



County court – how to set aside a judgment

Fact sheet no. 12

May 2014

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 'acknowledgment 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 acknowledgment of service form within the time limit;
- put in a defence within the time limit; **or**
- sent in the reply form within the time limit asking for more time to pay.

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.



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When is it up to the court to decide?

The court **may** agree to set aside the default judgment even if you did not send in a reply form within 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'.

Extra advice:



good reasons for setting aside

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, the papers were sent to the wrong address; **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 to be set.



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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 can be complicated. **Contact us for advice.**

Extra advice:



stopping enforcement action

If the judgment is set aside then all enforcement action will then stop. Enforcement action will not stop automatically just because you have put in the application. 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 information the court asks for. The following points may help you when filling in the form. If you get stuck, **contact us for advice.**

- Include the claim number of the case and details of the creditor or 'claimant'.
- **Question 1:** fill in your name here.
- **Question 2:** you will normally tick the box as the 'defendant'.
- **Question 3:** you need to briefly state what order you are asking the court to make and the reasons for your request.
- **Question 4:** this asks if you have attached a draft of the order you are applying for. We would suggest that you only tick 'yes' to this if you have had help from a solicitor or advice agency with drafting the order. Otherwise, leave this up to the court.
- **Question 5:** this asks you if you want to have the application dealt with at a hearing. Most applications will be dealt with at a hearing.
- **Question 6, 7 and 8:** it is safer to leave these blank rather than guess how long a hearing will last or what level of judge you need at the hearing.
- **Question 9:** only fill this in if there is someone you want the court to send a copy of the application to, such as your solicitor.
- **Question 10:** this appears on the back of the form. You should tick the box saying you are relying on 'the evidence set out in the box below'. 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. You should explain any delay in making the application.
- Sign the statement of truth on the bottom of the form.
- Send enough copies of the form by recorded delivery back to the court so that one can be sent to the 'claimant' (the person who has the judgment against you) and one for the court. Remember to keep a copy for yourself.



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Even if the case began in a different court, it will be transferred for a hearing in your local County Court hearing centre 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.

Extra advice:



stopping enforcement

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

Information:

INFO

court forms

You can find most court forms using the [court form finder](#) on the HM Courts and Tribunals Service website www.justice.gov.uk/about/hmcts. You can fill in application forms online and print them off to sign and send to the court.

Information:

INFO

fees

There is a fee to pay for this type of application. If you are on a low income or certain benefits you may not have to pay the fee. See **Do I have to pay a court fee?** 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 hearing centre 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.

Extra advice:



applying for instalments

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 fee to make this application.

See our fact sheet:



County court – suspending a bailiff's warrant or reducing instalments on a county-court judgment.



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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.

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 may try to charge you a fee and often send you an information pack telling you how to clear county-court judgments.

Credit repair companies must be authorised by the **Financial Conduct Authority (FCA)**. Check if the company is authorised on the **FCA register** before using their services. If you have a complaint about something a credit repair company has done since **October 2008**, you can ask the Financial Ombudsman Service for help.

If you are not happy with a credit repair company you may be able to complain to the Financial Ombudsman Service on **0800 023 4567** or **0300 123 9123** www.financial-ombudsman.org.uk.

If the complaint relates to events before **October 2008** then complain to your trading standards department in your local council or contact the Citizens Advice consumer service on 0845 404 0506 www.citizensadvice.org.uk.

Remember:



your credit reference file

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

Warning:



credit repair

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.

See our fact sheet:

Credit reference agencies and credit reports.



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Do I have to pay a court fee?

How does the court decide whether I should pay a fee?

When you apply for help to pay a court fee, the court will decide on your application by using two tests. These are the 'disposable capital test' and the 'gross monthly income test'.

Information:

INFO

rules for help with fees

For more information see www.justice.gov.uk and click on the link 'court and tribunal fees'. Alternatively, **contact us for advice**.

Disposable capital test

The court will look at how much disposable capital you have. Disposable capital includes savings, stocks and shares, redundancy payments and the 'value' in second homes. 'Value' means the money you would have left if you sold the second home after any mortgages, secured loans and an allowance for sale expenses have been taken off. The value in your own home will not be counted.

If you are aged under **61**:

- For court fees of **£1,000** or less, if you have less than **£3,000** disposable capital, you will pass the disposable capital test.
- For court fees of more than **£1,000**, the rules about disposable capital are different. **Contact us for advice**.

If you are aged **61** or over:

- If you have less than **£16,000** disposable capital, you will pass the disposable capital test.

If you do not pass the disposable capital test, you will have to pay the court fee in full.

Gross monthly income test

If you pass the disposable capital test, the court will look at your monthly income before any deductions. The court will then decide how much of the court fee you should pay.

- If you receive certain benefits, you will not have to pay anything towards the fee.
- If you do not receive benefits but are on a low income, you may not have to pay the fee. Alternatively, you may only have to pay part of it.

Under the gross monthly income test, you have to provide proof of your income. This can include bank statements, wage slips and letters confirming that you get certain benefits.

Can I appeal?

If the court refuses your application, you can appeal. Do this in writing within the time limit the court sets when they write to tell you they have refused your application. This will usually be **14 days** from when you receive the letter.



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