



Subject: Extending Fixed Recoverable Costs in Civil Claims:
implementing Sir Rupert Jackson's proposals

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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 Ministry of Justice’s consultation on this important subject.

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. Our members include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

Approach

As the vast majority of CCUA members are usually claimants in debt recovery actions, this response is drafted from that perspective. Unless otherwise made clear, the points made below do not necessarily relate to other types of claims or situations and should not be interpreted as such.

Accordingly, we have chosen not to answer the specific questions raised, but rather to make general points from the perspective of our members.

The Association hopes that it will be appreciated that it does not consider it appropriate to respond to the specific questions raised. Clearly, our members do deal with contested claims, but as this is generally a relatively small proportion of their work. We consider it more appropriate to leave such responses to other Associations and interested parties whose members work more predominantly in those areas.

Response

The CCUA has previously set out the below thoughts and repeats them here.

1. The Association feels that fixed costs are generally appropriate and well-suited for debt recovery actions, i.e. actions which are generally uncomplicated. However, it is obviously important that they should be adequate so as not to prevent an access to justice problem.

It is particularly noted that fast track trial fees are to rise marginally. However, given that they have been at the current level for some considerable time, it is felt that a further increase should be considered to bring them to a realistic level.

2. An ongoing problem with the Civil Procedure Rules is that there are generally little or no sanctions for parties who fail to comply (in a timely manner or at all) with the Rules or with court orders. An uncooperative party can thereby render cases uneconomic for the other party by their behavior, without fear of consequences. This can result in access to justice problems, with Claimants

finding that their claims become uneconomic due to the actions of the Defendant, or maybe even deterring claims from being issued in the first place.

From the time of Lord Justice Briggs' Civil Structure Review onwards, we have suggested that the use of Fixed Recoverable Costs should be expanded to introduce fixed and transparent costs for failure to comply with Rules or Orders. This would be with the intention of attempting to ensure compliance with the Rules/ Order/ Court Timetable, or alternatively to compensate the other party for the losses incurred by failure to do so. The Association is disappointed to note that these ideas have so far not been taken further.

3. The Association has also argued that proportionate fixed costs should be introduced into the Small Claims Track. Indeed, it is lower value cases which are most at risk of being rendered uneconomic by the behavior identified at 2 above. If the court system wishes to remain credible in providing justice even at lower values, then the CCUA believes that measures must be taken to tackle this issue.