





The content

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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3. Taking court action

Types of claim

Adjournments

Applications: Form N244

Clients with mental health problems

The person or organisation bringing court action is called the 'claimant'. The person or organisation against which court action is brought is called the 'defendant'.

Most forms used in court proceedings are prescribed and can be identified by their number and title in the bottom left-hand corner. Debt advisers must familiarise themselves with these. The forms advisers most commonly encounter are available at gov.uk/government/collections/court-and-tribunal-forms.

Types of claim

Court action may involve the following.

- Money-only claims – eg, for repayment of an amount due under a loan, overdraft or credit card agreement. See Chapter 12 for more information.
- Claims relating to agreements regulated by the Consumer Credit Act that are not for money only – eg, for possession of goods supplied under a hire purchase agreement. See Chapter 13 for more information.
- Claims relating to land – eg, for possession of a house by a mortgage lender or landlord. See Chapter 13 for more information.
- All other claims – eg, a claim for the return of goods supplied under an agreement not regulated by the Consumer Credit Act and claims for declarations from the courts. These differ from money-only claims in that, if the client does not respond to the claim, the creditor must formally apply to the court for judgment and submit supporting evidence. You should obtain specialist help if you come across these claims.

Adjournments

An adjournment is a court order to delay a hearing, either for a specified time or indefinitely. The county court can either adjourn or bring forward the hearing date at any time. It can decide to do this itself or because one or both parties have applied. ¹

As one of the main aims of the Civil Procedure Rules is to avoid delays in hearing cases, it is important, if possible, to attend court to apply for an adjournment in case it is not granted.

An application for an adjournment on the grounds of illness should be accepted, provided it is supported by a fit note unless there is evidence that the illness or medical evidence is not genuine. Similarly, a district judge should adjourn a hearing if an important witness cannot be present.

It is reasonable to grant an adjournment if there would otherwise be a miscarriage of justice. For example, if a client comes to a court desk in a county court hearing centre at 10am to ask for representation at a possession hearing a quarter of an hour later, it should be argued that there are (or may be) legal points which the court must hear and which cannot be adequately

presented without further preparation. However, there must be some explanation of why the client has left it until the last minute to obtain advice or representation.

It is not a sufficient reason to adjourn a hearing simply because one (or even both) of the parties is not yet ready. Judges are often impatient or suspicious of applications to adjourn which they believe are merely means to prolong an action in which they think the creditor should succeed. On the other hand, if the need for the adjournment arises because the creditor (or its representative) has failed to supply information or documents reasonably required by the client in connection with their defence, the judge is more likely to grant the adjournment.

A district judge should consider the merits of an adjournment, whether or not one or both parties are requesting one. However, getting an adjournment is easier if the creditor agrees, and it is always worth contacting the creditor or its representative before applying for one.

1 r3.1(2)(b) CPR

Applications: Form N244

Applications are usually made on Form N244 – eg, an application to set aside a judgment or to stay (ie, put a hold on) execution of a High Court writ of control or to stay enforcement of a judgment debt. **1** Guidance notes to help complete the form are in leaflet N244. **2** The court fee on an application made on Form N244 is usually (but not invariably) currently £313 for court fee 2.4(a), payable ‘on an application on notice where no other fee is specified’. Another common fee specified is court fee 2.7, ‘payable on an application to vary a judgment or suspend enforcement’, which currently remains as £15, and applies to the applications for a stay referred to above. See [here](#) how to apply for full or partial fee remission.

An application can also be made verbally at a hearing that has already been fixed and can be made without using Form N244, but the creditor and the court should be informed (if possible in writing) as soon as possible. **3**

The various sections of Form N244 should be completed as follows.

- **Header.** The court name is likely to be ‘In the Civil National Business Centre’, but otherwise will be the name of the court which last contacted the client – eg, ‘In the county court at Northampton’. ‘Fee account’ is a fee payment system available for businesses who regularly use the courts. In the ‘Help with fees - Ref no.’ box put the reference number provided by the court if the client has successfully applied online for full or partial remission of the court fee (see [here](#)).

