

Written evidence submitted by The Civil Court Users Association (WCC0057)

The Civil Court Users Association (“CCUA”) welcomes the opportunity to contribute to this inquiry by the Justice Committee.

Membership of the CCUA is open to all those who use the courts, whether Claimants, Defendants, working in enforcement, etc.

The CCUA seeks to work with other stakeholders in a constructive and balanced manner, to achieve an efficient and cost-effective court service which is fair and proportionate for all court users.

Our members participate in around 85% of all money claims in the County Court in England and Wales, as well as being involved in a wide range of other litigation including, for example, repossession and return of goods claims. They include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

Before turning to the questions raised by the inquiry, we do wish to put on record the good working relationship enjoyed by the CCUA with both Ministry of Justice and HM Courts & Tribunals Service. We appreciate that many people are working very hard to make the best of very difficult circumstances, which is very much appreciated.

We also consider that the current consultation by Ministry of Justice to once again increase selected court fees, which coincidentally closes the very same day as this call for evidence, is in very bad taste given the current difficulties in the courts. The difficulties should be resolved first.

Inquiry questions

- What the current level of delay in the County Court is; the extent of any regional variations; and the effect of delays on litigants and the administration of justice;

We are grateful that HMCTS regularly share details of backlogs and delays with the CCUA. Since the pandemic these have become very poor indeed, with court users regularly stating that the system is broken, not fit for purpose, etc.

The statistics collated by HMCTS tend to be based on performance towards targets, for example the percentage of small claims track hearings which happen within the target of 30 weeks, or telephones being answered within a certain time. The difficulty measuring average performance on a percentage basis is that there is no measure of exactly how bad the situation is for those cases which fail to meet the target. They can regularly fall months in arrears, or even over a year.

Court users raise seriously problematic cases with the Association on a daily basis. Again, we are very grateful to HMCTS that we are able to raise such cases with them as exceptions and the situation is often able to be resolved on a case by case basis. However, the fact that these cases are frequently delayed by many months, or even over a year, before they are finally escalated and resolved in this way, should be unacceptable.

Part of the problem is that court users struggle to communicate with the courts, with telephone calls and other correspondence regularly going unanswered. Even if it is possible to make contact, court staff often have little or no understanding and are effectively unable to assist.

Delays are particularly bad in London and the South East, but there are difficulties everywhere.

The Civil Court Money Claims Centre (CCMCC) and the Civil Court Business Centre (CCBC) recently merged and became the Civil National Business Centre (CNBC). This has seen a serious deterioration in service over the last few months, with lengthy delays, although there are some early signs of improvement over the last few weeks. We are sure that the committee will be aware of the extent of these considerable delays, published weekly on the Government's internet site.

The impact on court users has been significant and has had a major impact on access to justice. Any court action is likely to be considered urgent to the participants. Some are particularly urgent, such as applications to set aside Judgments and bankruptcy petitions for example, where respectively a party may be suffering adverse consequences on a day-by-day basis, or where assets may be being disposed of before they can be realised. We are frequently seeing these being listed for hearing months into the distance, or even over a year. This is completely unacceptable.

Users regularly report that Applications to the court take weeks or even months to process. Some Claimant users have been informed by court staff that the courts are deliberately prioritising Defendant Applications. As well as being a potentially unbalanced and preferential approach by the court, this is leading some Claimant Users to agree Consent Orders or even ask the Defendant to make Applications which the Claimant would normally make themselves, purely to jump the queue.

The courts are also often taking so long to draft and send orders that the deadlines stated within them have already expired before they are received by the parties. This is leading to cases being struck out unnecessarily, which is only adding to backlogs and delays whilst Applications are made for relief from sanctions.

Possession claims are another urgent area of work which should be prioritised. Within mortgage possession proceedings, paper based claims (where PCOL cannot be used) are seeing long lead times to issue and are regularly requiring chasing of courts for updates. Likewise, with orders, court users are regularly seeing possession orders not being available until after the date on which the possession order was enforceable (as an understanding point, a member reports a court staff member initially refusing to issue a warrant as the possession order had not yet been drawn even though the date had passed after which a warrant could be issued).

Migration of warrant for possession enforcements to a hub basis in some areas has only centralised continued delays without actually achieving anything.

Users report that the current situation with county court bailiffs/ warrants of control is dire. It is reported that at some courts their enforcement applications are not actioned for many

months and in some cases, they receive no responses at all. There are not enough court bailiffs to execute Warrants of Control.

