



Subject: Enforcement of possession orders and alignment of procedures in the County Court and High Court

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Representation: The CCUA Policy & Reform Committee has drawn upon the views of the CCUA membership and corresponded with various other relevant organisations.

Introduction

The Civil Court Users Association (“CCUA”) welcomes the opportunity to contribute to the Civil Procedure Rule Committee’s (“CPRC”) call for evidence.

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 handle a large volume of repossession claims, particularly those brought by mortgage lenders. Our members include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

Approach

Our members are individually better placed to provide some of the detailed process responses requested in this paper. Nonetheless, enforcement of possession orders is an extremely important topic for the CCUA and a significant proportion of its membership, and we therefore feel that it is important to respond in respect of the key principles, albeit we have not responded to the questions individually.

Response

The CCUA agrees with the CPRC that the current civil procedure rules for enforcement of possession orders are unsatisfactory. The CCUA has long argued for a harmonisation, or unification, of enforcement processes in the County and High Courts. Harmonisation would improve effectiveness, efficiency and consumer protection. It also raises the possibility of greater choice for claimants as between bailiffs and High Court Enforcement Officers (“HCEO”) across a broader range of claims.

The CCUA supports a number of principles, which it hopes will be reflected in the CPRC’s proposals:

1. It would be welcomed if the CPRC would in due course consult again on the proposed wording of the draft rules.
2. As stated, the CCUA supports the general principle that wherever possible the procedures in the County and High Courts should be harmonised. The benefits of that include:
 - a) simplification improves the understanding of consumers and support agencies;
 - b) improved efficiency for HMCTS, allowing overdue investment in improvements in bailiff service levels;

- c) improved efficiency for volume claimants, allowing investment in increased support to consumers.
3. The same risks to consumers exist whether the possession order is enforced in the County or High Court and there is no obvious basis for having different approaches to consumer protection. Harmonisation of the requirements as to notice is sensible.
 4. Claimants have a role to play in giving notice to parties and non-parties. However, an additional requirement for the bailiff to hand deliver a Form 54 Notice to the property would be very beneficial. At one time when County Court bailiffs were better funded and had smaller areas to cover, it was the general practice of bailiffs to hand deliver a notice prior to the eviction. Anecdotally that had significant benefits for the bailiff and the claimant, as it meant the bailiff often established in advance, and communicated to claimants, potential problems with the eviction such as aggressive dogs, livestock, access issues, etc. The perception is that as the practice of hand delivery has fallen away, so the incidence of problems on first eviction has increased, undermining the effectiveness of enforcement and leading to greater health and safety risks to all of those involved. That said, there will also be occasions where hand delivery may be inappropriate or impractical, so there does also need to be a mechanism whereby it is not required in those cases.
 5. It is accepted that in routine cases evictions should not take place without parties and non-parties having been given advance notice. However, the CUA considers that there are legitimate exceptions to this to reflect the fact that some occupiers abuse the Court's process and wilfully frustrate evictions. Specifically:
 - a. Rather than having to rely on general powers the CPR should include a clearly set out, and broad, discretion for the Court to waive the requirement for notice on application.
 - b. Claims against trespassers should remain an exception to the requirement for advance notice of the eviction date to reflect that trespassing is unlawful and these represent a high proportion of the evictions where individuals seek to frustrate evictions. If a blanket exception for trespassers is not possible then s.144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 may provide a model for the categories of trespassers for whom advance notice is appropriate. I.e. advance notice would not be required where:
 - i. the person is in a building as a trespasser having entered it as a trespasser,
 - ii. the person knows or ought to know that he or she is a trespasser, and
 - iii. the person is not holding over after the end of a lease or licence (even if the person leaves and re-enters the building).
 6. Form 54 is serviceable as a form for the bailiff/HCEO to use as advance notice of evictions. The notices for claimants to give should not be prescribed beyond

certain key facts, so claimants can tailor notices to be most helpful for their sectors. I.e. a rule similar to CPR 55.10(2).

7. The period of notice of an eviction should not be so long that it leads to logistical problems where evictions have to be cancelled or delayed simply because there is insufficient time to give notice. Conversely it is of no help to courts or parties if short notice means that applications to suspend warrants are made at the last minute. 14 days may be an appropriate period.
8. Once there is a harmonised process and adequate consumer protection in both the County and High Court then there should be no need for judicial control or oversight of the transfer from the County to the High Court (or of the issue of warrants/writs). That should be an administrative rather than legal process with notice being given to parties by the Court after transfer. Non-parties will receive advance notice of an eviction and there is nothing to be achieved by sending notices to non-parties at the point of transfer.
9. Certification that notice has been given to occupiers is proportionate if that is included within the form for requesting the writ or warrant so it does not unnecessarily add to administration for claimants and HMCTS. The certification should therefore be limited to certifying that the claimant has given notice of the claimant's intention to enforce the possession order, as currently required in mortgage claims by s.2 Mortgage Repossessions (Protection of Tenants etc) Act 2010. It is noted that possession orders can subsist for many years (potentially indefinitely). During that period the occupiers of the property may change (for example a series of unauthorised tenants in a mortgage claim). Therefore there seems little point in requiring certification of service of proceedings, or of the transfer up, in a claim where the orders may have been made many years before. The pragmatic conclusion is that certification of service on non-parties at this late stage should just be of the intention to enforce. Thereafter, with the exceptions mentioned above, there would in any event be notice of the date and time of eviction given to occupiers.
10. Further restriction of HCEO fees will be prejudicial. HCEOs offer a very different service to bailiffs and could not sustain that on harmonised fees. The precedent has long been established in the enforcement of money judgments that HCEO fees do not need to be harmonised with bailiff fees. There is a powerful incentive on creditors to not incur higher fees unnecessarily as the fees are only rarely recovered, so it is always likely that the use of HCEOs will be reserved for exceptional cases where their fees are warranted by an occupier's behaviour.
11. The CCA supports competition and there is no reason in principle why HCEOs should not be able to carry out County Court evictions if they are operating to the same procedures as bailiffs.
12. Given the applicant's home County Court is likely to be much closer than the relevant High Court, and the fact that County Courts are more experienced in dealing with what are often last minute applications, there is a logic to allowing the

applicant's home county court to hear applications to stay or suspend enforcement in High Court claims.

2 May 2019