

Warning:

restarting the time limit

Once the time limit has started running, there are two ways it can start from the beginning again. If you are going to argue your debt is statute-barred, you must be reasonably sure you have not restarted the time limit running in either of these ways.

Extra advice:

if the limitation period has passed

If you made a payment, or acknowledged the debt, but the limitation period of six or 12 years had already gone by, and no court action had already been taken, you probably should not be forced to pay the debt. Contact us for advice.

The Financial Conduct Authority rules

On 1 April 2013 the Financial Conduct Authority (FCA) took over the regulation of mortgage lending, and problems with existing mortgages.

The FCA’s Mortgages and Home Finance: Conduct of Business sourcebook (MCOB), says that a lender “must deal fairly with any customer who has a mortgage shortfall debt”. A lender does not have to recover a shortfall debt, but if they do, they must tell you in writing, within six years of the date your home was sold. If they don’t, you can complain to the Financial Ombudsman Service (FOS). See Useful contacts later in this fact sheet.

Warning:

when the FCA’s MCOB rules apply

Most first mortgages taken out on or after 31 October 2004 will be regulated by the FCA’s MCOB rules. If you are unsure whether your mortgage is regulated, contact us for advice.

My Money Steps is our free, independent and confidential online debt advice service. My Money Steps will help you work out a budget and give you a personalised action plan setting out practical steps to deal with your debts.

www.mymoneysteps.org

Freephone 0808 808 4000
www.nationaldebtline.org
UK Finance policy

UK Finance say in their policy that:

"anyone whose property was taken into possession and sold more than six years ago, and who has not been contacted by their lender for recovery of the outstanding debt, will not now be asked to pay the shortfall".

The UK Finance policy is now part of the FCA’s MCOB rules. The UK Finance part of MCOB is a voluntary code, but should be followed as good practice by lenders. MCOB only covers lenders that are regulated by the Financial Conduct Authority (FCA). If you are not sure if your lender is covered by MCOB, contact us for advice.

When can I use these rules?

It is important to understand that the MCOB rules, including the UK Finance policy, operate separate to the Limitation Act. This means that making a payment or acknowledging the debt in writing does not matter if you are relying on these rules to argue you should not have to pay.

MCOB and the UK Finance policy are useful if you cannot use the Limitation Act as a legal defence as to why you should not have to pay.

What can I do?

- Do you owe capital or interest? This will affect which time limit applies to your debt. In most cases, it will be capital and the 12 year rule will apply. If you think you owe interest, contact us for advice.

- Work out when you last made a payment, or acknowledged the debt. If this was over 12 years ago, you can use the Dispute liability for a mortgage shortfall sample letter. The letter argues that the debt is unenforceable under the Limitation Act 1980.

- Check if your mortgage lender is a member of UK Finance. If they did not contact you before 11 February 2000 and it is six years or more since the house was sold without any contact from your lender, you can use the UK Finance policy with your lender. See the Ask your mortgage lender not to pursue the shortfall sample letter.

- Has your lender sent you a letter within six years of the sale confirming that there is a mortgage shortfall and that they intend to recover the debt? If you did not receive this letter you may be able to complain to the Financial Ombudsman Service (FOS). Ask your lender for a copy of their complaints policy and follow this first.
Joint debts

If your mortgage was in joint names, you need to check what the other borrower has done. If they have acknowledged the debt it doesn’t affect you. However, if they have made a payment towards the debt, the limitation period starts running again from the beginning for both of you from the date they last made a payment.

Ask for details of the debt

If you are contacted by your lender or their agent, the first thing to do is ask for a detailed breakdown of what they say you owe. See the Ask your mortgage lender for a breakdown sample letter.

Check all the figures and decide if you think the correct procedures have been followed. You should ask for details of:

- the exact sale price of the house;
- details of any valuations made on the property;
- how your lender has worked out the interest that has been added up to, and since, the sale; and
- any solicitors’, estate agents’ fees, or court costs that have been added on.

