



FACT SHEET NO. 12

HOW TO SET ASIDE A JUDGMENT IN THE COUNTY COURT

WHEN WILL THE COURT AGREE TO SET ASIDE A JUDGMENT?

The county court rules set out when you can apply to set aside a judgment. For example:

- an order was made against you in your absence in certain circumstances;
- there may be an error in the judgment;
- you want to put in a defence and did not have the opportunity to do this;
- the proceedings did not follow the court rules.

DEFAULT JUDGMENT

You may have a default judgment made against you where there was no hearing and you have not sent back the 'acknowledgement of service' form to say you intend to put in a defence. You may also have a default judgment made against you if you have **not** sent in the reply form asking for time to pay within the time limits.

When must the court set aside the judgment?

The court **must** set aside the default judgment if you:

- have paid the whole amount owed (including any interest and costs) before the date the creditor entered judgment;
- sent back the acknowledgement of service form within the time limit;
- put in a defence within the time limit; **or**

- sent in the reply form early to pay within the time limit.

The court must set aside the judgment in these circumstances, even if you do not have a defence.

There is no time limit for making an application on these grounds.

When is it up to the court to decide?

The court **may** agree to set aside the default judgment if you did not send in a reply form with the time limit if:

- the court thinks you have a real chance of a successful defence to the claim; **or**
- the court thinks there is some other good reason why the judgment should be set aside.

There is no time limit for making an application on these grounds but the court will look at whether you made the application 'promptly'.

“ADVICE

If you did not deal with the papers or go to a hearing because you were ill, in hospital, or away and have a defence then this may be a good reason to set aside a judgment.

I did not get the court papers

If you did not get the court papers through the post the court will not always agree that this is a good reason to set aside the judgment. The court is allowed to send the papers to your usual or last known address (even if you have moved). If you have given your creditors your new address then they should contact you there.

If they still send the papers to your old address then you may have good reason for the judgment to be set aside.

If you did not get the claim form, you will usually need to show you have a defence or other good reason as well, for the court to set aside the judgment unless:

- you can prove you gave the creditor your new address;
- the claim was not made following the rules, for example they were sent to the wrong address, or lost in the post; **or**
- the post office returned the claim papers as they were not able to deliver them.

I MISSED A COURT HEARING, WHAT CAN I DO?

If you miss a hearing date that has been set by the court and you now have a court judgment or order, you can apply for the judgment to be set aside to allow a new hearing date.

The court may agree to your application if you:

- act promptly in applying to set aside the judgment (usually within 14 days);
- explain that you had a good reason for missing the hearing; **and**
- would have had a reasonable prospect of success at the hearing.

You will need to give reasons why you did not go to the hearing and explain any delay in your application. The court may not agree an application if they decide you knew action was likely but did not give your creditor a current address. This is complicated. Phone us for advice.



WARNING

If the judgment is set aside then all enforcement action will then stop but until then, making the application will not stop enforcement action automatically. It is important that you ask for any enforcement action to be stopped or 'stayed' until your application is heard. You should include this request on the N244 application form when you apply for the judgment to be set aside.

HOW DO I APPLY?

You need to ask the court for a general application form called an **N244**. You should fill in the **N244** to include the following information:

- the claim number of the case and details of the creditor or 'claimant';
- the reason for your request to set the judgment aside in **Part A** on the front of the form.
- In **Part B** you should tick the box saying you reply on the evidence in '**Part C**'.
- In **Part C** on the back of the form you need to include any evidence you have to support your case such as proof you have changed address or were out of the country. Any information you have about your possible defence should also be included.



INFORMATION

A sample application **N244** is attached.

- Sign the statement of truth on the bottom of the form.
- Send the form back to the court and remember to keep a copy.

You must fill in **Part C** on the **N244** to outline your evidence in support of your application and to include brief details of any defence.

You should explain any delay in making the application.

