

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.

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6. Dealing with a judgment debt

Suspension of a warrant of control
Insolvency options

There are a number of steps clients can take to prevent enforcement, or further enforcement, action.

Setting aside a judgment

Serving the claim form
Applications

If a judgment is 'set aside', its effect is cancelled and the client and creditor are put back into the position they were in before judgment was obtained. This includes the creditor cancelling any enforcement action. [1] If the court sets aside the judgment but does not dismiss the creditor's claim entirely, the claim is still outstanding and must be dealt with. The court may make directions setting out to the client the next steps. The court will likely expect a full defence to be filed along with a witness statement by the client. [2] If the client's application to set aside covers the defence in full, it is possible that the court may dismiss the entire claim.

The court *must* set aside a default judgment if: [3]

- judgment was entered before the client's time for filing an acknowledgement of service or a defence had expired (see here); *or*
- judgment was entered in default of an acknowledgement of service where the judgment was entered after an acknowledgement of service had been filed, even if it was filed late; *or*
- judgment was entered after the client had submitted a defence, even if it was submitted late (see here); *or*
- the client served an admission on the creditor, together with a request for time to pay before the judgment was entered (see here); *or*
- the client paid the whole of the claim (including any interest or costs due) before judgment was entered. If the client paid the whole of the claim before the claim form was issued, they should have filed a defence (see here).

The court also has the discretion to set aside a judgment if: [4]

- the client has a real prospect of success in the claim; *or*
- the court is satisfied that there is some other good reason why the judgment should be set aside/varied or the client allowed to defend the claim; *or*
- there has been an error of procedure, such as a failure to comply with a rule or practice direction.

1 r70.6 CPR

2 Witness statements must comply with PD 32 CPR and be verified by a statement of truth (see Part 22 CPR)

3 r13.2 CPR

4 r13.3 CPR. In *Marla International Ltd v Ready4s Ltd* [2021] EWHC 3490 (Ch), the High Court held that, where only part of a claim is defended, it would not be appropriate to set aside the entire judgment. Instead, the Court varied the judgment to allow Ready4s to defend those parts of the claim that fell within CPR 13.3(1)(a) and allowed the remainder of the judgment to stand.

Serving the claim form

Provided the creditor's claim form is served in accordance with the Civil Procedure Rules, the fact that the proceedings only came to the client's attention after judgment was entered is not a ground, in itself, for it to be set aside, even if the client alleges they did not receive the claim form.

The claim form is treated as having been served in accordance with the Civil Procedure Rules even if it is returned undelivered to the court, provided it was sent to the client's 'relevant address'. This is the client's usual or last known address unless:

- the creditor has reason to believe it is no longer the client's current address; *and either*
- the creditor can establish the client's current address; *or*
- the creditor is cannot establish the client's current address, but considers there is an alternative place or method of service.

A claim form must be served no more than four months after its date of issue (although the creditor can apply to the court to extend this period). The High Court has held that a claim form was validly served when it was posted in accordance with the rules during its four-month period of validity, but its deemed date of service was out of time. [1]

Delivery of claim forms to multi-occupancy addresses – eg, a block of flats – can raise issues as to whether the claim form has been validly served on the client per the rules. These require the claim form to be served at the client's specific 'usual or last known residence'. While delivery to the building itself may be sufficient in some cases, that will not always be so. For example, if the client lives at an address that includes a separate mailbox number, the claim form must be delivered there. [2]

If the creditor has reason to believe that the client's usual or last known address is not their

current address (eg, because letters have been returned marked 'gone away'), the creditor must take reasonable steps to find out their current address. If the creditor can establish the client's current address, the claim form must be served at that address. Provided this is the client's current address, the claim form is treated as having been served, even if the client does not actually receive it or it is returned to the court. 3

