



**Default County Court Judgments: A consultation on ensuring the process
works fairly, for both creditor and debtors**

**A response by
The Chartered Institute of Legal Executives**

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Contents	Page
Introduction	3
General Points	3
Question 1	5
Question 2 & 3	7
Question 4	7
Question 5	7
Question 6	8
Question 7	10
Question 8	10
Question 9	11
Question 10	11
Question 11	12

1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes:
 - 1.1.1. Approximately 7,500 fully qualified Chartered Legal Executive lawyers.
 - 1.1.2. Approximately 7,000 members of all grades who work in civil law.
- 1.2. CILEx continually engages in the process of policy and law reform. At the heart of this engagement is public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform.
- 1.3. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 1.4. This response includes contributions from some of CILEx's civil practitioners. CILEx liaised with members through its Civil Practitioners Specialist Reference Group, and conducted a survey into their experience of default County Courts judgments.

2. General Points

- 2.1. CILEx agrees that there is a distinct lack of clear, simple and comprehensive information available to users of the County Courts that can be sourced from one centralised location.
- 2.2. We therefore support the Government in its efforts to provide consumers with valuable information which can help:
 - increase the knowledge and confidence of consumers, therefore reducing the likelihood of them feeling intimidated,
 - speed up processes and procedures in the County Courts,
 - improve fairness and equality, with defendants and claimants able to access the same impartial information from the same impartial source, and
 - increase the openness and transparency of the County Courts.
- 2.3. CILEx is aware that some information on the County Court process and how to avoid a default judgment is currently available to the public. However, the ease in which members of the public can find this information is variable.

Those that are more computer-literate will likely be able to find information from a third-party source, however a large proportion of society are less skilled when it comes to researching legal matters. As a result, CILEx supports efforts to raise awareness that this information is available.

Proposed Campaign Banner

2.4. CILEx would encourage further consideration of the campaign banner “how to avoid a County Court judgment” as it may not be as effective as it could be.

2.4.1. Members of the public who are, at present, unaware of how to avoid a County Court judgment are unlikely to seek out the information needed in order to develop their own knowledge of the County Courts and judgments. They would lack the incentive to do so.

2.4.2. CILEx would therefore recommend that the Government consider alternative banners under which to run an information campaign that would focus on messages relevant to key audiences.

2.4.2.1. For example, an information campaign that aimed to provide information on the importance of managing debts, general financial management and the importance of keeping address records up-to-date may incentivise a larger proportion of the population to seek out information that will also help them avoid default County Court judgments.

Public information alone does not go far enough

2.5. CILEx is concerned that improving information available to the public alone may not go far enough in tackling the issues associated with the significant proportion of claims that result in default judgments.

2.6. CILEx respondents emphasised concerns over “deliberate defaulters,” and the negligible impact the Government’s proposals will likely have in addressing debtors that intentionally avoid paying their debts.

2.6.1. CILEx would welcome additional discussion regarding how best to tackle issues associated with serial debtors who are not ‘picked up’ by the default judgments system. By providing false address details to creditors or purposefully moving addresses without informing the

creditor, debtors can avoid paying the debt and leave the creditors' claim to become a default judgment¹.

2.7. CILEx would also welcome further discussion regarding the issues associated with dishonest creditors.

2.7.1. Some creditors, for example, have been found to target vulnerable members of society, and charge exorbitant rates of interest.²

2.8. Although new rules have been implemented³, CILEx is concerned that by focusing on the provision of information to consumers, the Government is risking tackling the symptoms of the issues associated with the increasing number of default County Court judgments, as opposed to the root cause.

2.9. This view is also reflected among half of our respondents, who disagreed or strongly disagreed that a lack of publicly accessible information has been a significant factor in increasing the number of default County Court judgments⁴.

2.10. While CILEx agrees that more needs to be done to ensure that those who are most vulnerable are provided with as much information as possible to help them avoid default County Court judgments, we would welcome further discussion on the root issues of the increase in the number of County Court claims and default judgments in order to effectively reduce the number of default County Court judgments.