ADVICE

Also ask the court to stop any enforcement of the judgment until after the hearing to set the judgment aside.

Even if the case began in a different court, it will be transferred for a hearing in your local county court in private with a district judge.

The court will take into account how quickly you made the application and may want to know the reason for any delay e.g. you only just found out about the judgment.

DO I HAVE TO PAY A FEE?

From **October 2007** you will have to pay a fee of £75 to the court when you make the application.

INFORMATION

If you are on a low income or certain benefits you may not have to pay the fee. See the section on fees at the end of this fact sheet.

WHAT HAPPENS NEXT?

The court may send you a date to go to a court hearing to discuss the reasons for your application with a district judge. The application will be transferred to your local county court for the hearing. In some circumstances the court can decide to allow your application without the need for a hearing.

If this happens, you will hear back from the court that the judgment has been set aside.

WARNING

If you agree that you owe the money on the judgment you may just want to pay the whole debt off in instalments you can afford. It may be easier to apply to the court for an instalment order using another form called an **N245**, rather than going through the process of having the judgment set aside first. You will usually have to pay a £35 fee to make this application.

FACT SHEET

We have a fact sheet on 'Reducing instalments or suspending a warrant in the county court', which may be helpful to you. **Phone us for a copy.**

WHAT HAPPENS TO A JUDGMENT THAT IS 'SET ASIDE'?

If the judgment is set aside by the court, this means that the proceedings go back to the claim stage and any enforcement action is also cancelled. You have a new opportunity to fill in the reply to the claim form, make an offer of payment or put in any defence or counterclaim. Having a judgment set aside does not wipe out the proceedings altogether but the details will be removed from the Register of Judgments, Orders and Fines until a new judgment is made.

REMEMBER

If a new judgment is made it will be recorded for six years on your credit file from the date of the new judgment.

CAN CREDIT REPAIR COMPANIES HELP ME?

You may have heard of companies that offer to clear your credit record with credit reference agencies to allow you to apply for more credit.

Credit repair companies charge varying fees and usually send you an information pack telling you how to clear county court judgments.



WARNING

You need to be very careful before paying a fee to a commercial company offering to remove judgments for you. If you apply to the county court to set aside a judgment and do not have real reasons to do so then you could be in trouble with the court. Check this website for information on credit repair companies www.ukcreditrepair.co.uk

Also, it is more difficult to persuade the court to agree to do so since new tighter rules came into force in **April 1999**.



ADVICE

We understand that the Office of Fair Trading and the Department for Constitutional Affairs are investigating credit repair companies. If you are not happy with a credit repair company complain to your trading standards department in your local council or contact Consumer Direct on **0845 404 0506** www.consumerdirect.gov.uk



FACT SHEET

We have a fact sheet on 'Credit reference agencies', which may be of help to you. **Phone us for a copy.**

COUNTY COURT FEES

Do I have to pay a fee for an application in the county court?

There will usually be a fee to pay with your application. You can ask the court not to pay the fee in some circumstances. The form you will need to fill in is called an **EX160 'Application for a fee remission'**. This form needs to go to the court with your main application. If the court agrees your application you will not have to pay the fee. If you pay a fee when you should have qualified for a remission, then you have six months to apply to the court for a refund.

Remission if you are on benefits

You will not have to pay the fee if you are on the following benefits:

- Income Support;
- income-based Jobseeker's Allowance (JSA);
- the guarantee credit element of Pension Credit; or
- Working Tax Credit if you are **not** getting Child Tax Credit as well.

You must ask the court for exemption from the fee. You need to give the court proof that you are getting the benefit.

Remission if you have a low income

You will not have to pay the fee if your income **before** tax and national insurance falls below a set amount. This figure changes each year. Your partner's income is also taken into account as well as the number of children you have. You will need to give the court proof of your income and any children. If you have more than 4 children then you need to add £2,470 for each additional child.

