



## Sheriff court action for debt

Fact sheet no. 05 SCOT Sheriff court action for debt

May 2019

Use this fact sheet to:

- find out what court action means;
- understand the different court processes that can be used; and
- see how you can either admit or dispute the debt.

### Information:

#### changes to court procedures

On **28 November 2016**, the court procedures for dealing with most debts of **£5,000** or less changed to the 'simple procedure'. The information in this fact sheet is based on our understanding of the new rules.

## What is a court action?

If you are in debt and you cannot pay what you owe, your creditor may take court against you. This will be civil court action, which means that you cannot go to prison for owing the debt.

There may be no dispute over the amount owed to your creditor. However, if you do dispute the debt and think that you have a defence, do not ignore the court document. Get advice immediately from a legal aid solicitor, law centre, Citizens Advice Bureau or **contact us for advice**.

In Scotland, the person or company taking court action is called the 'pursuer' or 'claimant'. The person who the action is taken against is called the 'defender' or 'respondent'.

## Which court process do I use?

In Scotland, debt actions can be started in the 'sheriff court' and the 'Court of Session'. The Court of Session will only usually be used for claims for more than **£100,000**. We do not cover the rules about the Court of Session in this fact sheet. If you think that a creditor is taking court action against you in the Court of Session, **contact us for advice**.

Since **28 November 2016** there are two different sheriff court procedures.

- 'Simple procedure' for debts **up to £5,000**.
- 'Ordinary cause' for debts **over £5,000**.

Claims for child support, personal injury, defamation and mortgage or rent repossession do not use the simple procedure. Since **1 December 2017** rent repossession for Private Residential Tenancies does not involve a court at all, as the process is run through the First-tier Tribunal (Housing and Property Chamber).

If a claim for a debt under **£5,000** was started before **28 November 2016**, the procedure may be different, contact us for advice.



## Simple procedure

Under the simple procedure, although a sheriff presides over the court, it is less formal than ordinary cause. The court may still seem an intimidating place at first, but you should be given help by staff of the sheriff clerk's office on procedures and how to use the court.

You will first know about an action when court documents are served on you. The documents will normally be sent to you by post.

You should receive the following documents.

### A copy of the Claim Form

This has been filled in by the claimant and shows how much money they want from you and the reasons for their claim.

### A blank Response Form

You (the respondent) can use this form to reply to the claim, by either admitting or disputing the claim.

### A copy of the Timetable

This shows you the date by which you must return the Response Form.

### A blank Time to Pay Application

You can use this form to ask to pay by instalments if you agree you owe the money, but can't afford to pay the debt in full.

## Ordinary cause

If a creditor takes court action against you using the ordinary cause procedure, you should receive an 'initial writ'. The documents used in the ordinary cause procedure are much more formal than sheriff court summonses. They include:

- 'craves';
- 'condescendences' (which means the facts claimed by the pursuer); and
- 'pleas-in-law' (the legal rules and principles which allow the pursuer to claim money from you).

### Extra advice:



#### help with court forms

If you are dealing with court forms involved in the ordinary cause procedure, **contact us for advice**. You are likely to need specialist help. National Debtline can assist you to find help that is right for you.



## Replying to the court

It is very important to reply to court forms within the correct timescales.

### Warning:



#### act quickly

Do not ignore court documents. If you don't act you may end up paying more money in court expenses.

### Remember:



#### handle with care

If you receive any documents from the court, keep them in a safe place.

Sometimes people deny having had court documents. This can happen, but it is rare. It does not help your case if you claim you have not had the court documents if you did receive them. Court documents are generally sent by recorded delivery. Check if anyone else in your household could have signed for the letter and did not pass it on to you.

If you don't want to speak for yourself in court, and cannot afford a solicitor or cannot get legal aid, some courts allow non-solicitors to represent you. Others require you to represent yourself or for you to be represented by a solicitor or 'advocate'.

Advice and assistance through the legal aid system may be available to you for initial advice from a solicitor, who can help by advising on court procedures. There are detailed rules about who is eligible.

Legal aid is not available for small claim actions. You may be able to get advice from a solicitor about the preparation of your case under the 'Advice and Assistance Scheme'. You have to meet certain criteria to be able to get help under this scheme. The solicitor will not be paid under this scheme for going to court with you.

### Help:



#### dealing with forms

Before you try to reply to the court document yourself, it is worth trying to get some help.