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

3.1. CILEx welcomes the key messages that the Government has considered valuable in providing consumers to help them avoid County Court judgments.

3.1.1. Although a majority of CILEx respondents indicated that members of the public are aware of the importance of notifying a change of address with creditors, ensuring the DVLA has an up-to-date address, and

¹ One respondent said: "I process a lot of consumer credit claims and the defendant will not update addresses with lenders to avoid payment deliberately."

² See: https://www.stepchange.org/Portals/0/Documents/media/reports/got_their_number.pdf, <https://www.fca.org.uk/publication/research/consumer-credit-customers-vulnerable-circumstances.pdf> and <https://www.stepchange.org/Portals/0/documents/Reports/Payday-loans-next-generation.pdf>

³ More information on the Financial Conduct Authority's price cap on what high-cost short-term credit lenders can charge: <https://www.fca.org.uk/publications/policy-statements/ps14-16-detailed-rules-price-cap-high-cost-short-term-credit>

⁴ 50% of respondents agreed or disagreed that a lack of public information has significantly contributed to the reported increase in the number of default County Court judgments.

engaging with creditors⁵, less than half of respondents indicated that individuals are aware that these actions may help them avoid a default County Court judgment if a claim is brought forward against them⁶.

3.1.2. Furthermore, only a third of respondents agreed that members of the public understand what steps are required of a defendant following the receipt of claims papers, and how to challenge a County Court judgment⁷.

3.2. Evidence from CILEx respondents suggests that providing consumers with greater amounts of impartial information on the procedures involved in County Court judgments may help remedy the lack of awareness regarding how to contest a claim, and how to avoid County Court claims in the future, though as referred to in 2.5-2.10 above other actions may be necessary.

3.2.1. CILEx believes that in order to provide consumers with as much valuable information as possible regarding how best to avoid County Court judgments in the future, the Government may wish to consider providing key messages regarding managing finances and debt, seeking financial advice, seeking legal advice following the receipt of a County Court judgment, and registering on the electoral register.

3.3. CILEx also recommends that any information provided to the public regarding the importance of changing address should include a variety of sources of credit that members of the public may have⁸.

⁵ 53% of respondents agreed or strongly agreed that individuals understand the importance of notifying a change of address with creditors in order to protect themselves against receiving a County Court judgment. 55% of respondents agreed or strongly agreed that individuals understand the importance of ensuring the DVLA has an up-to-date address in order to protect themselves against receiving a County Court judgment. 60% of respondents agreed or strongly agreed that individuals understand the importance of engaging with creditors in order to protect themselves against receiving a County Court judgment.

⁶ 40% of respondent agreed or strongly agreed that carrying out any of the previously mentioned actions may help them avoid a default County Court judgment if a claim is brought forward against them

⁷ 36% of respondents agreed or strongly agreed that the public understands what steps are required of a defendant following the receipt of claims papers.

36% of respondents agreed or strongly agreed that the public understands how to challenge a County Court judgment.

⁸ Creditors may include: employers, local authorities, recreational membership groups (e.g. gyms, clubs and societies, and newspaper or magazine subscriptions), household subscription goods (TV, internet and phone subscriptions), schools and/or universities, dentists, doctors, opticians, vets, insurers, household service providers (cleaners, gardeners, accountants, lawyers), Banks, Pensions, Loan companies, Credit card / debit card companies, Store cards, Premium bonds, and utility companies, etc.

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

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.

4.1. CILEx reiterates its concerns that providing consumers with greater amounts of information may not go far enough in tackling serial debtors and unscrupulous creditors⁹.

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

5.1. CILEx will assist in disseminating updated information to our members.

5.2. The Pre-Action Protocol for Debt Claims may also be a possible means of ensuring the public are signposted to the information proposed in the consultation via its Information Sheet.¹⁰

5.2.1. The Information Sheet already signposts debtors to organisations that provide free, impartial advice on debt management, and could also include details of the consultation's proposed guidance and information.

