



## **Bar Council response to the Default County Court Judgments consultation paper**

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Ministry of Justice consultation paper entitled Default County Court Judgments.<sup>1</sup>
2. The Bar Council represents over 16,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

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

4. The Bar Council believes that members of the public should be encouraged to check their credit record on a regular basis to ensure that rogue default County Court Judgments are not being registered against their name. This is particularly important in the year after moving from one address to another, as companies may be still be corresponding with them at their previous address and using it for service. Checking of the credit record is also important before applying for mortgages, because even if the CCJ is removed, refusal of credit will negatively impact a consumer's credit score.

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<sup>1</sup> Ministry of Justice (2018), Default County Court Judgments: <https://consult.justice.gov.uk/digital-communications/default-county-court-judgments-2/>

5. The Bar Council believes that consumers should be advised how they are able to challenge default County Court Judgments and the importance of doing so promptly.

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

6. The Bar Council does not have any comments in response to this question.

**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.**

7. One very important action that the Government could take to improve public information is to ensure that everyone has access to professional legal advice, especially the poorest and most vulnerable in society, who are both the most likely to have problems with debt and the least likely to be able to access advice.

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

8. The Bar Council does not have any comments in response to this question.

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

9. See the response to Question 3 above.

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

10. The Bar Council considers that the current proposal is too conservative, as it depends on the consumer satisfying a claim which may not be meritorious. The Bar Council is also concerned that amounts being claimed are inflated through enforcement charges, which may be difficult for consumers to challenge.

11. The Bar Council does not consider that it is satisfactory that a CCJ should remain on a consumer's credit record where they have been served at an address at which the consumer does not reside and where the consumer disputes the amount being claimed. This is particularly important because of the length of time that the CCJ can remain on a consumer's credit record before a claim is finally struck out at trial, often more than a year later, severely hampering the consumer's ability to access credit in the interim.

12. The Bar Council considers a system that places the consumer back in the position as if they had been properly served to be far preferable and proposes the following:

- a. A specific category is created for setting aside default judgment when there has been service at an address at which the consumer does not reside.
- b. The consumer signs a statutory declaration that there has been service at an address at which the consumer does not reside, much as consumers currently do for traffic offences.
- c. The test of a real prospect of successfully defending the claim is eliminated for this category of setting aside default judgment and setting aside of default judgment is automatic for this specific category.
- d. The process of setting aside default judgment in this category should not require a full court hearing, as the present system of setting aside default judgments is slow, laborious and expensive, as well as placing a strain on court resources.
- e. CCJs are automatically removed from the register pending the final determination of the claim.

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

13. The Bar Council suggests a statutory declaration. This is currently done by consumers for traffic offences.

**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?**

14. The period should certainly not be any longer, as this would risk blighting people's lives for a single instance of temporary financial difficulties that may have arisen through no fault of the debtor's due to *e.g.* illness or loss of a job.

**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?**

16. It is difficult to see what further steps could be taken beyond service of the judgment at the address given on the Claim Form, when the problem arises from that address itself not being current.

**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.**

17. The Bar Council does not have any comments in response to this question.

**Question 11: How can this be avoided?**

18. The current Statement of Truth on the standard Claim Form does not make clear that the Claimant is thereby certifying that the address given for the Defendant is accurate. It would be better if this were made explicit, as this would discourage Claimants from using addresses which are known to be old. At the same time this could both deal with the issue raised under Question 6 above and simplify the process for seeking permission for alternative service.

19. We suggest the Statement of Truth could be expanded to include a section along the lines of the following suggested wording:

*Defendant's address for service – tick ONE box:*

- Documents are to be served on the Defendant's legal representatives who have notified the Claimant that they are instructed to accept service.*
- The address given for the Defendant is a postal address which the Claimant believes to be current, having received correspondence from the Defendant at this address within the last three months.*
- The address given for the Defendant is a postal address which is the most recent address known to the Claimant, but the Claimant has not received correspondence from the Defendant within the last three months. NOTE: if this address is used for service, any judgment obtained in default of a response will be set aside if the Defendant satisfies the court that the documents were not received and the Defendant disputes the claim.*
- The Claimant does not know the Defendant's current postal address and will serve the documents on the Defendant by one of the following methods:*
  - by sending copies to the following email address/fax number [delete as applicable] which the Claimant believes to be current:*

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- *by personal service.*

*NOTE: if this method is used the documents will not be deemed served until the Claimant files a Certificate of Service (Form N215).*

20. We suggest that a Claimant ought to be able to rely on service by email or fax, provided a Certificate of Service is filed, as these methods will normally result in automatic notification if the message is not delivered. Consideration should be given to amending Form N215 to require confirmation that no such notice has been received and the message was successfully delivered.

**Question 12: Do you think we have correctly identified the range and extent of the effects of these proposals on those with protected characteristics?**

**Question 13: 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?**

21. The Bar Council has no comments in response to these questions.

**Bar Council<sup>2</sup>**  
**20<sup>th</sup> February 2018**

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<sup>2</sup> Prepared by the Bar Council's Legal Services Committee