- **Section 1** should be completed with the client's name, unless they have a legal representative (eg, a solicitor) acting for them.
- **Section 2** should usually indicate that the client is the defendant (unless they have a legal representative acting for them or, exceptionally, if they are the claimant).
- **Section 3** asks what order the client is seeking and why. This information must be supplied. **4** The following are suggested wordings for some common applications.
 - **Redetermination/reconsideration:** 'The judgment be paid by instalments of £x per month because I cannot afford to pay at the rate determined.'
 - **Variation:** 'Payment of the judgment debt be varied to £x per month because my circumstances have changed and I can no longer afford to pay at the rate ordered.'
 - **Suspension:** 'Payment of the judgment debt be suspended under s71(2) of the County Courts Act 1984 on the ground that I am no longer able to pay it because...'
 - **Stay of enforcement:** 'Any enforcement proceedings against me be stayed until a further order is made (Rule 83.7 of the Civil Procedure Rules).'
 - **Stay of execution:** 'Execution of the Writ of Control be stayed under Rule 83.7(4)(b) of the Civil Procedure Rules so long as I pay the judgment debt and costs by instalments of £x per month because I am unable to pay the amount due in a lump sum.'
- **Section 4** asks whether a draft of the order being applied for has been attached. This is not usually required unless the application is being made by consent.
- **Sections 5 and 6** ask for information about the application. The client must indicate whether or not they want the court to deal with the application at a hearing or at a telephone hearing. If a hearing is requested, the court fixes a time and date, and notifies the parties at the same time as it serves Form N244. You should use your experience to estimate hearing times (15–30 minutes is suggested, unless the case is very complicated), but can just leave the box(es) blank. If no hearing is requested, the application is referred to a district judge to decide whether it is suitable for consideration without a hearing. If no hearing is requested, the district judge may disagree and order a hearing anyway and the other party can apply to set aside or vary any order made without a hearing. **5** You should only ask the court to deal with an application without a hearing if it will not automatically be transferred to the client's local court, and should also ask the court to use its discretion to transfer the case to the client's local court if it decides that a hearing should take place. **6**

If it is not possible (or it will be extremely difficult) for the client to attend a hearing in person, they can ask the court to arrange a telephone hearing on Form N244. If it is the creditor's or lender's application, the client can request a telephone hearing in writing. **7**

- **Section 7** contains details of any hearing date already allocated for the case.
- **Section 8** usually specifies a district judge for the hearing.
- **Section 9** usually specifies the other party/ies as the persons to be served with the application.
- **Section 9a** asks for the address of any party named in the response to the previous section who is **not** the claimant or defendant.
- **Section 10** should indicate whether the client is relying on a separate witness statement, their statement of the case or the evidence set out in the box on Form N244 in support of their application. The amount of text that can be fitted into the box is limited to 840 characters, so, in many cases, a separate witness statement may be needed. Evidence is required in certain cases (eg, set-aside applications) and the court can ask for evidence in support of an application. The client will not usually have served a defence and so any facts that they want the court to consider should be set out in the box and any written evidence referred to and attached – eg, a financial statement. The client should sign the statement of truth at the foot of the box. There is no need for a financial statement to contain a statement of truth.
- **Section 11** is a new section reflecting the provisions of Practice Direction 1A of the Civil Procedure Rules. This requires the court to take all proportionate measures to address whether vulnerability affects the ability of the client and/or a witness to participate in the proceedings and/or give evidence. The court should consider the factors set out in paragraph 5 - eg, understanding the proceedings and their role in them. A non-exhaustive list of matters that may cause vulnerability for this purpose is in paragraph 4. These include: age, communication difficulties, physical disability, mental health condition, learning difficulties, the impact of having witnessed a traumatic event relevant to the case or their relationship with a party or witness - eg, domestic abuse. Once vulnerability is identified, the activities covered by paragraph 5 should be checked sequentially in order to assess how the client's vulnerability impacted on them. 8 You should indicate whether the client and/or any witnesses are believed to be vulnerable in any way which the court needs to consider, including in what way(s) they are vulnerable and what steps, support or adjustment should be considered (a non-exhaustive list of possible measures is set out in paragraph 10).
- **Statement of Truth** section requires the maker to acknowledge that contempt of court proceedings may be taken against them if they make a false statement. You should point this out to the client and the form should then be signed and dated, and the details of the client's address completed.

- 2 Available from assets.publishing.service.gov.uk/media/62e3ea60d3bf7f75b50d4f63/N244_Notes_0722.pdf
- 3 CPR PD 23A, paras 2.8 and 3
- 4 r23.8 CPR
- 5 CPR PD 23, para 2.4
- 6 Quoting r30.2(1) CPR
- 7 CPR PD 23A, para 6
- 8 *AXX v Zajac* [2022] EWHC 2463 (KB) is an example of the court's approach

Clients with mental health problems

A client who 'lacks capacity' for the purposes of the Mental Capacity Act 2005 (see [here](#)) is a 'protected party' in any county court proceedings and can only take part in them through another person, known as a 'litigation friend'. A litigation friend is usually a family member, social worker, or the official solicitor. Advisers should not agree to be a person's litigation friend as they can incur costs and the role conflicts with giving advice.

A creditor can issue a claim, and it can be served on a client who is a protected party, even if they do not have a litigation friend. Any further step taken before a litigation friend has been appointed (eg, entering default judgment (see [here](#)) or taking enforcement action – see [here](#)) is of no effect unless the court subsequently ratifies it. ¹

¹ r21.3(4) CPR