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Debt Advice Handbook 15th edition

Description

With living costs and unemployment rising, budgets squeezed and problem debt on the increase, no adviser should be without this essential guide to the practice and process of giving money advice in England and Wales.

Who's this book for?

It is essential for debt advisers, welfare rights advisers, lawyers, local authority and housing association staff, social workers and union official.

What does it do?

The handbook provides the most comprehensive information needed by advisers on the key stages of money advice, including interviewing clients, establishing liability, prioritising debts, preparing a financial statement, negotiating with creditors and dealing with bailiffs. Fully indexed and cross-referenced to law, regulations and official guidance, and to court and tribunal decisions Includes tactical guidance and examples

What's new?

Fully updated to cover all recent changes to legislation, caselaw and court procedure and practice Emphasis is placed on taking due care of vulnerable clients and making sure that any payment arrangements agreed are appropriate. There is a focus on sustainable credit arrangements that do not affect a client's abilities to pay essential living expenses and priority debts.

Properties

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5. Time limits

Acknowledgements

Part payments

Court action to recover debts must be taken within certain time limits. These are mainly contained in the Limitation Act 1980, although some debts have their own time limit – eg, council tax. These time limits are known as '**limitation periods**'.

Most limitation periods run from the date the 'cause of action accrued'. ¹

The date the cause of action accrued is ignored. For example, if a client defaulted on 30 November 2000, a six-year limitation period would have ended on 30 November 2006.

Note: if a debt (eg, an overdraft) is repayable 'on demand', until the demand is made, there is no cause of action, and the time limit does not begin to run. ²

If the only thing preventing a creditor from taking court action is the need to comply with a procedural requirement, the time limit accrues regardless. ³ However, a default notice – needed before a creditor under a regulated credit agreement can take specified steps (see here) – is not regarded as a procedural requirement. The service and expiry of a default notice (where required) which has not been remedied by the client is, therefore, necessary to begin the limitation period in such cases. This, in theory, allows the creditor to defer the start of the limitation period indefinitely, allowing court proceedings to be started a significant time after the date the client last made a payment under the agreement – ie, the date of actual default. ⁴ **Note:** service of a default notice is not required to recover sums which have already accrued due under a consumer credit agreement – eg, a claim for arrears only when the limitation period would run from the date the missed payment(s) should have been made under the terms of the agreement.

Where a client has been made the subject of a bankruptcy order, the limitation period continues to run for any debts outside of the bankruptcy (such as fraudulent debts and personal injury claims), but, for debts included in the bankruptcy, the limitation period ceases to run after the making of the bankruptcy order because these debts will be dealt with by the trustee in bankruptcy. However, where a bankruptcy order is subsequently annulled, the effect is that the bankruptcy is 'wiped away', and so the limitation period continues to run in all cases, putting all creditors in the same position (see here

). ⁵ A debt relief order does not prevent the limitation period from running, but the limitation period is suspended for the duration of an individual voluntary arrangement so that, if this fails, creditors whose debts might otherwise have become statute-barred may still be able to take court action to recover them. ⁶ Where the client is in a breathing space or mental health crisis moratorium and a limitation period (which began before the moratorium started) would be due to expire within eight weeks after the last day of the moratorium, that limitation period is extended until the end of the period of eight weeks beginning with the day on which the moratorium ended. ⁷

Common limitation periods

Unsecured regulated credit agreement: six years from the date of expiry of a default notice (where required) which has not been remedied. See below for cases where, under the terms of

the agreement, a further notice is required to terminate the agreement before the creditor can take action to recover the outstanding balance.

Other unsecured borrowing: six years from default unless repayable 'on demand', when the time period does not start until the date of the demand or unless, under the terms of the agreement, termination of the agreement by the creditor is a pre-condition of court action to recover the outstanding balance. In this case, the period starts when the agreement is terminated. ⁸

Interest: six years from default in payment. Each amount of interest charged to an account has its own six-year limitation period. Once the capital is statute-barred, so is any claim for interest, even if that interest was added to the account less than six years ago.

Fuel debt: six years from the date the service was provided.

Telephone charges: six years from the date the service was provided.

Water charges: six years from the date of the bill.

Council tax: six years from the date of the bill (demand notice).

National insurance contributions: six years from the date payment was due.

Rent arrears: six years from the date the rent became due. Each amount of rent due has its own six-year limitation period.

Possession of land: 12 years from default in payment.

Mortgage shortfall: six years for arrears of interest from the date the interest became due; 12 years for the outstanding capital from the date the right to receive the money accrued (usually after default in payment of one or more contractual instalments). See here.

In relation to contracts for the supply of goods and services (but not water charges, which are payable under statute), the courts have held that the limitation period runs from the date the goods/services were provided and not from default in any time stipulated for payment in the contract in the absence of any 'special term' displacing that general rule - eg, the right to payment depends on the certification by a third party of the value of the work done. A term in the contract stipulating when payment is to be made is not such a term. The right to sue for payment may not arise until the time for payment has elapsed, but that is a separate issue and does not affect the accrual of the right to payment. ⁹

Where a creditor's action is based on the client's fraud or any fact relevant to the creditor's right of action has been deliberately concealed from the creditor by the client, the limitation period does not begin until the creditor *either* discovers the fraud or concealment *or* could with reasonable diligence have discovered it. ¹⁰ If a creditor relies on either of these provisions to argue that the limitation period has been extended, seek specialist advice.

