



February 2018

**CJC response to the Ministry of Justice consultation on:
DEFAULT COUNTY COURT JUDGMENTS**

General remarks:

The Government has responded to concerns that people find their consumer credit rating affected by having been subject to a default County Court judgment, of which they had not been aware. The consultation paper explores ways in which the risks of this can be reduced.

The wider context to this policy review is that household debt has risen in recent years¹. Default judgments (where claims are not responded to by defendants) now account for 87% of all court judgments, according to the latest civil statistics.²

The problem is balancing the interests of claimants, who are seeking recovery of unpaid bills and debts, with the interests of defendants who have not responded as the claim was sent to an old or incorrect address, sometimes deliberately.

One such way is to address issues with service of money claims, where if service has been ineffective and judgment entered in default, that judgment is placed on a register for 6 years affecting consumer credit score. The current rules state that not receiving the claim is not a defence, and while there is a risk that some people will be completely unaware of claims and default judgments sent to old/incorrect addresses, there is also a risk that some people will simply claim not to have received court papers as a way of evading debts.

The government hopes to strike a balance between ensuring debts continue to be paid but that the process is not open to abuse. The current focus is on:

- providing increased information on consumer rights
- removing names from the register if the defendant immediately pays when made aware of the claim (when the address is known to be wrong)
- Gathering information on mis-served claims where this has been done deliberately.

The department has held a series of meetings with stakeholders and agreed that greater provision of information should include advice on checking credit scores and emphasising the need to notify changes of address.

¹ House of Commons briefing paper (No.7584, December 2017)

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/665073/civil-justice-statistics-quarterly-july-sept-2017.pdf

The consultation aims to encourage improved behaviours such as updating postal addresses as changes made to Part 6.9 of the CPR in 2008 made it clear that it is the defendant's responsibility to ensure that the correct address is known to those who provide them with goods and services and to whom they may owe money.

The CJC favour a balanced approach to addressing this issue, it is important to balance the need to protect individuals with the need to ensure businesses and individuals are able to use the courts to recover debts.

Answers to specific questions

Improving public information:

Q1: Are there any other key messages that would be valuable to consumers? If so, what are they?

Aside from what has already been recommended – i.e. responsible behaviours, the consequences of not updating contact information and the provision of information resources - it would also be beneficial to make it clear what help is available, for instance organisations that can help with debt issues including Stepchange, Money Advice Service, National Debt Helpline UK, Citizens Advice. Information on all these organisations can be found in the Debt Pre-Action Protocol.

Q2: Are there any other aims or responsible behaviours the improved public information should include, and why?

Improved public information would be welcomed. In addition to setting out the responsibilities of individuals, it should also provide information on debtors' rights e.g. the ability to apply to set aside a default judgment. Guidance on what to expect from creditors would be welcomed, and what would constitute unacceptable behaviours.

There should also be encouragement to use the Financial Services Ombudsman and also to provide further information on debtors' rights.

Q3: Are there any other actions the Government could take to improve public information that are not included in this paper?

Aside from providing a centralised online information source, information leaflets could be provided in public places (such as libraries) or at advice centres to those who do not have access to digital services.

Credit agreement websites can also help to highlight the importance of updating postal addresses.

Q4: How can the advice sector and claimant organisations ensure that the industry actively signposts consumers to a government source of information?

Given the respective levels of influence with the credit industry, a better question may be how can Government encourage the industry to ensure that consumers are signposted to an official public source of information? For example, through encouraging a voluntary code of practice on handling debt claims.

One suggestion would be to make an amendment to the debt pre-action protocol to directly refer to government information in addition to the organisations already highlighted.

Q5: What options should be available to help people who are vulnerable or have difficulty accessing information get the guidance they need?

The CJC believes that this is a key issue in the consultation as many debtors have problem 'clusters' increased by consumer vulnerability.

There should be as many methods of communication available as possible including the provision of specialist support workers for the most vulnerable via other agencies such as social services.

Lessons learnt through the HMCTS digital court reforms on digital exclusion could be applied here to ensure vulnerable groups are protected.

Q6: Do you agree with this proposal? If you do not, please explain your answer.

This question refers to the government's proposal that a judgment in default may be moved from the Register where the court is satisfied that:

- the defendant was unaware of the claim/judgment when originally entered;
- that the defendant had only just become aware of the claim and judgment; or
- that the defendant immediately pays in full.