In *Moloney v Lombard North Central plc,* L sent a pre-claim letter to M at 16 Minet Avenue but the Post Office returned it as undelivered. Enquiry agents visited Minet Avenue but could not establish whether M lived there. They did, however, find out that he owned a property at 222A Chapter Road. On that basis, L issued and served proceedings at that address. There was no response, so L entered judgment in default and began enforcement action. Eventually, M found out about the claim and applied to set aside the judgment, claiming that he had always lived at Minet Avenue apart from a period when he was in Ireland. The Court of Appeal held that, on the evidence, because the claim had been served at Chapter Road this was not good service and it ordered that the judgment be set aside. Although L had identified a connection between M and Chapter Road, L had not taken 'reasonable steps' to establish that this address was the address for service. Since L had not taken sufficient steps to establish M's correct address, the claim should have been served at his last known address, Minet Avenue. 4

If the creditor has been unable to establish the client's current address (as above) but considers there is an alternative place or alternative method by which service could be effected, the creditor must make an application to the court permitting service at that place or by that method (eg, by email). The creditor can apply retrospectively to the court to validate alternative steps already taken. 5 The claim form is treated as having been served by the alternative method or at the alternative place, even if it does not reach the client or is returned to the court. If the creditor is both unable to establish the client's current address and there is no suitable alternative place or method of service, the client's usual or last known address is still the relevant address (even though it is unlikely that the claim form will come to the client's attention) and a claim form sent to that address is treated as having been served, even if it does not reach the client or is returned to the court.

If the claim form is treated as having been served under the above rules, unless one of the mandatory grounds for setting aside applies (see here), if the client wants to apply for a set-aside, one of the discretionary grounds must be relied on (see here). If the client does not have a 'real prospect of successfully defending the claim', but could, for example, satisfy the court they would have paid the debt in full had they known about the claim, they may be able to rely on the 'some other good reason' ground. However, they would probably have to provide evidence that the judgment had had some impact on their situation. 6

On the other hand, if the claim form has not been properly served, the client can apply to have

the judgment and any enforcement action set aside. In the usual case, the court can only refuse a set aside if there has been no prejudice to the client or possibly if the client has been guilty of 'inexcusable delay' in making the application. 7

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1 *Jones v Chichester Harbour Conservancy* [2017] EWHC 2270 (QB)

2 *Ivanchev v Valli* [2020] EWHC 1917 (QB)

3 rr6.9, 6.15 and 6.18 CPR; CPR PD 6, paras 9.1-9.3. The rules allow the creditor to take steps to effect service at an alternative place or by an alternative method and ask the court to validate it retrospectively. Provided the court makes the order, the claim form is treated as served.

4 *Moloney v Lombard North Central plc* [2016] EWCA Civ 1347

5 rr 6.9(5) and 6.15 CPR. See also *Ivanchev v Valli* [2020] EWHC 1917 (QB).

6 See *Godwin v Swindon BC* [2001] EWCA Civ 1478 at para 49 quoted in the 'Enquiry of the Month' section in Shelter's SDAS ebulletin, February 2021

7 *Nelson v Clearsprings (Management) Ltd* [2006] EWCA Civ 1252

Applications

If an application to have a judgment set aside is made on a discretionary ground, the court must take into account whether or not the client acted promptly in making the application – ie, with all reasonable speed once they found out about the existence of the judgment. 1 When applying for a judgment to be set aside, the client should always try to find an argument based on the facts or law of the case (eg, 'I do not owe the money because the goods supplied under a linked agreement were of unsatisfactory quality'), rather than personal circumstances – eg, 'I did not know how to reply to the claim form'. The onus is on the client to show the defence is a 'convincing' one as opposed to merely 'arguable'.