If my lender does not provide information

If your lender is being awkward about supplying a breakdown of the mortgage shortfall account to you, try asking them in writing for all the information held by them to do with the mortgage account. This request should be made under the Data Protection Act 2018. The request should be free unless it is unreasonable.

The Data Protection Act 2018 allows your lender to give you information about payments made by a joint account holder, such as your partner or ex-partner. However, it does not force them to do so. You can ask your lender to provide this information under the Data Protection Act, but they are within their legal rights to say no.

Mortgage indemnity insurance

Mortgage indemnity insurance, sometimes known as a mortgage indemnity guarantee (MIG), is insurance that covers the mortgage lender against a loss. Usually it is paid as a lump sum when the mortgage is taken out, or it can be taken off your mortgage advance at the time.
If the insurer pays out to your mortgage lender, you may still be pursued by your mortgage lender for the shortfall. You may also be pursued to by the insurer too, as they look to recover the money they have paid out. If this happens, contact us for advice.

Disputing the amount

The FCA’s MCOB rules say that all lenders must obtain the ‘best price that might reasonably be paid’ when they sell your house. If you do not think they have done this, it might be possible to dispute the amount they say you owe. You have six years from the date of sale to make a claim against the lender. You will need proof to support your case, such as valuations for your house at the time.

If you think any of the examples below apply to you, contact us for advice.

- The house was sold for a lot less than the market value at the time of sale.
- The house was not marketed well enough to obtain the best price.
- You arranged a sale which was refused by the lender, but after repossession the house was sold by the lender for a much lower price.
- If the house stood empty for a very long time, you may be able to argue that the mortgage company should have rented it out and therefore off-set possible rental income against the shortfall balance.
- Check who bought the property. Your lender should not have sold it to a related company.

Who do I complain to?

On 1 April 2013 the Financial Conduct Authority (FCA) took over the regulation of mortgage lending and problems with existing mortgages. Most mortgages taken out on or after 31 October 2004 will be regulated. This also applies to all new mortgages where the lender had a first charge over the property, and at least 40% of the property is lived in by you or your immediate family. If you are not sure what type of loan you have, contact us for advice.

If you are not happy about the way in which your lender has dealt with the mortgage shortfall, complain to them first. If you are still not happy, you could make a complaint to the Financial Ombudsman Service (FOS), contact us for advice.

Extra advice:

paying your lender back

If the insurance company has made a payment to your lender, they can ask you to pay them back this amount. Contact us for advice if you think this applies to you.

Extra advice:

contact us for advice first

Mortgage shortfall debts can be complicated. It can be hard to remember exactly what happened, or get hold of paperwork from the time. Before making a complaint to the Financial Ombudsman Service (FOS), contact us for advice.
Negotiating with your lender

If your mortgage shortfall debt is definitely not statute-barred, you will need to decide how to deal with it. In most cases, mortgage shortfall debts, or claims for repayment of insurance policies, can be treated as non-priority debts. This means treating them the same as credit card or catalogue debts. These are non-priority debts because these creditors have limited powers to make you pay. You cannot usually go to prison, be evicted from your home or lose an essential service for not paying non-priority debts.

Extra advice:

county court judgments

You should only treat the debt as non-priority if no court action has already been taken. If a county court judgment (CCJ) has been made, contact us for advice.

Making a payment arrangement

If you are going to try and make a payment arrangement with your lender, you need to do a budget. This will help you work out what you can afford to pay towards your mortgage shortfall debt. Your lender will also usually want to see your budget so they know that your offer is reasonable.

Ask your lender not to pursue the debt

If your mortgage shortfall debt is large, and your budget shows that you can only afford very small, or no payments, tell your lender. Use your budget to explain your financial situation. If you have other difficult circumstances, such as disability or illness, explain this to your lender.

If your house was repossessed and you are now in rented accommodation, explain to your lender that you no longer have any assets such as a house.

