



Time limits for recovering debts

Fact sheet no. 23 SCOT Time limits for recovering debts

March 2017

This fact sheet tells you about time limits for debts. These are important as if the time limit has passed, you may not have to pay the debt back. It is especially important that you understand time limits if you have old debts. This is so you don't do something that could start the time limit running again.

Use this fact sheet to:

- find out which time limits apply to which debts;
- find out when a time limit starts running on a debt;
- deal with creditors chasing you for old debts; and
- deal with court action for debts past their limit.

The Prescription and Limitation (Scotland) Act 1973

The **Prescription and Limitation (Scotland) Act 1973** 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. The time limits do not apply to all types of recovery action. Also, the time limits are different depending on the type of debt you have.

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

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.

Unsecured credit debts

This includes credit cards, store cards, bank and building society personal loans, catalogues, old energy bills, finance company loans and similar agreements. They are known as 'simple contract debts'. 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.

You need to think carefully about any action that either you or the creditor has taken over the last **five years**.

You can argue that the debt is 'extinguished' if:

- the creditor has not already obtained a decree (a court order for payment) 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**.



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This means that it no longer exists and there is no debt for the creditor to pursue.

What should I do next?

If you are being asked to pay a simple contract debt that you think is extinguished, you can use the **Time has run out to recover the debt sample letter** to write back to the creditor. This tells them about **The Prescription and Limitation (Scotland) Act** and disputes that you owe the debt. **Keep a copy of any letter that you send.**

If you have started to make payments on a debt after the **five year** limitation period has run out, your payments will not have revived the debt. The debt is still 'extinguished' and legally no longer exists. You could even argue that the creditor should pay back the money that you have paid because there was no debt to be paid off. **Contact us for advice.**

Remember:



if the creditor has evidence

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

The Financial Conduct Authority (FCA)

The Financial Conduct Authority (FCA) has published the **Consumer Credit sourcebook (CONC)** which looks at whether a debt is being collected fairly. Although the FCA cannot investigate individual complaints, you can still use their rules and guidance when disputing a debt on the grounds of limitation. All of the rules and guidance applies, no matter how old the debt is. In the **Consumer Credit sourcebook (CONC)**, the FCA includes the following rules and guidance:

- "In Scotland, a statute barred debt ceases to exist and is no longer recoverable if: (1) a relevant claim on behalf of the lender or owner has not been made during the relevant limitation period; and (2) the debt has not been acknowledged by, or on behalf of, the customer during the relevant limitation period." 7.15.3 Guidance
- "It is misleading for a firm to suggest or state that a customer may be the subject of court action for the sum of the statute barred debt when the firm knows, or reasonably ought to know, that the relevant limitation period has expired." 7.15.7 Guidance
- "A firm must not continue to demand payment from a customer after the customer has stated that he will not be paying the debt because it is statute barred." 7.15.8 Rule

You can make a complaint to your local trading standards department, who can look into your case. You can also complain to the FCA, as they can look into companies' behaviour, even though they cannot deal with individual complaints. See the **Useful contacts** at the end of this fact sheet, or **contact us for advice.**

The Financial Ombudsman Service (FOS)

You may be able to complain to the **Financial Ombudsman Service (FOS)** about the way a company has dealt with your account. You must follow your lender's complaints procedure first. You can only use FOS to complain about events that happened **from April 2007** onwards. See the **Useful contacts** at the end of this fact sheet, or **contact us for advice.**



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Debt types

Sheriff court decrees

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

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.

Overpayment of social security benefits

The DWP are likely to try to take court action to recover a benefit overpayment within the following time limits.

- If the DWP has decided that the overpayment should be recovered from you, within **20 years** of their decision.
- If the DWP has decided that you have been overpaid a benefit, but they have not decided that it should be recovered from you, within **5 years** of the decision that you have been overpaid.

This is a complicated area. You may need legal help to check whether an overpayment can still be recovered from you. **Contact us for advice** about finding the right type of legal help.

Other debt types

Council Tax

Arrears of Council Tax 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 any new recovery action. **Contact us for advice**.

Income tax and VAT

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

See our fact sheet:
Credit reference files and credit reports.



Information:
tax credits and social fund

INFO

It is not clear whether overpayments of tax credits and social fund loans follow the same rules. **Contact us for advice.**

See our fact sheet:
Business debts.





Mortgage shortfalls

There are rules in place about how quickly a lender should contact you after sale of the property if they want to recover the shortfall. **Contact us for advice.**

There are different legal views about whether a lender has **5 or 20 years** to take court action to recover a mortgage shortfall debt in Scotland. You may need specialist legal advice if:

- your lender is trying to recover a mortgage shortfall debt;
- you have not made any payments towards it recently; and
- you have not written to the lender about the shortfall recently.

Contact us for advice about how to find the right type of legal help.

**See out fact sheet:
Mortgage shortfalls.**



Student loans

Student loan agreements are simple contract debts and this gives the company asking you to pay **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. Court action has to be taken before the debt can be enforced. This means that the time limits can apply if you have not paid or acknowledged the debt for over **five years**.

If you are being asked to pay an old style 'mortgage' student loan that you think is extinguished, you can use the **Time has run out to recover the debt sample letter** to write back to the creditor. This tells them about **The Prescription and**

Limitation (Scotland) Act and disputes that you owe the debt. **Keep a copy of any letter that you send.**

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 Student Loans Company (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.

Warning:
if you defer the loan



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



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Useful contacts

Financial Conduct Authority (FCA)

Regulator for financial services such as payday lenders, banks, credit companies, insurance companies and mortgage lenders.

Phone: 0800 111 6768 or 0300 500 8082

Email: consumer.queries@fca.org.uk

www.fca.org.uk

Financial Ombudsman Service

For complaints about banks and other creditors

Phone: 0800 023 4567 or 0300 123 9123

Email: complaint.info@financial-ombudsman.org.uk

www.financial-ombudsman.org.uk

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National Debtline endeavour to keep our fact sheets as up-to-date as possible, however, we cannot be held responsible for changes in legislation or for developments in case law since this edition of the fact sheet was issued.

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