Although not strictly required by the Civil Procedure Rules, the client should explain why they failed to respond to the claim form - eg, although failure to receive the claim form may not be a set aside ground in itself, it could be a valid explanation for failing to respond. This is consistent with the approach now generally taken by the courts, such as in the recent decision in *Ince Gordon Dadds v Mellitah Oil & Gas* [2022] EWHC 997 (Ch), that an application to set aside a default judgment is an *'application for relief from any sanction'* falling within rule 3.9 of the Civil Procedure Rules. Therefore, when exercising its discretion, the court is required to consider the so-called *Denton* test, which has three stages:

- Was the breach serious and significant?
- If so, was there a good reason for it?
- If the first two stages are decided against the client, the court should consider all the circumstances to enable it to deal justly with the application as per rule 3.9. [2]

In *FXF v English Karate Federation Ltd & another*, the Court of Appeal has made clear that the three-stage *Denton* test apply 'in their full rigour' to applications to set aside a default judgment and that such an application is an application for relief from sanction to which rule 3.9 CPR applies as well as Rule 3.13. [3]

Unless the client wants to defend the claim or the creditor has already taken enforcement action (which would also be cancelled), it may be preferable for the client to apply to vary or suspend the terms of payment of the judgment (see below) or to vary the amount for which the judgment was entered where the only dispute is the amount for which the client was liable. Applying to set aside a judgment does not automatically prevent or delay any enforcement action by the creditor.

The application to set aside should also contain an application for a stay of enforcement pending the hearing, quoting rule 83.7 of the Civil Procedure Rules. The application is made on Form N244. If the client needs to communicate complex or detailed facts to the court, it is advisable to do so in the form of a witness statement, which should accompany the N244. A fee of £313 is currently payable for the application (see here for applying for full or partial fee remission). The case is sent to the client's home court.

If the client wants to set aside a county court judgment transferred to the High Court for enforcement, it seems that the application must still be made to the county court. [4] However, get specialist advice in this situation.

If the client has admitted the debt and judgment was entered on the basis of Form N9A, they should apply for permission to withdraw the admission [5] and defend the claim. [6] Form N244 must also contain a request for a transfer to the county court hearing centre serving the address where the client lives (the client's home court), when appropriate, plus a request for a stay of enforcement.

If there has been a hearing in the county court, the client can apply to have the order set aside and the matter reheard if they did not attend the hearing and an order was made in their absence. They should apply to the court where the hearing took place on Form N244. The fee is currently £313 (see here for applying for full or partial remission).

The court will want to know why the client did not attend and whether there has been a miscarriage of justice. The court is unlikely to order a rehearing if the client deliberately failed to attend or if the court is satisfied that there is no real prospect of the original order being changed.

The court will not allow an application for a rehearing purely because the client did not receive notice of the hearing date without enquiring as to why they did not receive it. On the other hand, the court should not refuse an application for a rehearing just because the client failed to provide the creditor or lender with a forwarding address. In general: [7]

- if the client is unaware that proceedings are imminent or have been served, they have a good reason for not attending any hearing;
- if the client knows of the proceedings but does not have a system in place for receiving communications about the case, they are unlikely to have a good reason for not attending any hearing.

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1 In *Core-Export v Yang Ming* [2020] EWHC 425 (Comm), an application to set aside a judgment made 23 days after entry of judgment in default was held not to have been made 'promptly' in view of YM's pre-action conduct, despite YM making out an arguable case that the defence had a reasonable prospect of success. The judge commented: 'What may be prompt where there is no history of earlier delay may not be so if there has been such delay'. YM had consistently ignored communications from C-E between January and September 2019 when judgment was entered. In *Pincus v Singh* [2023] EWHC 2997 (Ch), the court held that an application to set aside judgment under CPR 13.3 made more than three months after a default judgment had been entered was 'simply not prompt'.

2 *Denton v TH White* [2014] EWCA Civ 906

3 [2023] EWCA Civ 891

4 s42(6) CCA 1984, which says that the county court's powers to set aside a judgment continue to apply

5 Under r14.2(11) CPR

6 Under r31(3) CPR

7 *Estate Acquisition and Development v Wiltshire* [2006] EWCA Civ 533

Suspending a charging order

If a final charging order has been made but no application was made to suspend its enforcement by an order for sale on payment of instalments, the client can still make this application, if necessary, on Form N244 (see here). Alternatively, if the judgment was made on or after 1 October 2012, the client could apply for a variation (see here), which has the same effect as a suspension. A fee of £15 (court fee 2.7) currently remains payable on the basis it is 'an application to vary a judgment or suspend enforcement' (see here for applying for a fee remission).

