

WBL Logbook Sheet Template

Learning Outcome and example number e.g. 1.1(1), 1.2(2), 1.2(1) 1.2(2) etc.		Page numbers from portfolio	
3.5(2)		144 - 153	
Evidence provided and date of evidence e.g. Letter to client dated 01.01.2020 Telephone attendance note dated 01.01.2020			
Email from client 12 November 2020 Application to set aside Default Judgment dated 12 November 2020			
Explain how the example meets the learning Outcome and how the evidence shows this			
<p>Identify how to act on your client's or service user's instructions: My client instructed me to prepare an application to set aside a default judgment that had been entered against it.</p> <p>Demonstrate how you took all reasonable steps to take appropriate action (this may include your judgements and decisions in the matter): I prepared an application to the Court on Form N244 to request that Judgment be set aside pursuant to Part 13 of the Civil Procedure Rules. In preparing the application I kept in mind the requirements for making applications for court orders as set out in Part 23 of the Civil Procedure Rules and I included a draft order and witness statement in support of application.</p> <p>Whilst preparing the application to set aside default judgment I also established that my client had good prospects to seek strike out of the claim and / or summary judgment as the claim disclosed no reasonable grounds for bringing the claim. I therefore maximised the use of the application to set aside default judgment and also sought strike out / summary judgment in order to try to conclude the claim at application stage, rather than getting judgment set aside and then the client having to incur the costs of proceeding to a full trial. This was my own judgment in the matter.</p>			
Reflection and evaluation			
Describe what you learnt from the activity you undertook to meet the Learning Outcome. You may want to complete this section at a later date once you have had time to reflect on your practice and experience.			
I understand the importance of identifying how best to act on my client's instructions to ensure that my client's overall objectives are best met. In this instance my client instructed me to apply to set aside default judgment, which I did, but I also used my own judgement to seek strike out / summary judgment at the same time as there was no additional cost to my client in doing so (as they were already paying the application issue fee) which met their overall objective of dealing with claims as swiftly and economically as possible.			
Supervisor's Name			

<p>Please print the full name of the supervisor that supervised the work referred to above within this logbook sheet and the supporting evidence.</p>	
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Application notice

For help in completing this form please read the notes for guidance form N244 Notes.

Find out how HM Courts and Tribunals Service uses personal information you give them when you fill in a form:

<https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter>

Name of court Online Civil Money Claims	Claim no. [REDACTED]
Fee account no. (if applicable) [REDACTED]	Help with Fees – Ref. no. (if applicable) H W F - [] [] [] - [] [] []
Warrant no. (if applicable)	
Claimant's name (including ref.) [REDACTED]	
Defendant's name (including ref.) [REDACTED]	
Date	12 November 2020

1. What is your name or, if you are a legal representative, the name of the legal representative?
[REDACTED]

2. Are you a Claimant Defendant Legal Representative
 Other (please specify) [REDACTED]

If you are a legal representative whom do you represent? [REDACTED] The Defendant

3. What order are you asking the court to make and why?

1. To the extent that it is necessary as required, the Defendant is granted relief from sanction pursuant to CPR 3.9

2. The Judgment for the Claimant (in default) dated 4 November 2020 is set aside, pursuant to CPR 13.

3. [The Claimant's Claim is struck out, pursuant to CPR 3.4]

[OR]

4. [Summary Judgment is granted, dismissing the Claim, pursuant to CPR 24.2]

5. The Claimant do pay the costs of the application and the main action summarily assessed in the sum of []

Note that if the Claimant wishes to rely on written evidence at the hearing of this application, they must file that evidence and serve copies on every other party to the application at least seven days before the hearing under CPR 24.5(1).

4. Have you attached a draft of the order you are applying for? Yes No

5. How do you want to have this application dealt with? at a hearing without a hearing
 at a telephone hearing

6. How long do you think the hearing will last? 0 [] Hours 30 [] Minutes
Is this time estimate agreed by all parties? Yes No

7. Give details of any fixed trial date or period N/A

8. What level of Judge does your hearing need? (Deputy) District Judge

9. Who should be served with this application? The Claimant

9a. Please give the service address, (other than details of the claimant or defendant) of any party named in question 9.

10. What information will you be relying on, in support of your application?

- the attached witness statement
- the statement of case
- the evidence set out in the box below

If necessary, please continue on a separate sheet.

