

Statute Barred Debt... To collect or not to collect, that is the question?!

Lets set aside the issue of the proposed reduction to the limitation period for a moment and give a little focus on the actual collection of Statute Barred debt.

Thanks to my nemesis, the Consumer Action Group website, there is a lot of misinterpretation of statute barred debt, what can and cant be done and the rights of the consumer and DCA.

And to make matters worse the Office of Fair Trading seem to have misinterpreted the law also...

If you are in the process of renewing or varying your Consumer Credit Licence you will be aware that part of the process is to complete a Credit Competency Plan (CCP1). Question 41 of the CCP1 form states:

Do you have systems in place to ensure that you do not collect statute barred debt?

You can imagine the kind of feedback I am receiving from members regarding this, a few even taking the step not to touch statute barred accounts to avoid action by the OFT!

So, to set at ease those members, and to provide a clear picture on the misinterpretations, below is some important clarification:

The OFT have confirmed that the wording of this part of the CCP is inaccurate. The wording will be updated when the CCP as a whole is revised and we will be updated on timings in due course.

Under the Limitation Act 1980, which applies to England and Wales, a debt is considered to be statute barred when no payments have been made against it or where it has not been acknowledged* for six years. In Northern Ireland, statute barred debts are governed by the Limitation (Northern Ireland) Order 1989. In Scotland, statute barred debts are governed by the Prescription and Limitation (Scotland) Act 1973 which states that the debt itself ceases to exist after five years providing that it has not been acknowledged and that no relevant claim against it has been made by the creditor.

*For clarification purposes, acknowledgement is either acknowledgement made in writing or a payment received against the debt. Once acknowledgement is received, this re-sets the limitation period.

Whilst the OFT accepts that the debt still exists, the OFT considers that it can be unfair to pursue the debt in the circumstances set out in their Debt Collection Guidance (section 2.13 and 2.14a and b), and it is the methods in which the debt is attempted to be collected that can cause concern to the OFT.

In essence, providing you work within legislation and guidance, collection of statute barred accounts is a legitimate activity. However, if your debtor has stated that they will not be paying a debt because it is statute barred, these accounts should be closed and your records updated appropriately. This will reduce the number of accounts that could be placed back out for collection or sale, which in turn could lead to complaint and create further issues for the industry in this area.

If you have any queries regarding this, please contact Claire Aynsley, Head of Membership & Compliance on 0191 2718043 or claire@csa-uk.com