You could also contact the creditor and ask whether it intends to apply for an order for sale and to confirm its position in writing. In many cases, the creditor has no intention of applying for an order for sale. So, provided an instalment arrangement can be agreed, the creditor will be prepared to confirm this. Should the creditor, nevertheless, subsequently apply for an order for sale while the instalment arrangement is still in place, seek specialist advice.

If an instalment order is in place, it is unlikely that the court will make an order for sale if there has been no default, although (strictly) if the judgment was made before 1 October 2012, not defaulting on an instalment order does not prevent an application for an order for sale from being made. If the judgment or order under which the client is required to pay a sum of money by instalments is made on or after 1 October 2012, the court cannot make an order for sale unless the client has defaulted on the instalment order *and* any arrears of instalments remain unpaid. [1]

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1 s93(3) TCEA 2007. Rules of court can provide otherwise, but at the time of writing, no such rules had been made.

Varying payments due under an order

If the court made the decision on the rate of payment without a hearing and the client is unable to afford it, they should request a redetermination (see here). Where the client is out of time to apply for redetermination or the rate of payment was set by a district judge at a hearing, see below. However, if judgment was either entered in default or on acceptance of the client's offer of payment, the following procedures apply.

If the creditor believes it can persuade the district judge that the client can afford to increase their payments, it can apply for the rate of instalments to be increased. An application is made on Form N244 (see here) and the case is automatically transferred to the county court hearing centre serving the address where the client lives (the client's home court) for a hearing.

Once an order for payment has been made, either in default or on acceptance of the client's offer of payment, the client can apply to the court that made it to have it varied at any time. [1] They do not need a particular reason for making this application, although it is usually because they can no longer afford the original instalment order because of a change in circumstances or because the original order was made in ignorance of a material fact. In the case of default judgments for immediate payment, a successful application for a variation prevents the creditor from taking subsequent enforcement action, provided the client complies with the terms of the variation order.

The variation can include changes to either the amount of instalments or their frequency and is made on Form N245, which is very similar to Form N9A (see here on how to complete this). Form N245 should be sent to the court that made the judgment. If it is also being used to apply to suspend a warrant of control, it should be sent to the enforcing court instead (see here). If Form N245 is being used to apply to suspend a warrant of control, an application for a variation should be made at the same time by ticking both boxes. A fee of £15 currently remains payable to cover both applications. See here for details about fee remissions.

When helping a client to apply for a variation order, it is helpful to send a letter to accompany Form N245, with a copy to the creditor, outlining the reasons for the application, especially if this is the first contact you have had with the creditor.

The court sends a copy of Form N245 to the creditor and if it does not respond within 14 days, the variation *must* be granted in the terms applied for. [2] If the creditor objects within 14 days, a court officer uses the determination of means guidelines to decide what the order should be.

Once the variation order has been made, either the creditor or client has 14 days to apply to the court for a reconsideration if they do not agree with the terms. Rule 40.9A(13) provides for this application to be made 'on notice', which unfortunately appears to require the use of Form N244 and payment of a court fee (currently £313 (fee2.4(a)) (subject to eligibility for full or partial remission) but, as this procedure is identical to redetermination under rule 14.13 CPR in the case of Form N9A where the application can be made by letter and no court fee is payable (see here) you could ask the court manager to waive payment of any fee. The case is automatically sent to the client's home court and a hearing arranged. At the hearing, the district judge can make whatever order they think just.

Advisers should keep a copy of Form N245. Clients may wish to ask the court for a receipt or, if the form is to be posted, send it by special delivery or get a certificate of posting. Follow up on any application not dealt with within 21 days of Form N245 being posted to or filed at the court.

If the order for payment was made by a court officer or the district judge without a hearing and the client is out of time to apply for a redetermination, or it was made by the district judge at a hearing, the client can only apply to vary the order on the grounds of a change of circumstances (including information not previously before the court). The application is made on Form N244 (see here). [3] A fee of £15 (fee 2.7) currently remains payable on the basis it is 'an application to vary a judgment or suspend enforcement'**.** See here for applying for a fee remission. The case is not automatically sent to the client's home court, so an application for this should be included on Form N244, quoting rule 30.2(1) of the Civil Procedure Rules.