Statement of Truth

(I believe) (The applicant believes) that the facts stated in this section (and any continuation sheets) are true. I understand that proceedings for contempt of court may be brought against anyone who 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.

Signed _____ Dated _____
Applicant('s legal representative)('s litigation friend)

Full name _____

Name of applicant's legal representative's firm _____

Position or office held _____
(if signing on behalf of firm or company)

11. Signature and address details



12 November 2020

**IN THE COUNTY COURT AT
ONLINE CIVIL MONEY CLAIMS**

B E T W E E N:

[REDACTED]

Claimant

AND

[REDACTED]

Defendant

DRAFT ORDER

UPON the application of the Defendant dated 12 November 2020

AND UPON the Court reading the evidence filed

AND UPON hearing the advocate for the Defendant and the Claimant appearing in person

IT IS HEREBY ORDERED THAT:

1. To the extent that it is necessary as required, the Defendant is granted relief from sanction pursuant to CPR 3.9
2. The Judgment for the Claimant (in default) dated 4 November 2020 is set aside, pursuant to CPR 13.
3. [The Claimant's Claim is struck out, pursuant to CPR 3.4]
- [OR]
4. [Summary Judgment is granted, dismissing the Claim, pursuant to CPR 24.2]
5. The Claimant do pay the Defendant's costs of the application and the main action summarily assessed in the sum of []

Signed

[Deputy] District Judge

Date:

Claim No: [REDACTED]

**IN THE COUNTY COURT AT
ONLINE CIVIL MONEY CLAIMS**

B E T W E E N:

[REDACTED]

Claimant

AND

[REDACTED]

Defendant

WITNESS STATEMENT OF [REDACTED]

I, [REDACTED]
[REDACTED] WILL SAY as follows (and prepared in the language of the
witness):

1. I am a Paralegal/Litigation specialist, supporting the [REDACTED] Department. By way of explanation, the [REDACTED] Department advises [REDACTED] [REDACTED] in respect of litigation cases in the EMEA region, including the UK.
2. I make this statement from matters within my own knowledge and from my understanding from [REDACTED] Limited's solicitors of the requirements of the Civil Procedure Rules, or where I have been given the information by other employees of [REDACTED] Limited that information is true to the best of my knowledge and belief.
3. This witness statement has been taken by email.
4. I make this statement in support of [REDACTED] Limited's Application to set aside the Judgment in Default dated 4 November 2020 (**Judgment**) (and that any enforcement of the Judgment be stayed).

Background

5. The named Defendant, [REDACTED] does not exist and cannot and does not provide any payment service nor has it any relationship with users of the [REDACTED] online payment service. There is no contractual relationship with the named Defendant as it is not a registered legal entity.

[REDACTED]

6. I assume that the Claimant intended to bring proceedings against [REDACTED] Limited because the address for service on the Judgment is "[REDACTED]" which is part of the correspondence address "[REDACTED] Limited with a registered seat at [REDACTED]
7. There is no contractual relationship between the Claimant and [REDACTED]. Consequently [REDACTED] Limited does not hold any information pertaining to the Claimant.

Actions Taken Following the Judgment in Default

8. The Judgment notice was forwarded to [REDACTED] Department by [REDACTED] Limited on 10 November 2020. The Claim Form has not been received.
9. The [REDACTED] Department instructed [REDACTED] act on behalf of the Defendant in respect of the matter on 10 November 2020.
10. [REDACTED] standard process is to run all necessary conflict checks and confirm they are able to act. Conflict checks were completed [REDACTED] to the [REDACTED] Department, [REDACTED] act in respect of the claim. This Application to set aside the Judgment was prepared as soon as possible.

Grounds for Application to set aside Judgment in Default - CPR 13.2

11. CPR 12.3(1) provides that the Claimant may obtain judgment in default of an acknowledgment of service only if (a) the Defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and (b) the relevant time for doing so has expired.
12. Pursuant to CPR 13.2(a), the Court must set aside a default judgment where the conditions for default judgment are not satisfied.
13. Considering that the Claimant failed to issue and serve the Claim against the correct Defendant, at the correct address, the 14-day period within which the Defendant is required to file an acknowledgement of service has not started (much less has it expired) and therefore the conditions of default judgment have not been satisfied.
14. In summary, the Defendant's primary position is that the Judgment must be set aside pursuant to CPR 13.2(a) as the Judgment was wrongly entered.