This table shows the figures from **October 2007**.

| Number of children | Single | Couple |
|--------------------|---------|---------|
| No children | £12,000 | £16,000 |
| 1 child | £14,470 | £18,470 |
| 2 children | £16,940 | £20,940 |
| 3 children | £19,410 | £23,410 |
| 4 children | £21,880 | £25,880 |

Do I have to pay the fee in full?

You can also qualify for a reduction in the fee by telling the court how much money you have left after paying essential bills such as rent or mortgage, childcare, maintenance and court orders.

There is a set amount allowed for living costs. This is called your 'disposable monthly income' and is worked out by the court. They can only take set items into account. If your disposable monthly income is below a set amount then you will not have to pay the fee. (**This is £50 from October 2007**).

You may only have to pay part of the fee depending on how the court has worked out your disposable monthly income.

The calculation is complicated and you will need to give the court proof of your income and bills. Ask the court for help or **phone us for advice**.

INFORMATION



There is a fees section on the HM Court Service website that may be helpful.

<http://www.hmcourts-service.gov.uk/publications/guidance/fees/index.htm>.

Remember: You can always contact us for advice about any difficulty you have in dealing with your debts.

Freephone 0808 808 4000 Website www.nationaldebtline.co.uk

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Whilst we endeavour to keep our fact sheets as up to date as possible, National Debtline cannot be held responsible for changes in legislation or for developments in case law since this edition of the fact sheet was issued.

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Application Notice

- You must complete Parts A **and** B, **and** Part C if applicable
- Send any relevant fee and the completed application to the court with any draft order, witness statement or other evidence; and sufficient copies of these for service on each respondent.

You should provide this information for listing the application

1. Do you wish to have your application dealt with at a hearing?
 Yes No If Yes, please complete 2

2. Time estimate —(hours)— (mins)
 Is this agreed by all parties? Yes No
 Level of judge _____

3. Parties to be served: _____

| | |
|--|------------|
| In the Birmingham County Court | |
| Claim no. | 438406/99 |
| Warrant no. (if applicable) | |
| Claimant (including ref.) | A Creditor |
| defendant(s) (including ref.) | John Smith |
| Date | 16.6.99 |

Part A

I (We) ⁽¹⁾ John Smith (on behalf of) (the claimant) (the defendant)

intend to apply for an order (a draft of which is attached) that ⁽²⁾ The Default Judgment entered against me be set aside and a re-hearing ordered.

because ⁽³⁾

The claim form did not come to my attention because I was away on holiday and I believe that I have a complete defence to the claimant's case.

Part B

I (We) wish to rely on: *tick one box*

the attached (witness statement)(affidavit) my statement of case

evidence in Part C in support of my application

Signed

John Smith

Position or office held

(if signing on behalf of friend or company)

(Applicant(s) solicitor)'s litigation friend)

Address to which documents about this claim should be sent (including reference if appropriate) ⁽⁴⁾

| | | | |
|--------------|----------|---------------|--|
| John Smith | | if applicable | |
| 1 Any Street | | fax no. | |
| Any Town | | DX no. | |
| Tel. no. | Postcode | e-mail | |

The Court office at
 Is open from 10am to 4pm Monday to Friday. When corresponding with the court please address forms or letters to the Court Manager and quote the claim number.

Part C

Claim No.

I (We) wish to rely on the following evidence in support of this application:

The claim form did not come to my attention because I was away on holiday when the claim form was served.

I believe that I have a full defence to the claimant's case in that I have paid the full amount owed to the claimant and have a receipt signed by the claimant's employee.

On discovering that judgment had been entered against me I sought advice from my local Money Advice Centre as soon as I could, and I was advised to make this application.

Statement of Truth

* I (believe) (The applicant believes) that the facts stated in this application are true

Signed

(Applicant)(~~'s solicitor~~)(~~'s litigation friend~~)

Position or office held

(if signing on behalf of firm or company)

Date

* delete as appropriate