

Enquiry of the month

Successful application to set aside County Court Judgment

Our featured enquiry this month is concerned with a client's application to set aside a judgment. Well done to Sara Milbourne, debt adviser at Citizens Advice Newcastle, for this fantastic result.

Sara contacted the Specialist Debt Advice Service (SDAS) following an appointment with a distressed client. The client's abusive ex-partner had obtained a County Court Judgment against her in the sum of £650 in relation to an engagement ring he'd bought her. The client had given the ring away to charity. She believed that her ex-partner was using the judgment as a way of maintaining control over her: she'd successfully applied for a restraining order against him.

The client had been left with serious mental health problems following the breakdown of the relationship. She'd received the claim form and had tried to get an appointment with her local Citizens Advice, but the waiting time for appointments meant the time to file a defence had passed. Fortunately, once she had an appointment, Sara acted quickly, contacting us to discuss the client's options.

We looked at the criteria for applying to set aside the default judgment (or, to use the term in the leading case of *Denton v White* [2014] EWCA Civ 906, 'relief from sanctions'). In *Denton*, the Court of Appeal laid down a three-step test to be applied in all cases where a party in proceedings applies to have an order set aside because they have failed to do something – in this case, to file a defence in time.

To make a successful application, the client needed to show:

- why she hadn't defended the claim in the first place, and
- that she had acted promptly, and
- that her defence would have a good prospect of success.

Sara worked with SDAS to produce a statement of case and witness statement. The witness statement explained the client's mental health problems, that she had to wait for an appointment, and that she had a restraining order against the claimant. The statement of case contained the relevant law. In this case, that relied upon s3 Law Reform (Misc Provisions) Act 1970, which states that the gift of an engagement ring shall be an absolute gift, and any person expecting it to be returned must rebut that presumption with evidence of an agreement to that effect.

The judgment was set aside on the client's application.

The Specialist Debt Advice Service resource on Dealing with Judgment Debts is available on the IMA website.