If the order for payment of the judgment was made in the High Court either in default or on acceptance of the client's offer of payment, get specialist advice on applying for a stay of execution by writ of control and a variation of the judgment.

1 r40.9A(8)-(15) CPR

2 r40.9A(11) CPR

3 CPR PD 14, paras 6.1-6.2

Suspensions and stays

Suspension of a warrant of control

An application for a variation on Form N245 must include an offer of payment. If even a nominal sum cannot be found, the client can apply for the judgment to be suspended or 'stayed' (see also here on Form N9A).

A 'suspension' is usually on terms (eg, provided payments are made) and a 'stay' is usually until an event occurs – eg, until a particular date. Applications should be on Form N244 (see here) and are more likely to be accepted if there are compelling reasons – eg, if the client has serious mental or physical ill health or is in prison. A fee of £15 (court fee 2.7) currently remains payable on the basis that the application is 'to vary a judgment or suspend enforcement'. See here for details about fee remissions. The case is not automatically sent to the county court hearing centre serving the client's home court, so an application for this must be made on Form N244, quoting rule 30.2(1) of the Civil Procedure Rules.

Suspension of a warrant of control

If payments ordered under a judgment are missed and the creditor applies to the county court for enforcement agents (bailiffs) to enforce the debt, the client receives an enforcement notice from the court warning that a warrant to take control of the client's goods has been issued and giving a date after which the goods will be taken control of. Enforcement agents may call at the client's home to try to take goods to sell.

Form N245 should be completed to suspend the warrant. The client should tick the box requesting a 'suspension of the warrant' and the box requesting 'a reduction in the instalment order' (even if the current terms of the judgment are for immediate payment). **Note**: the enforcement agents can continue to attempt to take control of goods until the application has been heard and a decision given. Form N245 should be sent to the county court hearing centre which serves the address where the client lives (the client's home court). A fee of £15 currently remains payable (court fee 2.7 is 'payable on an application to vary a judgment or suspend enforcement'), which covers both applications. See here for details about applying for fee

remissions.

The client could apply to have the matter 'stayed' (see above). However, to prevent goods being taken into control, an offer of payment must be made on Form N245, but this could be a token amount (eg, £1 a month) if the client is realistically unable to afford payments. Write to the creditor and explain the client's circumstances. If payments cannot be afforded, explain why such enforcement is not appropriate.

An offer of payment may not be appropriate if the client has no goods that could be taken into control (see here for excluded items) and there are no other methods of enforcement open to the creditor – ie, a charging order, third-party debt order or attachment of earnings order. In these circumstances, ask the creditor to consider writing off the debt (see here).

Once the court receives Form N245, a copy is sent to the creditor, which has 14 days to agree to the client's proposal or not. If the creditor agrees, the warrant is suspended and the client is ordered to pay the amount offered. If the creditor does not agree to a suspension on any terms, a hearing is arranged at the client's home court, where the district judge decides whether or not to suspend the warrant and on what terms. If the creditor agrees with a suspension but not the proposed terms, the procedure described on here for varying an order is followed. [1]

Note: in some cases, county court judgments are enforced in the High Court. Once you are aware that High Court enforcement agents have been instructed, get specialist advice. This is very likely to involve an application for a stay of execution in the High Court on form N244 (see here). The fee currently remains £15 (court fee 2.7, see above). The fee, currently £313, usually payable on an application made on form N244 (court fee 2.4(a)), is only payable for an application on notice 'where no other fee is specified'. See here for details about applying for a fee remission.

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1 'r.83.7(7)-(15) CPR

Insolvency options

If the client has a judgment (either a county court or High Court judgment) and their total debts are not more than £5,000, they should consider applying for an administration order (see here). Otherwise, they could consider an individual voluntary arrangement, bankruptcy or a debt relief order.