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Response to:	dwg@judiciary.uk
CCUA Contacts:	Rob Thompson, Vice Chair and Chair of the Policy & Reform Committee
Email:	robertthompson@brachers.co.uk Claire Stokes, Association Administrator Email: claires@ccua.org.uk
Representation:	The CCUA Policy & Reform Committee has drawn upon the views of the CCUA membership.

Introduction

The Civil Court Users Association ("CCUA") welcomes the opportunity to respond to these proposals.

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

Our members issue around 85% of all money claims in the County Court in England and Wales and regularly handle a huge volume of consumer debt matters, whether requiring court action or otherwise. Our members include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

Response on behalf of members

The following points have been raised by members, which the Association hopes will be of assistance-

"For the most part we agree that the proposed changes are sensible as it will limit the disclosure process and save costs (particularly in large complex cases)."

"We do definitely agree with the more limited disclosure that the proposed changes would introduce – we do currently seek to limit disclosure where appropriate, but often find that District Judges will not consider the suggestion and will simply fall back on standard disclosure which often unnecessarily builds costs when limited disclosure would have been sufficient. The proposed scheme would therefore, mean that it would be much more likely that there would be more limited disclosure which would reduce costs."

"We are in agreement that delaying Form H until after the CMC is sensible as the scope of disclosure will then be more clear, which will have a significant effect on costs."

"Our main concerns would be:

Basic Disclosure, and in particular the stage at which this would be required. It appears that basic disclosure would need to be given when the claim is issued, as it appears to suggest that the documents should accompany the particulars of claim. This would be a problem for various reasons, namely:

- The vast majority of claims are issued via CCBC and as such, there is no facility for the claimant to include the documents which would form basic disclosure (CPR PD 7C para 1.4 (3A) already excludes the requirement for claimants to include copy documents with claims which are issued electronically for that reason).

- Even if this was amended to require the basic disclosure to be done by list, this would require changes at the Court to allow this to be included, which is likely to be time consuming and expensive, particularly, as basic disclosure could be done at another stage (referred to below).

- We would be of the view that basic disclosure with at the same time as issue would be too early in the process and would therefore, unnecessarily incur costs and place an unnecessary burden on claimants when they are issuing proceedings, particularly large financial institutions and debt purchasers that issue a large amount of proceedings. As we know, the vast majority of proceedings will not be defended, so in those cases (and hence, the vast majority of cases that are issued), the additional costs would be incurred but it would not add anything to the process. It appears that the working group have made this suggestion on the assumption that most proceedings will be defended, which is not the case. Whilst we do not therefore, have any objection to basic disclosure at an early stage, we consider that it would be more sensible for this to take place when directions questionnaires are filed as at that stage, it is known that the proceedings are defended and how much is in dispute etc.

- It would be particularly difficult for some claimants, such as debt purchasers to comply with basic disclosure when issuing the claim given that they are not usually provided with documents when they purchase debts and will be issuing proceedings based on information provided by the assignor of the debt. Their basic disclosure would therefore, simply refer to information provided by the assignor, which could then lead to applications for disclosure of further documents. If basic disclosure was done at the same time as filing directions questionnaires, this would mean that they would only have to obtain the documents from the assignor in respect of the small percentage of cases that are defended.

When limited disclosure takes place, it will need making clear to litigants in person that in addition to documents which they intend to rely upon, they do also need to disclose documents that can hinder their case. We believe that it will however, be difficult to monitor this / be sure that they have disclosed all relevant documents. We do however, appreciate that it is already difficult to be sure that litigants in person have disclosed all documents required under standard disclosure so in reality, we do not believe that this will cause additional problems that do not already exist. As set out above, we do believe that limited disclosure under the proposed scheme would be a benefit."

"As extended disclosure is likely to be statistically unusual, it would seem more proportionate to require confirmation only when it is likely to be required, rather than requiring confirmation of whether or not it is likely to be required in every single case."

"We note that it appears that the proposed new scheme would not apply to matters allocated to the small claims track as it states that it is to replace the existing CPR 31, so would not apply to matters on the small claim track, pursuant to CPR 27.2(b). We agree that this would be sensible and that the existing disclosure requirements in respect of claims allocated to the small claims track are suitable."

"In respect of the proposed basic disclosure requirement however, presumably, this would apply to all claims regardless of what track they would be allocated to as the claim will not have been allocated when it is issued and hence, when it is proposed that basic disclosure would need to take place. As set out above, we believe that it would be sensible that basic disclosure should take place when directions questionnaires are filed. We also believe that it would be sensible if it did not apply to claims under £10,000.00 – i.e. claims that would be allocated to the small claims track, as the proposal does not appear to be suggesting a change to the disclosure requirements on the small claims track. We believe that it would be simple to implement this by simply adding the reference to the requirement into the N181 as this is the directions questionnaire that the parties will receive if the claim is of a value / type that would be allocated to the fast or multi track."

The CCUA's viewpoint

We hope that the above points as raised by our members will be of assistance.

The Association is extremely concerned that there should not be any additional requirements placed upon Claimants at the point of issue of money claims. The vast majority of money claims are undefended, around 95%. It would be vastly disproportionate to expect Claimants to address points relating to disclosure at that point, when it is highly unlikely that disclosure will ever be required.

These points have only recently been fully investigated and concluded during the implementation of the Pre-Action Protocol on debt claims, when there was a great deal of investigation, discussion and agreement on what information should and should not be exchanged prior to the start of a claim.

We fully agree with the suggestion set out above, that disclosure should occur at the point when the Directions Questionnaire is filed and not before.

28th February 2018