The CJC welcomes these proposals, which seem sensible and place the defendant in the same position as someone who pays within 28 days of receiving the judgment. A 6-year register entry and subsequent poor credit rating seems onerous in some circumstances, particularly for instance in an economic climate where there are already so many other barriers to purchasing a house. The 6-year period is set by the current regulations, and would require secondary legislation to reform.

In addition to these proposals, there could be a system where the length of registration could be linked to the value of the debt. For instance, as highlighted in the consultation paper, a large proportion of default judgments centred on low value, unpaid parking charges. Having a value based registration system could help combat these issues.

Some attention could also be given to the current £255 court fee for a set-aside application which could be regarded as a prohibitive sum to those who have few means and could limit access to justice

Finally, the 14 day payment/response period could be increased as this disadvantages those who may be on holiday or travelling.

Policy proposal for removing an entry from the Register of Fines, Orders and Judgments

Q7: How should a defendant satisfy the Court that they did not have prior knowledge of the County Court judgment?

This will be a challenge for the courts, but it will ultimately be for them to use their discretion. Defendants can produce witness statements or documented evidence such as a tenancy agreement showing a change of address.

Q8: County Court judgments remain on the Register for six years. Does this strike the right balance between protecting people from being disadvantaged by past debts, whilst ensuring lenders have access to the information they need to decide who to lend to?

The CJC has no specific comment on a replacement time period, but does feel that 6 years appears burdensome particularly considering the low value of many of the claims made. As suggested above, there could be a value based registration period to assist in cases of unfair parking tickets.

One of our members has highlighted the issue of road traffic accident cases impacting on policy holders credit ratings, often first coming to light years after the judgment had been obtained. In many motor claims, the defendant will have no real involvement in the litigation as this will be dealt with by their insurer. If damages or costs are paid late, the claimant's solicitors may issue enforcement proceedings and if payment is not made within 28 days these debts are placed on the County Court Register. However, occasionally even when payments are made within this period the court may not have been notified by the creditor resulting in an erroneous entry on the register. The new General Data Protection Regulations due in May 2018, provide that data being held on the County Court register must be relevant. In these claims the defendant/policyholder has no financial interest in the action and no liability for the debt as the insurer pays the damages and costs. In such cases, judgments should not show against defendants on the Register.

Q9: Should other steps be taken to alert a person that a default judgment has been entered against them? If so what are they, and who should take them?

As highlighted in the consultation paper, many now rely more on email addresses than postal with many credit agreements entered into online. It would therefore be helpful to consumers to have more than one method of notification available. Currently claimants are required to make an application under CPR 6.15 to allow service of the claim form by an alternative method or at an alternative place. This could be relaxed to shift attitudes to a more modern, digital approach.

Court staff would be the most obvious neutral agency to facilitate this but this may be a burden on already stretched resources.

Whilst, of course an aim of this consultation paper is to encourage defendants to keep personal information updated to allow effective service, there are issues regarding motor claims whereby solicitors have been nominated to accept service but proceedings have been served direct on the policyholder. Another difficulty is where the motor insurer has never been made aware of proceedings and therefore unable to pay outstanding monies. Finally, the claimant's solicitors could correctly sue the insurer concerned for the outstanding monies but the more common policy is to sue the policyholder which often results in default judgments. More clarification and guidance is therefore required in the motor claims field, to ensure the claims are served on the correct individual to avoid onerous penalties on policyholders.

The problem of County Court Judgments being served to an old address

Q10: Do you have experience of, or information about, County Court judgments that have been entered against a debtor without their knowledge where claimants are deliberately using an old address? If you do, please give details

The CJC does not hold such information.

Q11: How can this be avoided?

When considering an application to set aside a judgment, the court could request a witness statement from creditors as to why they used a particular address and what documentary evidence they relied on to show it was current.

Q12: Do you think we have correctly identified the range and extent of the effects of these proposals on those with protected characteristics?

Q13: If not, are you aware of any evidence that we have not considered as part of our equality analysis? If so, what is the effect of that evidence on our proposals?

The CJC is not able to make any further points or offer additional evidence but suggests that the responses from the most relevant and best placed agencies consulted are carefully considered.