5.2.2. However, this will not necessarily prevent cases arising in the first place, and so preventative advice, including early legal advice, will also have a role to play.

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

6.1. CILEx welcomes the Government's efforts to ensure that the proposed information and guidance is made available to those who are vulnerable or have difficulty accessing information.

⁹ See paras 2.5 – 2.10.

¹⁰ Pre-Action Protocol for Debt Claims Annex 1: <https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/protocols/pre-action-protocol-for-debt-claims.pdf>

- 6.1.1. Efforts should be made to ensure that vulnerable consumers or those that have difficulty accessing information online are made aware of free advice provided at organisations such as Citizens Advice, Civil Legal Advice, AdviceUK, etc.
- 6.1.2. As already referred to, the Pre-Action Protocol for Debt Claims does ensure defendants are made aware of the impartial and detailed advice available.
- 6.2. The public should be aware of their obligations and requirements when undertaking any credit agreement/contract, and if they are unsure they should seek independent legal advice.
- 6.3. We recognise though that the Government may wish to consider how it could expand efforts to ensure creditors supply relevant information to borrowers before agreements are formalised, particularly for circumstances where there is greater risk of default, or where larger sums are owed. This could include the information the Government proposes to provide to the public, and may help empower more vulnerable individuals so they do not fall prey to disreputable debtors or claimants.
- 6.4. At the point of having to attend a County Court however, CILEx would welcome further discussion over the experience of litigants in person. The important role The personal support units(PSU) plays an important role in providing much needed support to vulnerable individuals in high-stress situations, but greater focus would be welcome.

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

- 7.1. CILEx agrees with the Government’s proposal that a judgment may be moved from the Register where the court is satisfied that the defendant was unaware of the claim/judgement when originally issued/entered.
- 7.2. Providing suitable evidence is provided to the court¹¹, the Government’s proposal would ensure that the defendant does not suffer as a result of a default judgment that arises from circumstances outside of their control.

¹¹ See paras 8.1 – 8.2 for discussion on what determines “suitable evidence.”

7.3. However, CILEx is concerned that the proposal as currently worded may inadvertently compel defendants to settle the claim when in ordinary circumstances they would challenge it.

7.3.1. Although the consultation states “the defendant would be placed in the same position as a defendant who received the judgment and paid within 28 days of receiving it,” the proposal only indicates that the entry may be removed from the Register of Fines, Orders and Judgments if “the defendant immediately pays in full.”

7.3.2. CILEx is concerned that this would leave defendants to decide between paying in full in order to avoid inclusion on the register, or challenging the claim and being left to suffer the consequences of having an entry of the Register for 6 years. Neither choice allows for circumstances where a defendant can challenge an illegitimate claim without being penalised.

7.3.3. CILEx proposes that, providing sufficient evidence is provided in order to satisfy the Court that the defendant was unaware of the claim/judgment when originally issued/entered, and that the defendant has only just become aware of the claims and judgment, then the defendant should be provided with at least;

- a 14-day period in which to reply to the claim (or 28 days if they return an acknowledgement of service requesting further time to file a defence), and
- a 28-day period in which to pay the debt in full.

7.3.4. CILEx would emphasise that this should be a minimum requirement considering the increased difficulty that can come with having to obtain an understanding and evidence of the original claim following the receipt of a County Court judgment as opposed to the original County Court Claim.

7.3.5. This would ensure that debtors that are genuinely unaware of a claim or judgment against them are provided with the equivalent opportunity to defend themselves as those who were made aware of the claim at the outset.

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

8.1. For a defendant to satisfy to the Court that they did not have prior knowledge of the County Court judgment, CILEx recommends that the defendant provide evidence;

- of a change of address that coincides with the time the claim was made, and
- that the defendant notified, or reasonably attempted to notify, the claimant of their change of address.

8.1.1. It should not simply be a case that evidence can be provided to the Court showing a defendant moved address and failed to inform the claimant. It remains the debtor's responsibility to update creditors with their new address.