Once the relevant limitation period has expired, a debt is said to be '**statute-barred**'. ¹¹ The effect of a debt being statute-barred is that it prevents court action. However, the debt still legally exists and can be recovered by any other lawful method. ¹² This means that statute-barred benefits and tax credit overpayments can be recovered – eg, by deductions from benefit because that does not involve court proceedings. However, the *Consumer Credit Sourcebook* states that a creditor must not attempt to recover a statute-barred debt if it has not been in contact with the client during the limitation period nor after the client has stated that they will not be paying the debt because it is statute-barred. Pursuing a complaint could be considered in appropriate cases. ¹³

Limitation periods are only relevant when the creditor must take the initial court proceedings. The time limit ceases to run once court proceedings are issued. If the creditor obtains a judgment, the limitation period does not apply to the enforcement of that judgment.

A limitation period that has already started can be repeatedly restarted by an 'acknowledgement' or 'part payment'.

If a client receives a claim form for a debt which is statute-barred or partly statute-barred (eg, in the case of rent or interest), and they wish to avoid a judgment being made against them, they must defend the claim on the ground that the debt is statute-barred. ¹⁴ Once they have done so, the onus switches to the creditor to prove that the claim is not statute-barred. Where relevant, advise clients who are considering raising limitation defences in relation to regulated credit agreements who cannot recall if, and/or when, they received a default notice and/or are unable to provide you with a copy, but have received a 'letter before claim', to query when the default notice was served when responding to the 'letter of claim' and also ask for a copy.

¹ *Reeves v Butcher* [1891] 2 QB 509. See also C Wilkinson, 'Consultancy corner: default dates for debt limitation purposes', *Adviser* 173

² *Goldsmith v Chittell* [2016] EWHC 630 (Ch)

³ *Swansea CC v Glass* [1992] 2 All ER 680

⁴ *Doyle v PRA Group* [2019] EWCA Civ 12. See also R Rosenberg, 'Legal round-up', *Quarterly Account* 52, IMA and C Bott, 'Limitations after Doyle', *Quarterly Account* 54, IMA.

⁵ *Khan v Singh-Sall* [2022] EWHC 1913 (Ch), paras 151 - 172

6 *O'Brien v Osborne* [1852] 10 Hare 92

7 Reg 8 DRS Regs

8 For example, as in *BMW Financial Services v Hart* [2012] EWCA Civ 1959

9 *Consulting Concepts International v Consumer Protection Association* [2022] EWCA Civ 1699 paras 33 - 35.

10 s32 LA 1980

11 For a discussion of tactics when dealing with statute-barred debts, see C Wilkinson, 'Consultancy corner', *Adviser* 109, including a suggested response letter to a demand for payment

12 But note *FCA Handbook*, CONC 7.15.4 and 7.15.8, which restrict a creditor's right to attempt recovery of statute-barred debts

13 CONC 7.15.4R and 7.15.8R

14 CPR PD 16, para 13.1

Acknowledgements

An acknowledgement means that the client has, in effect, admitted liability for what is being claimed. No amount need be specified. An acknowledgement must be in writing and signed by the client (or their agent – eg, a debt adviser).

The debt must be acknowledged either to the creditor or its agent. This means the client cannot acknowledge a debt on the telephone and letters from the creditor to the client cannot restart the limitation period. On the other hand, you could inadvertently acknowledge a debt when writing to a creditor on behalf of the client.

An admission of part of a debt together with a denial of liability for the balance is not an acknowledgement of the disputed balance. The phrases 'outstanding amount' and 'outstanding balance' have been held to be acknowledgements, as has a letter expressing concern about the amount of the claim, but not about the fact of a claim being made. ¹ An acknowledgement by one co-debtor only restarts the limitation period against that debtor and not any co-debtors. Once a debt becomes statute-barred, any subsequent acknowledgement cannot restart the limitation period.

1 *Bradford and Bingley v Rashid* [2006] UKHL 37; *Phillips and Co v Bath Housing Co-operative* [2012] EWCA Civ 1591

Part payments

To restart the limitation period, a payment must be made by the client (or a co-debtor) or agent, to the creditor or agent and must be in respect to the particular debt in question. For this purpose, the DWP is treated as the client's agent when making payments of mortgage interest to lenders. ¹ If part of the debt is disputed and a payment is made, the client must make clear that the payment relates to the undisputed part of the debt and ask the creditor to appropriate the payment to that part of the debt. ²

A payment of interest restarts the limitation period for the capital, but not the interest. In practice, payments are usually allocated first to interest and then to capital. **Note:** once the capital is statute-barred, so is any claim for interest, even if that interest was added to the account less than six years ago. Similarly, a payment of rent arrears does not restart the limitation period for any other rent outstanding. Writing off part of a debt does not count as a payment. Once a debt has become statute-barred, any subsequent payment cannot restart the limitation period. However, the client cannot recover any payment(s) made, as the effect of a debt being statute-barred is only to prevent court action. The debt still legally exists and can be recovered by any other lawful method. ³

¹ *Bradford and Bingley v Cutler* [2008] EWCA Civ 74

² *Ashcroft v Bradford and Bingley* [2010] EWCA Civ 223

³ But note *FCA Handbook*, CONC 7.15.4 and 7.15.8, which restrict a creditor's right to attempt recovery of statute-barred debts.