



### **Spotlight: Set aside applications in regard to default County Court Judgments**

We have seen an increasing number of enquiries relating to whether a client has the option of making a set aside application. This piece explores the process of setting aside a default County Court Judgment (CCJ).

It is important to understand that when a client is making an application to set aside a default CCJ, if successful, the client and creditor are placed back in the position they were both in prior to judgment being made. The client will then need to respond as if they had received the county court claim pack in the first place. A set aside application does not strike out the claim and does not guarantee that a client will not have to repay the amount being claimed.

It is [Part 13](#) of the Civil Procedure Rules (CPR) that covers setting aside or varying a default judgment.

#### **Cases where a court must set aside judgment**

In some circumstances the court has no discretion and must agree to set aside the judgment. These situations are listed below:

1. The client has paid the whole of the claim (including any interest or costs due) before the judgment was entered
2. The judgment was entered before the expiration of the client's time to file an acknowledgement
3. The client had filed a defence within the time limit and the judgment was entered before expiration of this time limit
4. The client has served an admission and requested further time to pay before the judgment was entered

If a client can evidence one of the above grounds, the court must set aside the judgment even where a client does not have a defence. Furthermore, there is no time limit for making an application on these grounds.

#### **Cases where a court *may* agree to set aside judgment**

If it does not appear that a client has a mandatory ground for setting aside the judgment, they would need to demonstrate that a discretionary ground applies. These are as follows:

1. The client has a real prospect of success in the claim; or
2. 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;
3. There has been an error of procedure, such as a failure to comply with a rule or practice direction.

An example of a defence which has a real prospect of success would be where the client can evidence the claim was statute barred when judgment was entered. Another example would be where a credit agreement is irredeemably unenforceable. The client should provide as much evidence as possible in support of the reasons why the judgment should be set aside. The court might dismiss the claim or set directions for trial if necessary.

However, the client can ask for the claim to be dismissed at the same time as applying to set aside the judgment, for example, where the debt was statute barred or unenforceable. The client would need to provide supporting evidence with their request for the set aside and strike out of the claim.

If the claim is not dismissed and the order not replaced, the claim will be stayed, sometimes indefinitely. The court may set new directions for dealing with the stayed claim, but often fails to do so. If your client is in a similar situation, they may need to apply for an “unless order”. Please contact us if you require advice on this.

### **Promptness**

In addition to a discretionary ground, the court must also be satisfied that your client has acted promptly in making the application. This is under [CPR 13.3 \(2\)](#).

Please note that when a judge is considering promptness, the time will run from when your client became aware of the judgment, it is not automatically from when the judgment was originally entered.

Volume 1 of The Civil Court Practice 2017 provides some clarity around what amounts to acting promptly and is covered on pages 471 and 472. Ultimately *‘what amounts to applying promptly will depend upon the individual circumstances of each case and each defendant’*.

However, there have been decisions in case law that give us a better understanding of what actions are likely to be considered as acting promptly.

As cited in The Civil Court Practice 2017, in the case of *Regency Rolls Ltd & Anor v Carnall* [\[2000\] EWCA Civ 379](#), an application made after 28 days was held not to be made promptly. Conversely, in *Bank of Credit and Commerce International v Zafar*, a delay of 30 days was accepted but described as dangerously close to the margin.

Whilst promptness plays a key part in the judge’s decision, a longer delay may be overlooked where the client has a strong defence. In *MacDonald v Thorn plc*, the Court of Appeal held that a long delay was “not conclusive against ordering the judgment to be set aside where the defendant has a real prospect of success”.

The law relating to whether or not an applicant has acted promptly is quite complex and takes into account a number of factors. If you are unsure about your client’s circumstances, please contact us for further advice.

## **Clients not receiving county court claim pack or other correspondence**

In many cases we come across, clients will inform advisers that they never received the claim pack or any letters from the creditor. It will usually be that the creditor has served correspondence to their previous address.

Unfortunately, the court is unlikely to agree that this is a good reason to set aside the judgment. Under Part 6 of the CPR, a creditor only has to serve the claim form to the usual or last known address of the client. Therefore, if your client has not updated the creditor with their change of address then the creditor has correctly followed the rules.

If your client can evidence that they provided up to date address details before the claim was issued, then the court may agree to set aside the judgment. However, your client will still require a defence to the claim.

### **How to apply**

If your client wants to apply to set aside a CCJ, they will need to complete an N244 and the application fee is £255, unless they qualify for fee exemption. If you have any difficulties with the N244 application there is a [guidance document](#) to help you complete the form.

In the application form, they will need to explain that they want to set aside the judgment and the reason why. Furthermore, your client will need to include an explanation if they didn't respond to the original claim form. Lastly, if they have delayed applying to set aside the CCJ after they found out about it, they will need to explain why.

Pages 323 – 326 of the CPAG Debt Advice Handbook 12th Edition has further information on setting aside a CCJ.