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Fees Policy Team
Ministry of Justice
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Also by email: mojfeespolicy@justice.gov.uk

Dear Sirs,

We write further to the Association's response to the recent consultation by the Ministry on the proposals to "align" court fees.

As the Ministry is aware, the CCUA strenuously opposed the proposals and called for a full review of the current fee structure, which is extremely damaging to the interests of justice and not fit for purpose. It is unfair to court users whether Claimant or Defendant. Where possible, we shall endeavour not to repeat the same points here. We have already set them out quite clearly in our consultation response.

Quite simply, we are extremely disappointed with the Ministry's response to the consultation responses, dated 8th March 2021.

The heading "Background" ignores the points made by the Association and numerous other respondents and repeats the flawed logic set out in the original consultation paper, declaring that the proposals will "...ensure justice for all." As we set out in our response, the current free structure denies access to justice to the very parties who provide the highest amount of income to the court service, pricing larger value money claims out of reach.

Under the section "Summary of responses", it is acknowledged by the Ministry that the majority of responses disagreed with the proposals, citing a wide range of reasons covering some 4 paragraphs. 77% disagreed with the need for alignment at all and 91% disagreed with the proposal to align electronic fees upwards to match the paper fees. Only a small minority agreed, their reasoning being substantially narrower and summarised in only one paragraph.

Later in the response it is stated that some 94% of respondents disagreed with the proposal to increase the Warrant of Control reissue fees.

Nonetheless, despite this lack of support for the proposals, under "Summary of the Government's response" the Government states that it "...believes that there is a strong justification to proceed..." The responses to the consultation do not appear to align with this view and we can only presume that the government's assessment is based on its own view without taking account of the views of those who responded to the consultation.

The same financial argument regarding the need for income is made in paragraphs 15 and 16 of the response as was set out in the original consultation paper. As we set out in our response, those figures are disingenuous at best. They ignore the fact that claimants already pay vastly more than the cost of the service provided to them, thereby already helping to finance other areas of the court system which have nothing to do with their claim. Those points have simply been ignored. Instead, the response spins the figures in an attempt to advance a flawed suggestion that access to justice is improved. This ignores all the data relating to money claim issue levels which clearly show the direct opposite, that larger money claims no longer enjoy access to justice.

The response does at least acknowledge the concerns raised in respect of "...the quality of the county court bailiff enforcement service". We welcome the fact that the warrant of control fee will align at £83, being only a £6 increase on electronic issue and a £27 decrease in the paper fee. That is appreciated.

However, we note that the stated justification for this exception to the general approach of aligning the electronic fee upwards to meet the paper fee was only partly due to the "difficulties" in the quality of service. The Ministry states that they also recognise the potential for increased cost to be passed on to debtors. If this is recognised as a concern in relation to warrants, why is it not also recognised across the whole fee structure? Warrants attract a comparatively low fee. That is certainly the case compared for, example, to the totally unjustifiable Claim issue fees for larger debt values, up to £10,000 for the swift, easy and purely administrative task of issuing a Claim. Why does the Ministry baulk at the possibility of a debtor seeing their debt increased by an additional £27 upon the issue of a warrant of control, but consider an entirely unjustifiable increase of £10,000 to be perfectly acceptable?

As regards the response stating that enhanced fees are allowed by statute, we are fully aware of that and even stated such in our response. However, that does not make the principle correct. We are equally aware of the opposition to that provision when the Bill passed through Parliament and the subsequent successful legal challenges to similar provisions in respect of employment tribunal and personal injury claims.

As regards the length of the consultation period, only 6 weeks which cynically concluded during the festive period between Christmas and New Year, we note the reasons given by the Ministry that they consider that to be a proportionate amount of time. We beg to differ. We also recall a previous consultation by HM Government, albeit some considerable years ago now, which stated that consultations should generally run for 12 weeks and should only be scheduled for a lesser time in exceptional circumstances. For the avoidance of doubt, we do not consider that 12 weeks would have been necessary here, but we do feel that six weeks was insufficient, especially as it concluded during the festive period and also incorporated an additional proposal part way through. Would it

really have hurt to have extended by even one week, taking it beyond the festive period? That would certainly have been likely to have allowed for additional responses.
Paragraph 20 of the response shows a staggering degree of naivety and lack of understanding. This states that the Ministry does not accept that the proposals would impact access to justice, as research has previously suggested that fees are a secondary consideration in the decision to litigate, with prospects of success and the likelihood of recovering the debt being primary considerations. For the avoidance of doubt, we agree with those points. However, does the Ministry not understand that as the fees increase as the debt amount increases (entirely unjustifiably as the same work is required for a £200 debt as for a £200,000 debt) that "secondary consideration" becomes increasingly relevant? Put simply, does a Claimant really want to risk another £10,000 when they have already lost £200,000?

The Ministry even states, apparently in support of their position, that 98% of claims are under £10,000. Does that not concern them? Do they not recognise that as a symptom of the current unfortunate situation? It reinforces our point that higher value claims are simply not happening, priced out of the market. This should be a major access to justice concern, leading to unjust and perverse situations as we set out in our response, with debtors more likely to end up with a Judgment if they owe a small debt than if they owe a large one.

We do thank the Ministry for noting our request for a full review of the fee structure, together with the statement that the structure will continue to be reviewed on an ongoing basis. However, fundamentally it appears that the Ministry is missing the point and does not appreciate the damage being caused by the current structure and the urgency required to address this.

The inescapable conclusion is that the Ministry is on a mission to increase budget, regardless of the harm this causes to the interests of justice or where their actions are contrary to the interest of court users on all sides. They have ignored the opposition of the overwhelming majority of respondents to their own consultation as well as almost all of the facts presented to them. We would suggest that this is extremely damaging to the credibility of the consultation process and to the Ministry of Justice itself and would urge them to reconsider.

However, if this is to be implemented in spite of the widespread opposition, we note that it is suggested that this may be in May 2021. Please can we have certainty on this as soon as possible in order that court users may prepare.

Rob Thompson

Chair, for and on behalf of the Civil Court Users Association