Full and final settlement

If you have no long-term prospects of clearing the full balance, it may be possible to offer part payment in ‘full and final settlement’ of the debt. If you can’t pay anything ‘up-front’, this could be in the form of instalments over time. For example, you could pay £3,000 in full and final settlement over five years at £50 per month. Before making a full and final settlement payment, contact us for advice.

See the Ask your mortgage lender to accept a full and final settlement offer of payment sample letter.
What about my credit rating?

From July 2010, UK Finance no longer keeps information on people who have been repossessed or handed the keys in on their home. This information used to be kept in a mortgage possessions register and was passed on to credit reference agencies. The information held on the register has been destroyed, but existing information may still be on your credit file.

If you have fallen behind with your mortgage, this will show as a ‘default’ on your credit file and will stay on there for six years. If you are not sure what information is on your credit file, you can check this by applying for a copy. Contact us for advice.

In some cases, details of how much you still owe will also appear on the file. This may affect your ability to get a new mortgage, especially if you still owe money to your previous lender.

What if my lender takes court action?

If you cannot come to an agreement with your lender or their collector, they may try and take court action to make you pay. This will usually be started in the County Court. This type of court action is civil, not criminal, and the court is not there to judge anyone innocent or guilty.

If you receive court forms, you must make sure you respond within the deadline. There is a time limit of 14 days from the date the claim is ‘served’ on you to send back the form. When a document is ‘served’, it means that it has been delivered in the correct way.

If you agree you owe the debt, and it is not statute-barred, you can use the court forms to make a monthly repayment offer.

If you disagree that you owe the debt, or you think it is statute-barred, use the forms to put in a defence.

Extra advice:
if the limitation period has passed

If you think your lender got a county court judgment (CCJ) against you after the 12 year limitation period, you may be able to ask the court to ‘set aside’ or remove the CCJ. Contact us for advice.

Information:
defences

Putting in a defence is complicated. Contact us for advice.
High Court

Although lenders must start court action in the County Court, if the debt is not a consumer credit agreement then the lender can try to enforce the judgment in the High Court. If this happens, contact us for advice. The forms used in the High Court are more complicated. You may want help with completing these, especially if you want to pay the debt back in instalments.

Bankruptcy

If you owe £5,000 or more, your lender may threaten to make you bankrupt. They will usually only do this if they think you have assets, such as another house that would be sold to pay your debt if you were bankrupt.

You can also choose to make yourself bankrupt. Bankruptcy is a last resort, but it can be a suitable option if you have lots of debt you cannot pay back. There are important disadvantages, and fees to pay, so it is very important that you get full advice first to make sure it is right for you.

If you are threatened with bankruptcy, or would like to talk about making yourself bankrupt, contact us for advice.

Debt relief orders (DROs)

A debt relief order is an alternative to bankruptcy. Your debt total must be £20,000 or less and you must have spare income of £50 per month or less, after essential living costs and bills. Also, you cannot have assets, for example savings or property, worth more than £1,000 in total.

There are special rules for cars. Contact us for advice.

Useful contacts

The Building Societies Association
Phone: 020 7520 5900
www.bsa.org.uk

Financial Conduct Authority
Phone: 0800 111 6768
www.the-fca.org.uk

Financial Ombudsman Service
Phone: 0800 023 4567 or 0300 123 9123
www.financial-ombudsman.org.uk
Mortgage shortfalls

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Information Commissioner’s Office
Phone: 0303 123 1113 or 01625 545745
www.ico.org.uk

Money Advice Service
Information and advice on money matters
Phone: 0300 500 5000
www.moneyadviceservice.org.uk

UK Finance
Does not deal directly with consumers but their website has useful information.
www.ukfinance.org.uk

My Money Steps is our free, independent and confidential online debt advice service. My Money Steps will help you work out a budget and give you a personalised action plan setting out practical steps to deal with your debts.

www.mymoneysteps.org

Freephone 0808 808 4000
www.nationaldebtline.org

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