8.1.2. 96% of CILEx respondents agreed or strongly agreed with this approach.

8.2. Other evidence the Government may wish to consider as satisfactory evidence of a defendant not having prior knowledge includes:

- evidence that the defendant had arranged for mail redirections that failed through no fault of their own, or
- if the defendant can satisfy the Court that they were unaware of the judgment as a result of being away from the address for legitimate reasons (such as hospital admission).

9. 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?

9.1. CILEx believes, to some degree, that the current six-year period for County Court judgments remaining on the Register strikes the right balance between, ensuring that people do not experience excessive detriment from past debts, and ensuring that banks and other lenders have the information they need to decide who to lend to.

- 9.2. However, CILEx has reservations regarding the extent to which debts settled after the 28-day period can be distinguished from one another.
- 9.2.1. All debts paid following the 28-day limit will appear in the Register, but will be marked 'satisfied' when the claimant informs the court. CILEx is concerned that a debt paid one or two days after the 28-day period has passed is considered equivalent to a debt that is paid 4 or 5 years after the 28-day period.
- 9.2.2. In this example both debtors, although late in repaying the full debt, display very different debt management behaviour. On the surface, a debtor who pays their debt one or two days after the 28-day period can be considered more reliable than the debtor who pays their debt 4 or 5 years later, although still somewhat likely to default on a debt. This is an important consideration for creditors who may consider all debtors with a debt marked satisfied on the Register as equally risky.
- 9.2.3. CILEx believes that by establishing the exact time period in which a defendant settles a debt, creditors would benefit from having greater information on an individual's behaviour. We would welcome further exploration on if this information can be displayed on the Register.

10. 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?

- 10.1. CILEx would welcome discussion regarding the role emails and other forms of communication technology can play in ensuring that a defendant with a default judgment is alerted to an outstanding debt.
- 10.2. Creditors and debtors are often required to exchange contact details outside of a physical address. These details can often include mobile phone numbers, home telephone numbers and email addresses.
- 10.3. CILEx believes that the Government may wish to consider the extent to which this technology could be used to alert defendants of outstanding debts.

11. 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

11.1. A small proportion of respondents indicated that they had experienced similarly behaviour.

11.1.1. One respondent said: “A creditor fabricated a financial claim of significant value and had it served on a false address resulting in a default judgment which took almost two years of hard work to set aside. The rouge creditor was referred to the public prosecutor by the District Judge.”

11.1.2. Another respondent said: “It involved a claim by a highly disreputable timeshare company. They were informed that the debtor had moved, but still tried to serve proceedings at the original address. Fortunately, the new tenant returned the papers with clear evidence that the debtor no longer lived at that address.”

12. Question 11: How can this be avoided?

12.1. Current rules require claimants to sign a statement of truth to confirm that they believe the facts stated in the claim form are true. Knowingly providing false information in the statement of truth can lead to contempt of court proceedings.¹²

12.2. Anecdotally however, respondents indicated that inaccurate information on the claim form is rarely pursued as a contempt of court.

12.3. The Government may wish to consider amending the statement of truth to ensure that claimants are aware that they are also declaring that the debtors address provided in the claim is accurate.

12.3.1. The statement of truth currently requires claimants to verify that “[I believe] [the (claimant or as may be) believes] that the facts stated in this [name document being verified] are true.”¹³

12.3.2. The statement of truth could make it clearer that the claimant is verifying that all aspects of the claim, including the contact address

¹² According to Rule 32.14 of the Civil Procedure Rules, Rules & Practice Directions: “(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.”

¹³ Form of the statement of truth, Practice Direction 22 supplementing Civil Procedure Rules Part 22: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part22/pd_part22#2.1

provided in the claim, are correct and truthful. In doing so, unscrupulous claimants may be deterred and either withdraw the illegitimate claims, or verify the defendant's details.

For further details

Should you require any further information, please contact;

Matthew Leydon
Policy & Research Officer

matthew.leydon@cilex.org.uk

01234 844648