The Rt Hon Robert Buckland QC MP
Lord Chancellor & Secretary of State for Justice
Ministry of Justice
102 Petty France
London
SW1H 9AJ

Susan Acland-Hood
Chief Executive and Board Member
HM Courts and Tribunals Service
102 Petty France
London
SW1H 9AJ

Susan.Acland-Hood@justice.gov.uk
7th February 2020

Dear Sir and Madam,

We are writing to express our concern regarding the progress and direction of the court reform programme.

The Civil Court Users Association has always recognised the incredible opportunity which the current reform programme potentially provides. We fully support the stated ideal of creating a court system suitable for 2050. It is for these reasons that we were originally keen to engage with Lord Briggs' Civil Structure Review as well as continuing to be willing and able to assist and support the development of the reform project itself.

There is no doubt that the programme has already seen some positive changes. However, we are increasingly concerned that these are almost exclusively targeting the areas of enhanced communication, automation, digitalisation and centralisation. We accept that these can be very beneficial. However, they hardly constitute fundamental reform.

There are currently significant flaws with the court service and our members would like to understand what, if any, measures are intended to be implemented in order to address them?

The level of service is patchy and inconsistent, but overall it is generally considered to be poor. Telephones are still rarely answered promptly, sometimes never. There remain significant delays that add considerable costs to the civil court users who subsidise the criminal court system.

We have seen many courts being closed over recent years. The CCUA recognises the arguments that court buildings in the wrong areas or of the wrong type can be unhelpful and expensive. However, we have also seen the concerns regarding access to justice raised by such entities as the House of Commons Justice Select Committee and the Law Society. From our perspective, we still see administration taking a long time, relatively untrained temps drafted in to work backlogs with their

attendant errors and court hearings listed months into the future. Whatever the rights or wrongs of court closures, our members have certainly yet to see any positive benefits.

We have seen the development of the new Online Civil Money Claim Service. This has yet to touch bulk claims, but what we have seen has already given cause for concern. The engagement opportunities we have been offered to date provide no reassurance that the metrics adopted by HMCTS are a reliable measure of improved access to justice. For example, increased numbers of defences are trumpeted as showing increased engagement by Defendants, a triumph of the enhanced communication methods. However, without more sophisticated analysis it cannot be concluded that a greater number of defences delivers improved access to justice. Once bulk users start using the system, if the newly emerging defences are illegitimate, filed purely to delay justice because it is so simple to do so, the impact could be grave, with the system becoming clogged up and delivering reduced, rather than improved, access to justice to all parties. It is important that the new system allows for defences to be triaged appropriately, to prevent HMCTS' reform objectives from being unintentionally thwarted.

This is one example, but it illustrates a wider concern of the CCUA: that what we have yet to see are any significant proposed improvements or developments in the service itself.

We have always said that for bulk litigation, the system works quite well up until the entry of Judgment. That is largely because there has always been a high proportion of default Judgments. Our members are generally dealing with undisputed debts. We hope that this part of the system continues to work well and that we do not see an increase in illegitimate defences, which could make the position worse.

Leaving that aside, there are other areas with big opportunities for court reform. In many cases, court documents such as Notices and Orders could be radically overhauled and streamlined, bringing them up to date for the modern world and again improving transparency and communication. This would considerably improve access to justice, yet we have had no indication to date that this will be substantially considered within the scope of the reform programme.

Enforcement was identified by Lord Briggs as a huge area of opportunity. Is there any intention to look at how this might be transformed with new ideas and methods, not just tinkering around the edges with what already exists? Some methods were developed many years ago and are long overview for review.

There always seems a reluctance to try to tackle anything which requires changes to statute or regulations, yet surely that is what true reform entails?

We were also informed last month that the timetable has been pushed back yet again and it is unlikely that enforcement reform will be considered until mid-2021 at the earliest. This is extremely disappointing to our members.

There are clear opportunities within enforcement, such as opening-up the provision of enforcement against goods, considering the implementation of fixed rate deductions for Attachment of Earnings

Orders or being able to claim payments from Judgment debtors from regular income from third parties, such as rental income. There should at least be active consideration and discussion regarding such ideas. Access to effective enforcement is a key tenet of access to justice: without the prospect of enforcing a judgment, where is the value in pursuing this, and indeed in paying court fees?