The introduction of Warrant of Control Support Centres was not requested or required by court users. Whilst some success is claimed by the courts in terms of money collected (which is welcome), it is effectively no more than a telephone collection service which serves to delay the attendance of the bailiff, which was actually the service requested and paid for by the court user.

Complaints to County Courts regarding delays is relatively fruitless, and escalating to the HMCTS complaints process also continues to be poor.

The whole situation has been a nightmare for court users.

- The ways in which the County Court engages with litigants in person, and how this could be improved;

Notices, Orders and forms have often not been reviewed or amended for decades, which does not assist understanding.

The lack of progress is often frustrating. For example, the Chair of the Association has recently participated in the Working Group on Determination of Means. Right at the start we pointed out (as we have for many years) that the determination of means forms are consumer focused and an alternative version should exist for responses by businesses, such as limited companies. This was agreed to be a good idea, but we were informed that this was out of scope for the group and would be picked up separately later. The working group continued to meet for many months to consider consumer facing determination of means forms, finally concluding that the existing forms should be brought into alignment with the Standard Financial Statement. This was pretty much the correct conclusion which was always going to be reached, but after all that work and consideration, the group was then informed that there is currently no budget available to make the change anyway.

Some guidance has been produced which has been welcome.

Some Litigants in Person genuinely struggle to understand the process.

Others sometimes seem to exploit that perceived lack of understanding to delay and obstruct the progression of cases. There is increasing concern that such Litigants in Person actually benefit from leniency and the “benefit of the doubt”, which actually leads to them potentially gaining an advantage over other court users. This could be improved by clearer expectations (and consequences) within the Civil Procedure Rules and in communications generally.

Too often we see erroneous orders drawn which are inaccurate. These can lead to a situation where a defendant thinks one thing has been ordered and where the amended order to correct the position takes a long time to be provided, causing confusion to the litigant in person. One of the worst most recent errors we have seen reported is an order for possession where the court erroneously gave the correspondence address rather than the security address as the property over which the possession order had been granted. This, understandably caused

confusion and consternation to the litigant in person and has taken the court a significant period of time to resolve.

- The accessibility of the County Court for people with disabilities;

Generally, requests for specific hearing venues suitable for people with disabilities are respected.

- The condition of the court estate, and its effect on the work of the County Court;

This may be causing some difficulties internally within HMCTS, but is not particularly large on the radar of most court users.

- The use of technology in the County Court and how it could be used to improve the service provided by the County Court;

There is ongoing progress with the building of new online processes, which has led to some improvements with regard to speed of case handling. However, there are still a huge number of cases which remain on older, manual systems and the use of technology remains poor for those.

One difficulty which arises with automated systems is where cases “go wrong”. Once a case goes off-piste, it is very difficult to make contact with anybody who can assist with putting it back on course and progressing it.

One success story from the pandemic was how quickly the court was able to embrace and roll out virtual online hearings. During Covid, this process worked reasonably well and provided access to justice for all and arguably presented benefits in certain circumstances, such as putting the Litigant in Person at more ease, as they could be heard in a place where they felt comfortable, as opposed to a Court. There were some considerable difficulties however, both during the pandemic and afterwards, with confused communications as to whether hearings were to take place remotely or in person, last minute adjournments, lack of judicial availability, etc.

More recently, we have seen the vast majority of hearings returning to being heard in person. At a time of considerable arrears, we feel that it might have been better to continue with a hybrid approach comprising both virtual and online hearings. We have been informed that this return to in person hearings has been led by the judiciary, but we do wonder if at least part of the reason behind that decision was due to the confusion which often arose, which must have been equally frustrating to the judiciary as it was for the parties.

e-filing should be considered as a matter of urgency to help alleviate some administrative burden within the County Court.

- The effect of the court reform programme on the County Court, including the new Online Civil Money Claims service and the Damages Claims service;

The court reform programme has largely been a damp squib. There has been very little in terms of actual, transformational reform. Mostly it has been limited to centralisation, digitalisation and streamlining. This does bring some benefits, but is hardly radical. There

have been many missed opportunities to properly review and reform processes, with most simply transferred across to a digital platform without much consideration.

The general perception amongst many court users is that the priority within MOJ and HMCTS is to supply the bare minimum service at minimal cost to them, rather than trying to properly service the interests of court users and building a system to be proud of.