15. Due to the Claimant's failure to serve the Claim in accordance with CPR 6.9, the time period of 14 days to file an acknowledgement of service has not yet commenced. Subsequently, the Defendant has not failed to file an acknowledgement of service as would be required before the Judgment in Default could properly be granted in accordance with CPR 12.3(1).

Grounds for Application to set aside Judgment in Default – CPR 13.3

16. [REDACTED] Limited does not have a contractual relationship with the Claimant.
17. Pursuant to CPR 13.3(1)(a), the Court has discretion to set aside a default judgment where the Defendant has a real prospect of successfully defending the claim. It is submitted that the Defendant does have a real prospect of successfully defending the Claim. Those reasons include that the named Defendant does not exist and [REDACTED] Limited does not have a contractual relationship with the Claimant.
18. Moreover, I respectfully request that the Court sets aside the Judgment pursuant to CPR 13.3(1)(b)(i) as there is a good reason why the Judgment should be set aside and the Defendant should be allowed to defend the claim, namely that the Claimant should not be allowed to obtain a pure windfall from issuing the Claim against a Defendant with which he has no contractual relationship.
19. I also respectfully submit that the Defendant has acted promptly in making this application.

Strike-out / summary judgment

20. In light of the above points, I also respectfully request that the Court exercises its power to strike-out the Claim pursuant to CPR 3.4. This is because, given that it has been issued against the wrong Defendant, the Claim discloses no reasonable grounds for bringing the Claim. The Claimant and the Defendant have no contractual relationship and never have.
21. Alternatively, I request for the reasons set out above, that the Court grants summary judgment dismissing the Claim pursuant to CPR 24.2.

Relief from sanction – CPR 3.9

22. The Defendant believes that a breach has not occurred in this matter because the Claim was issued against a company that does not exist, has no relationship with the Claimant and the Claim was not validly served upon the Defendant. However, to the extent that the Court considers it necessary for the Applicant to seek relief

from sanction pursuant to CPR 3.9, I submit that it would be just and proportionate for it to grant that relief. Having regard to the test to be applied to applications for relief as set out in the case of *Denton v T H White Limited* [2014] EWCA Civ 90;

- a) There was a good reason for the breach. As set out in this statement, the Claim was not validly served and names an incorrect party as the Defendant.
 - b) Taking all of the circumstances of the case into consideration, especially the 2 specific factors set out in CPR 3.9 (1) (a) & (b):
 - i) The Applicant has acted very promptly in bringing this Application Notice after being notified of Judgment in Default being entered by the Court;
 - ii) The grant of relief will not affect the conduct of the litigation (which is at a very early stage), or its proportionate disposal;
 - iii) It would be unjust for the Claimant to obtain a windfall from their own failure to name the correct Defendant and serve the Claim correctly;
 - iv) The Claimant is in breach of various provisions on the CPR including CPR 6.9, 6.11, 6.33 and 6.34.
23. I therefore submit that, in all the circumstances, it would be just and proportionate for the Court to grant relief from sanction in this case and for the Court to then proceed to consider the specific provisions governing applications to set aside a default judgment as set out in CPR 13.3.

Summary

24. In summary, it is respectfully submitted that the Judgment must be set aside pursuant to CPR 13.2(a) as the Judgment was wrongly entered. This is due to:
- 24.1 The Claimant's failure to issue and serve the Claim against the correct Defendant, or in fact serve the Claim at all. Subsequently, the Defendant has not failed to file an acknowledgement of service and so the conditions for judgment in default to be granted in accordance to CPR 12.3(1) have not been satisfied.
25. It is further requested that (i) the Claim is struck-out pursuant to CPR 3.4 because the Claimant discloses no reasonable grounds for bringing the Claim, or (ii) alternatively that the Court grants summary judgment dismissing the Claim pursuant to CPR 24.2 because the Claimant has no real prospect of succeeding on the Claim as it has been brought against an incorrect legal entity.

Order requested

26. It is respectfully requested that the Court orders that:

26.1 The Judgment for the Claimant (in default) dated 4 November 2020 is set aside.

26.2 The Claimant's Claim is struck out.

[OR]

26.3 [Summary Judgment is granted, dismissing the Claim, pursuant to CPR 24.2]

26.4 The Claimant do pay the costs of the application and the main action summarily assessed.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an

[REDACTED]