

## INSIGHT

### Prescription and limitation in Scottish Courts

When do civil actions become time-barred in Scotland, and when does the clock start ticking? Our team can guide you through the rules

Before any civil action is raised in the [Sheriff Court](#) or the [Court of Session](#) in Scotland, the first question to ask is: how long ago did the loss occur? As in other jurisdictions, there is only a certain amount of time that a person can take to raise court proceedings before their right to do so expires.

In Scotland there are two main deadlines that apply to court actions, according to the Prescription and Limitation (Scotland) Act 1973:

- three years for actions involving personal injury
- five years for most other actions

Exceptions include:

- actions relating to trusts, Wills or the right to own property where actions will prescribe (become time-barred) after 20 years, or even never
- actions relating to damages following the sale or purchase of a house will usually prescribe after two years.

#### When does the clock start ticking?

The usual approach in Scotland is that the prescription clock starts running at the date when:

- the claimant has suffered a loss, and
- has become aware of the loss.

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This is usually one and the same – i.e. where someone crashes into the claimant's car, it is obvious from the point of impact that the claimant has suffered a loss.

But what happens in less straightforward cases, perhaps if a person suffers loss without actually knowing it?

### **When the loss isn't immediately apparent**

It's relatively common for someone to suffer loss but not to know of it until later – for example, their parked car is damaged while they are away on holiday.

In this scenario, the prescription clock would start running at the time they discovered the damage. This reflects the legal principle that a person must be put "on notice" that something has gone awry before they are responsible for making a claim in the prescription period.

### **When it's not immediately clear the loss is someone's fault**

Take the example where a claimant's ceiling collapses, and they only discover much later that it was caused by water damage from their neighbour's shower.

In this scenario, the loss would be known about, but the claimant is not immediately put on notice that there is someone they can raise an action against to recover their losses.

Traditionally, it was thought the prescription clock did not start running until the claimant became aware they could raise an action against the person who caused the loss.

However, the Supreme Court of the United Kingdom took a different view in two recent cases: *David T Morrison & Co Limited t/a Gael Home Interiors v ICL Plastics and others* (2014 UKSC 48) and *Gordon's Trustees v Campbell Riddell Breeze Paterson LLP* (2017 UKSC 75).

In these cases, the Court determined that the clock starts running from the date where the claimant is aware they have suffered the loss (even if they are not aware it is the fault of someone else). The Court thought that as

soon as someone becomes aware they have suffered loss, it is their responsibility to make enquiries and find out who caused it. If they fail to make these enquiries, they risk losing the opportunity to pursue their claim.

### **The consequences in Scotland**

The Scottish Parliament is in the process of drafting new legislation to address this approach, and is looking at a Bill where the clock would not start to run until the claimant becomes aware of the identity of the person who caused the loss.

The Bill was introduced in the Scottish Parliament in February 2018, and is only in its early stages. Our Dispute Resolution and Litigation solicitors can keep you up to date on its progress and whether it could affect your claim.

Whatever the progress of the Bill, claimants should investigate the cause of any loss as soon as possible and seek legal advice promptly, so as not to jeopardise their right to raise a court action.

The other key point is that claimants should not assume that prescription and limitation in Scotland will be entirely consistent with that in other jurisdictions, and should seek specialist legal advice on Scottish Court procedures.

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