**Contact us for advice.** Have the court document next to you when you phone, as we will need to ask you about it. You can also go to a legal aid solicitor, law centre, money advice centre or Citizens Advice Bureau. They can help you fill in the forms and can sometimes go to court with you.

### Extra advice:



#### admitting the debt

In this fact sheet, we assume that you do not want to defend the action, but do want to ask for time to pay the debt back. This fact sheet provides basic information on how to do this.

### See our fact sheet:



#### Time to pay directions and orders

The way you respond will depend on the type of procedure being used.



In the simple procedure, if you admit the debt but cannot pay it all at once, you can request time to pay. You can do this by responding on the [Civil Online](#) website or completing the separate Time to Pay Application and sending it to the court. If granted, this allows you time to pay by either regular instalments or by a delayed lump sum.

If you are disputing a debt, particularly in ordinary cause, you will need legal advice.

## Extra advice:



### apply in time

You should complete the time to pay application and return it to the court or respond on the [Civil Online](#) website before the return date shown on the summons.

## Extra advice:



### no legal help?

If you cannot get legal help, **contact us for advice.**

## Warning:



### debts over £25,000

Time to pay directions are not available where the debt is **over £25,000**. For this reason, they are not available in some ordinary cause actions. They are also not available for maintenance orders, child support arrears, income tax, VAT or car tax.

## What happens next?

If you have admitted the debt and applied for time to pay, the creditor may accept or reject the offer. If your offer is accepted, start making payments immediately. If you have problems with the arrangement, you may be able to ask to reduce the payments.

If you are using the simple procedure, you will normally be able to apply for time in pay. In ordinary cause actions you may be able to apply for a time to pay direction or a time to pay order.

If the creditor does not accept the offer, the court will hold a hearing to look at the application.

If you have defended the case under the simple procedure, the sheriff will first consider the case in private. The sheriff can then choose to do any of the following:

## See our fact sheet:



### Time to pay in simple procedure actions

## See our fact sheet:



### Time to pay directions and orders

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- refer you and the claimant to alternative dispute resolution;
- arrange a case management discussion;
- arrange a hearing;
- if the sheriff thinks they can decide the case without having a hearing, tell you that they are considering doing this;
- dismiss the claim if it is obvious it cannot succeed; or
- grant a decree against you if it is obvious that your defence cannot succeed.

## Warning:



### ordinary cause

Ordinary cause procedures are more complicated. Do not try to deal with them without help from a solicitor.

## If time to pay is given

If a time to pay application is successful, the court will grant a 'decree' (court order), with time to pay. No further action will be taken against you as long as you stick to the terms and pay on time. If you are unable to keep to the amount you have agreed to pay, you can apply to have the amount varied.

See our fact sheet:  
[Time to pay directions and orders](#)



## Warning:



### if you don't respond

If you ignore the claim or writ, the court may grant an open decree against you for the sum owed, plus interest and the pursuer's expenses. This means that the creditor can take steps to enforce the debt by diligence. See **Enforcement** later in this fact sheet.

## Costs and expenses

If you defend a case and are unsuccessful, you will usually have to pay the legal costs of the creditor.

If you do not defend the action, you will usually have to pay the claimant's expenses and costs.

The claimant will also be entitled to interest on the debt. The rate of interest being claimed must be shown on the claim form.

It may be the rate in the original contract or the 'judicial' rate (this is the rate allowed under court rules). The current rate is **8%**



## Enforcement

'Diligence' is the technical term for debt enforcement in Scottish law.

Under the simple procedure creditors have to wait for **4 weeks** after the decree is granted before using enforcement against you. In ordinary cause cases the sheriff may grant an open decree, allowing them to use diligence straightaway. If you had been given time to pay but miss a payment, your creditor could also then apply to use diligence.

However, for most types of diligence, the creditor must serve a 'charge for payment' before diligence can begin. This is a legal document and will have 'charge for payment' written across the top.

Diligence may include:

- freezing money in your bank account;
- taking money directly from your earnings;
- an attachment of property outside your home;
- an application for an attachment for property inside your home; or
- an inhibition on the sale of property such as your house.

See our fact sheet:

**Diligence - how creditors can enforce debts**



### Extra advice:

#### worried about diligence?

If you are worried about a creditor using diligence to enforce a debt, **contact us for advice.**



### Information:

#### changes to diligence

There are ongoing changes to the laws about diligence. We will try to update our information on a regular basis, but if you have any queries, **contact us for advice.**