- The current level of fees and the approach taken to costs in the County Court, and how the fees collected are used as part of the current funding arrangements for the County Court;

It has been a few years since MOJ and HMCTS last shared details of the fee revenue with the CCUA. At that time, Civil Claims fees were over half a billion pounds per annum.

Since “enhanced fees” were introduced some years ago, HMCTS are able to charge more than the cost of providing the service. Again, when figures were last shared, over £100 million a year of Civil Court Fees were used to finance other areas, such as the Family and Criminal Courts.

Given the above, it is very difficult for Civil court users to accept being told that there is insufficient resource to provide a decent service. Over £100m of additional resource has been paid by users, but is being used for other purposes.

Court fees are extremely high and are “front loaded”. A large amount is charged simply for issuing a Claim Form, regardless of the fact that many claims do not proceed much further than that, and probably will never require a hearing. Most claims resolve with the entry of Judgment in Default, simply administering a form. The fact that court users have to pay up to £10,000 simply to issue a Claim Form is frankly outrageous and a significant access to justice issue.

It should be recognised that access to justice is not just a consideration to court users with limited means. The outcome of litigation is never certain. Even a potential party with sufficient means to launch a claim may well be effectively prevented from doing so, simply as they do not wish to risk such a huge amount of money merely in the issue of a claim form.

Court Users used to receive a discount for issuing claims digitally rather than on paper. Cynically, once most court users had moved to digital, the discount was removed.

- Whether there is sufficient judicial capacity in the County Court, and current steps to improve judicial capacity;

The CCUA is frequently told that lack of judicial capacity is adversely impacting court delays and leading to adjournment of hearings.

- Whether there is sufficient staffing of the County Court;

This is certainly inadequate. We do have some sympathy regarding loss of resource and difficulties with recruiting during the pandemic, which was far from unique to the court service.

However, we understand that it remains difficult for HMCTS to recruit and retain staff. It is clear to court users that the courts are under-resourced and that many of the staff have limited knowledge and experience. We suggest that salaries and benefits may need to be looked at.

There are clearly insufficient numbers of court bailiffs. For example, we understand that only 3 bailiffs cover the whole of Birmingham.

- The causes of action giving rise to claims in the County Court;

The vast majority of claims are money claims, most of which require minimal work by the courts as they result in the swift entry of Judgment in Default.

- The current procedural mechanisms used by the County Court to resolve disputes;

The recent decision to make mediation compulsory in all cases is a mistake.

Many court users highly value mediation for the correct cases. However, it is utterly pointless unless both parties are willing to engage constructively.

Default Judgment and Summary Judgment processes work well.

- The quality of data available on the work of the County Court; and

We have no further comments other than those already made above.

- What future reforms to the County Court should be considered.

Enforcement was the area considered most ripe for reform in Lord Justice Briggs' Civil Structure Review, yet there has been very little progress since.

We have been calling for the introduction of Information Orders for many years. These have been on the statute book since the Tribunals, Courts and Enforcement Act 2007, yet have not been introduced. Where a party has a Judgment entered against them, that is a court order requiring them to make payment. If the party fails to make payment or otherwise engage to explain why they cannot, it should be open to the Judgment Creditor to apply for an Information Order. This would enable HMCTS to approach HMRC to establish any employment data and to confirm whether or not they are currently employed (without additional detail) to the Judgment Creditor.

This would inform decision making when it comes to considering the best form of enforcement. This would be of obvious benefit to the Judgment Creditor. It would also benefit the Judgment Debtor in not having inappropriately targeted enforcement commenced against them. It would also save the courts time.

Justice requires effective enforcement. Allowing court order and Judgments to be ignored damages the credibility of the courts.

Similarly, County Court bailiffs are viewed as being ineffective. Consumer Credit Regulated debt and debts under £600 should be able to be enforced far more effectively within the private sector, by opening them up to High Court Enforcement Officers.

The Court Funds Office needs to start accepting BACS payment in place of cheques, and the Probate Registry needs to start accepting payment via the Payment By Account (PBA) service used by the County Court.

Users also have to pay by cheque for the Official Receiver's deposit in bankruptcy actions, because it is not seen as court funds, despite the fact that the cheque is payable to HMCTS. This appears to be because the systems cannot process the payment, which further appears to be a lack of foresight, as often seems to be the case when the court introduces a change.

There are huge opportunities for worthwhile reform in many areas. The CCUA remains willing and able to engage constructively with MOJ and HMCTS to share our ideas and insight, as we have for many years, often sadly with very limited uptake or progression.

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