



The Law Society

**Response of the Law Society of England and
Wales to the Ministry of Justice consultation -
Default County Court Judgments : A consultation
on ensuring the process works fairly, for both
creditors and debtors**

February 2018



**Consultation response submitted by the Law Society of England and Wales to the
Ministry of Justice**

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fairly, for both creditors and debtors
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The Law Society of England and Wales is the independent professional body that works globally to support and represent 180,000 solicitors, promoting the highest professional standards and the rule of law.

This consultation response should be read in conjunction with the consultation itself which sets out further background to the questions and proposals.

**Question 1: Are there any other key messages that would be valuable to consumers?
If so, what are they?**

The proposals made at stakeholder events are sensible. The Law Society is in favour of supporting all court users with full, transparent, consistent information which encourages the administration of justice and protects the rights of all. If official guidance for consumers is produced as a result of this consultation, it would be sensible for the Debt Pre-Action Protocol to be amended to include or direct consumers to such guidance.

**Question 2: Are there any other aims or responsible behaviours the improved public
information should include, and why?**

We consider these proposals sensible provided that they are well executed and appropriately funded.

**Question 3: Are there any other actions the Government could take to improve public
information that are not included in this paper? Please give details.**

We suggest action could be taken to provide clearer public information, educating consumers of how and when they may be able to set aside default Judgments. This should include sign-posting which highlights the importance of obtaining legal advice when necessary.

It would also be useful for consumers to be able to carry out an online search to see if they have any Judgments against them. This would be similar to a bankruptcy/insolvency search and similarly should be a free service.

**Question 4: How can the advice sector and claimant organisations ensure that the
industry actively signposts consumers to a government source of information?**

The recently implemented Pre-Action Protocol for Debt claims (annexed to the Civil Procedure Rules) already provides that, before a business commences a debt claim against a consumer at Court, it must comply with the provisions of the Debt Pre-Action Protocol. This protocol already includes obligations for creditors to send a letter of claim with full details of all claims and other prescribed information before commencement of court proceedings.

The protocol also prescribes specified enclosures including a copy of the Information Sheet which is contained in the Debt Pre-Action Protocol at Annex 1. That Information sheet includes sections signposting debtors to Government funded organisations which can

provide debt advice and information, as well as other charitable bodies etc that provide a similar function.

If official guidance for consumers is produced as a result of this consultation, it would be sensible for the Debt Pre-Action Protocol to be amended to include or direct consumers to such guidance.

Question 5: What options should be available to help people who are vulnerable or have difficulty accessing information get the guidance they need?

Many money claims fall within the remit of the Financial Conduct Authority (FCA) regulatory regime, which has well established controls to ensure vulnerable persons are treated appropriately. The Government suggests that other sectors are less well or non-regulated. We consider that achieving parity across all sectors on pre-action conduct and the treatment of vulnerable consumers would be a positive step. The newly implemented Debt Pre-Action Protocol goes some way towards achieving this.

The Government could consider implementing an FCA style Treating Customers Fairly (TCF) regime into pre-action conduct in all debt recovery cases, with appropriate sanctions for non-compliance to achieve parity of conduct across all sectors; however, we consider that the Government would need to consult more widely on this specific initiative.

Question 6: Do you agree with this proposal? If you do not, please explain your answer.

We agree that the principle of giving debtors an ability to remove entries relating to a debt **paid after** the entry's creation in the Register is fair. In addition, this is fair in cases which concern those debts stemming from court proceedings of which the defendant can satisfactorily and reasonably demonstrate they had no knowledge (because of lack of actual service/knowledge). This is subject to evidence of 'non-service' having been suitably met as determined by a suitable Court or tribunal service.

This would assist any defendants adversely affected by County Court Judgements (CCJs) obtained by claimants who knowingly serve proceedings at an old address. In other words, the policy proposal enables the current Civil Procedure Rules on deemed service and default judgment to remain intact (both of which are long-standing, proportionate and fit for purpose sections of the CPR).

Question 7: How should a defendant satisfy the Court that they did not have prior knowledge of the County Court judgment?

We consider that the question of evidence of 'non-service' should be dealt with according to normal and existing civil justice standards. The burden should rest with the defendant to prove the relevant facts on the balance of probabilities. Whether the defendant discharges this would need to be scrutinised and determined by a suitable Court or tribunal service.

Question 8: Does the current six-year period for County Court judgments remaining on the Register strike the right balance between, on the one hand, ensuring that people do not experience excessive detriment from past debts, while on the other ensuring that banks and other lenders have the information they need to decide who to lend to?

It is difficult to comment on the reasonableness of this time frame without identifying evidence of the level and extent of any detriment to consumers in respect of the existing regime.

Question 9: 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?

If consumers have provided an email address when signing a credit agreement, they should be alerted by email as well as by post. This would not create any significant additional administrative burden, but would give consumers a greater chance of being aware of a Judgment being entered.

It must be noted that sending by email would not be valid service without specific permission from the Court. In the absence of a Court order the email would only assist in helping make sure a consumer was aware of a Judgment.

Question 10: 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

We do not hold any such information.

Question 11: How can this be avoided?

We consider that the continuing reservation of litigation (reserved activity) to solicitors and other regulated lawyers acts as a sufficient control to prevent this from happening where solicitors (either in private practice or in house) are involved in litigation. Solicitors are highly unlikely to engage in such practices and there are clear sanctions in place for solicitors that mislead the court in such a way.

Further safeguards could be introduced where litigants in person or businesses acting alone are conducting claims for debts personally.

One consideration could be the imposition of recorded delivery or a good receipt (where solicitors are not responsible for the conduct of litigation) to ensure service on a debtor can be proven and evidenced prior to judgment being entered.

Any further regulation should be proportionate. Introducing more onerous measures makes the system more costly and difficult to administer in an area where regulated professionals (solicitors) are already under profit pressures. Additional costs will ultimately be borne by consumers at large through higher credit finance costs.

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