One area we have always argued would enhance the efficiency and outcome of enforcement would be access to increased information regarding the circumstances of the Judgment debtor. We continue to hope that the possible implementation of information orders and departmental Information requests will be actively considered. We believe that this would not only bring clear benefits to Judgment creditors in enabling more effectively targeted enforcement, but this would also help to protect Judgment debtors from enforcement which has accidentally been poorly targeted due to a lack of information, thereby impacting unnecessarily upon their lives.

Some of the items mentioned above, such as fixed rate deduction tables, information orders and departmental information requests, are of course already on the statute book and could be introduced with relatively little work if considered appropriate.

Regarding information to assist litigants, we were also a little disappointed by the lukewarm reception we recently received when we gave support to Registry Trust's suggested initiative of changing the rules to allow Judgment debts to be marked as partially settled or similar, if a short settlement is paid. Currently a Judgment is shown as outstanding in full until such time as it is fully paid. This is unfair on Judgment debtors who are making steps to pay their debts and is a barrier adversely affecting both Judgment creditors and Judgment debtors who wish to reach an agreed settlement other than payment in full. In the interests of both data accuracy and a just outcome to the case for both parties, we would suggest that reform of these rules should be a priority.

Other concerns have recently been raised by members regarding data accuracy at Registry Trust, which seems to arise due to uncertainty regarding the quality and accuracy of information supplied to them, especially whether or not a date of birth has been confirmed. Given that awareness of existing CCJs is an extremely important consideration when contemplating legal action, we would suggest that ensuring that as much as possible is done within the rules to capture and confirm information to enable effective registration. We wonder whether changes might be necessary to improve this?

One of our members' biggest ongoing concerns is the sheer expense of court action. Having taken advice, the Association has doubts regarding the lawfulness of enhanced court fees, whereby Claimants are expected to pay more for civil claims than the cost of the provision of the service. The fees are also front loaded, whereby Claimants often pay for services they do not want or need. The fact that Claimants can be expected to pay the equivalent price of a new car simply to issue a claim form is frankly absurd and cannot be justified. The increase in small claims track cases and the continuing decline in both fast and multi-track claims is clear evidence of the detrimental impact that this is having upon access to justice, with larger claims being priced out of the market or insolvency action being taken instead. The fact that a debtor with a small debt probably now has a greater chance of receiving a CCJ than a debtor with a large debt should be a major cause for alarm.

We raised these concerns at the 2019 CCUA annual conference. It is one thing to receive a poor service when there is a lack of financial resource to support a better standard. However, when members are told that they are paying more than the cost of delivering the service, there is understandable concern when a reasonable quality of service then fails to be delivered. As requested at the conference, we would be grateful to know what proportion of money taken in civil fees is reinvested each year into the provision of civil justice? Also, is there any intention to review the fees as part of the reform programme? One further matter raised is the possible re-instatement of refundable hearing fees. Most Courts require payment months in advance (with strike-out being the penalty for non-payment) and then with a high possibility of settlement pre-trial which seldom can include an element for a wasted hearing fee. The logic of requiring such an advance payment is not readily understood. Our members find it hard to resist the obvious inference.

The lack of progress in these and other areas gives the impression that court user engagement is perfunctory, rather than intended to deliver any real change. For example, activity had been proposed by the Ministry of Justice to reduce default County Court Judgments through a public information campaign. Defendants failing to maintain accurate address records results in damage to the perception of the court system, unintended consequences for defendants and increased demand on court resource. Solutions were identified following a consultation (closed February 2018) and series of roundtables, yet nothing has been communicated to attendees since.

Members report that there seems to be an increased appetite to stay or strike out claims due to relatively minor oversights and regardless of the interests of justice or any efforts by the party to rectify the situation. There are also local practice directions emerging where Claimants are sometimes ordered to disclose huge amounts of documentation relating to issues which have not even been raised by the Defendant. These issues potentially render the use of court action as even less economic and is particularly hard to swallow when such huge sums have been paid for the service in the first place.

In summary, the CCUA is concerned that many of the vast opportunities which could be realised from the reform programme have yet to even be touched upon. We do not believe that it would be correct for us to stand idly by without raising these concerns. We do not want to reach the end of the reform programme only to find that there has been little more than window dressing, or worse still that the service may even have deteriorated as a result of unforeseen consequences of those changes which have been made. We sincerely hope that these fears are unfounded and that we will now begin to see some far-reaching changes which will finally begin to truly transform the service. The Association remains ready and able to assist in the consideration and development of such changes.

Rob Thompson,

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