



THE UK INSOLVENCY HELPLINE


LIABILITY FOR DEBTS AND THE LIMITATION ACT

F A C T S H E E T N O 25

WHAT IS THE LIMITATION ACT

The Limitation Act 1980 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 that you have. This factsheet outlines when you can use the Limitation Act and includes a standard letter you can adapt to send if your debt fits into the rules.

WHEN CAN I USE THE LIMITATION ACT?

This depends upon the type of debt you have. If your type of debt is not included in the factsheet,  **phone us for advice.**

UNSECURED CREDIT DEBTS

This would include 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 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 judgment against you

and

- You, or any one else owing the money (on a debt in joint names) have not made a payment on the debt during the last six years

and


- You have not written to the creditor admitting you owe the debt during the last six years.

WHAT SHOULD I DO NEXT?

You can use the sample letter attached to write back to the creditor telling them about the Limitation Act and disputing that you owe the debt. Keep a copy of any letter you send.

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

Remember: If the creditor can prove you wrote to them admitting the debt, or you or anyone else owing the debt made a payment then the six years 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 where there was more than a 6 year gap then it is probably unenforceable.  **Phone us for advice.**

OFT 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 6 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 isn't.
- 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 happening then you can complain to your local trading standards department in the council. They can take up your case for you. You can also complain to the OFT. Their address is at the end of the factsheet. 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.

COUNTY COURT JUDGMENTS

If the creditor has been to court and there is a county court judgment outstanding, then you cannot use the Limitation Act to dispute you owe the debt. It does not matter how many years ago the creditor went to court, the county court judgment will still exist. However, the creditor may not be able to enforce the judgment without the court's permission if the judgment is over six years old. ☎Phone us for advice.

If you think the creditor has been to court and got a county court judgment against you after the debt is out of the six year limitation period, then you can ask the court to "set aside" or remove the county court judgment so you can put in a Limitation Act defence. We have a factsheet on "Setting aside a court judgment in the county court". ☎Phone us for advice.

The debt may be unenforceable but it is still a legal debt and non-payment is likely to have been entered on your credit reference file. A default will stay on your credit file for 6 years. We have a factsheet on credit reference agencies ☎phone us for advice.

COUNCIL TAX

The council should not go to the magistrates court and ask for a liability order for council tax if the application is made more than six years after the council tax became due. This is under *Regulation 34(3) Council Tax (Administration and Enforcement) Regulations 1992*.

Council tax appears to be "due" when the council sent a demand notice to you which may not be at the same time the council tax rate was set. It is important that you check when the demand was sent as this affects when the 6 year limitation period begins. You can also complain to the Local Government Ombudsman if the demand was not sent out "as soon as practicable" after the rate was set. ☎ phone us for advice.

COMMUNITY CHARGE

The council should not go to the magistrates court and ask for a liability order for community charge (poll tax) if the community charge was due more than six years before the liability order hearing. This means that the council can only pursue you for outstanding community charge if they got a liability order within 6 years of April 1993 at the latest. This rule is outlined in *Regulation 29 of the Community Charge (Administration and Enforcement) Regs. 1989 (as amended 1991)*.

In practice the council may go to court and ask for a liability order for a community charge (poll tax) debt which is more than 6 years old. They will get it unless you put forward a limitation defence at the hearing.

MORTGAGE SHORTFALLS

If your mortgage lender is chasing you for a debt left over when your house was repossessed or sold the situation is rather different. Mortgage lenders have 12 years to pursue you rather than 6 years. If you are in this situation we have a factsheet on "Mortgage shortfalls". ☎Phone us for advice.

INCOME TAX & VAT

There is no limitation period on debts to the Crown. You can always be pursued for tax and VAT. We have a factsheet on "How to deal with business debts". ☎ **Phone us for advice.**

BENEFIT OVERPAYMENTS & SOCIAL FUND LOANS

The Department of Work & Pensions (DWP) has 6 years to take action through the courts to recover benefit overpayments and social fund loans. This time starts running from the date of the final decision made on the overpayment and from when the social fund loan was due to be paid. But the DWP are still allowed to make deductions from your benefit for a debt over 6 years old as they don't need to go to court to do this. This applies to overpayments of benefits such as income support, job seekers allowance, pension credit, housing benefit, council tax benefit and paying back social fund loans.

STUDENT LOANS

Student loan agreements are simple contracts and this gives the Student Loans Company (SLC) 6 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 or "mortgage" student loans are consumer credit 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 Limitations Act

can apply if you have not paid or acknowledged the debt for over 6 years. (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 are 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 6 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 No: 0845 7224 499
www.oft.gov.uk

The Office of the Information Commissioner
Complaints Dept
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel No: 01625 545 745
www.dataprotection.gov.uk

Local Government Ombudsman
10th Floor
Millbank Tower
London
SW1P 4QP
Tel No: 020 7217 4620
www.lgo.org.uk

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

Freephone: 0800 074 6918

Website: www.insolvencyhelpline.org

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Whilst we endeavour to keep our factsheets as up to date as possible, The UK Insolvency Helpline cannot be held responsible for changes in legislation or for developments in case law since this edition of the factsheet was issued.

SAMPLE LETTER H

THIS EXAMPLE LETTER IS DESIGNED TO HELP YOU DISPUTE LIABILITY FOR A DEBT WHERE A CREDITOR HAS NOT CONTACTED YOU FOR OVER SIX YEARS AND YOU HAVE NOT MADE A PAYMENT OR WRITTEN ACKNOWLEDGING THAT YOU OWE THIS 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 Limitation Act 1980 Section 5 “*an action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.*”

I/we would also point out that the 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 **correspondence/payment/acknowledgement or payment** of this debt was made over six 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 Section 5 of the Limitation 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 contrary to section 40 (1) of the Administration of Justice Act 1970*”.

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 LETTERS YOU SEND TO YOUR CREDITORS**