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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") thanks the Ministry of Justice for the invitation to contribute to this consultation.

As the Ministry is aware, 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.

Overall summary

The CCUA firmly believes that the concerns set out in the paper are misconceived.

The recent history regarding changes to the service rules are helpfully set out on page 14 of the consultation paper. The CCUA fully supported those changes when they were introduced and continues to believe that the current rules strike the correct and proportionate balance between the rights, protections and interests of both Claimants/ Judgment Creditors and Defendants/ Judgment Debtors.

Taken out of context, the suggested concern that in some cases "…..creditors deliberately use addresses for debtors that they know to be old" is extremely emotive and potentially misleading. This statement could be representative of two vastly different scenarios-

1. It could be seen to suggest that this is the preferred choice of creditors, conducted in an underhand manner to take advantage of defendants. This is certainly the interpretation of the concerns which have been advanced in the national media. We would say that the idea that creditors would deliberately and actively prefer to obtain a Judgment at an out of date address defies any logic and we have yet to see any evidence that this is actually happening. There is no advantage to a creditor in doing this. Any credit reference entry relating to the registration of the Judgment is far less likely to impact the Defendant than at a current address and it takes the creditor no closer to enforcing the Judgment or actually recovering their money. Creditors would always prefer to have a Judgment at the correct address.
2. On the other hand, the Civil Procedure Rules do effectively actively allow a creditor to use an out of date address where all other possibilities have been exhausted, which includes tracing enquiries and after consideration of alternative methods of service. This was one of the main changes to the service rules referred to on page 14 of the consultation paper. The change was brought in quite correctly to recognise that some defendants will

deliberately seek to avoid their liabilities by leaving an address and failing to update their creditors. Whereas of course, their duty should be to keep the Claimant informed and in fact to seek out their Claimant and pay them. This provision is therefore used by Creditors where necessary, but it is far from their preferred choice and under the Rules can in fact only be used in situations where it is forced upon them by the circumstances of the case.

We believe that much of the furore surrounding this issue has been due to a lack of understanding. Those without a detailed knowledge of the Civil procedure Rules and the reasons behind each Rule, seem to have formed a view in line with scenario 1 above, whereas the truth of the matter is actually set out in scenario 2.

We would urge that there should be no change to the service rules. This would be a reward to those defendants who are doing the wrong thing by trying to run away from their responsibilities and would not be in the interests of justice. Although it would only affect a small number of cases, it would encourage greater numbers to act in that way. With ever tightening data protection laws, they would also be likely to find it much easier to succeed in disappearing.

Having said all of that, many of the proposals in the consultation paper do have merit and we are happy to support them to the extent set out below.

Replies to the Questions

Question 1

Are there any other key messages that would be valuable to consumers? If so, what are they?

The CCUA is extremely supportive of the proposals to improve public information.

As part of this, whilst we agree that consumers should be fully informed as to their rights including how to challenge a County Court Judgment, we would suggest that it would also be appropriate to warn them against making spurious applications to set aside Judgment. This can often result in detriment to the consumer, with unnecessary court costs being incurred.

Unfortunately, there are quite a number of rogue websites purporting to assist the consumer, often containing incorrect information and “legal advice” which can cause considerable harm to them. It would be good to see this countered with some official, impartial advice not to embark on potentially damaging approaches to situations, without first seeking proper advice and understanding.

It would also be extremely worthwhile to further highlight the advantages of engaging with creditors to avoid becoming subject to a CCJ in the first place. It is appreciated that consumers face a range of emotions and pressures whilst in debt, so it would be worthwhile pointing out that most creditors will welcome contact from them to understand their financial situation and hopefully work with them to find a mutually

acceptable solution. Where possible, this will avoid the need for litigation and the negative consequences which flow from it, such as costs, damage to credit rating and the possibility of enforcement action. Whilst most creditors make strenuous efforts to communicate these points, it is felt that such guidance will be much less likely to be ignored if originating from an impartial and authoritative source.

Question 2

Are there any other aims or responsible behaviours the improved public information should include, and why?

Again, the Association fully supports the proposals regarding the suggested new public information.

Further suggestions could include basic financial management tools, including budgeting help, template letters and guidance for notifying creditors of a new address.

Question 3

Are there any other actions the Government could take to improve public information that are not included in this paper? Please give details.

As an Association, we have additionally long argued that many court forms and notices need to be updated. Many have not been substantially updated for decades and have not benefitted from evolutions in areas such as plain English and behavioural science. We do appreciate that this would only come into play after the issue of legal proceedings, whereas it would be better to prevent the need for the proceedings in the first place. However, we believe that there is a massive opportunity for increased engagement in any proceedings which do then become necessary.

We should make it clear that our members make strenuous efforts to engage with Defendants both before and during legal action. However, for understandable reasons, anything that a Claimant says, however well intended, can often be viewed with mistrust by a Defendant. For these reasons, any guidance from an official and impartial source would be warmly welcomed.

Question 4

How can the advice sector and Claimant organisations ensure that the industry actively signposts consumers to a government source of information?

There are already strenuous attempts at signposting by both the advice sector and by Claimants. Claimants are indeed often obliged to signpost as part of the Pre-action protocol and by various regulators. Even where not expressly required, many creditors actively signpost in an effort to gain engagement in whatever form possible.

The Association actively supports signposting and would again welcome the opportunity for creditors to actively signpost to an impartial, government source of information. We would have no objection to this becoming mandatory, under the Pre-Action Protocol for example, providing that it is able to be conducted concurrently with existing obligations, thereby avoiding unnecessary duplication of delay. Industry groups could also be encouraged to require signposting from their members, including in any code of practice or rules of membership.

Additionally, we suggest signposting by Registry Trust, as that is often an early port of call for many Judgment Debtors. In line with our answer to question 1, we would suggest signposting to an impartial government sanctioned website which covers both the process and the potential pitfalls of applying to set aside Judgment.

We would also suggest signposting from credit reference agencies.

Following our answer to question 3, we would also suggest signposting within updated court notices or alongside existing court communications.

Question 5

What options should be available to help people who are vulnerable or have difficulty accessing information get the guidance they need?

The Association is again very supportive of identifying and making help available to consumers who are vulnerable or who otherwise have difficulty accessing information.

We repeat the ideas set out in our answer to question 4.

Question 6

Do you agree with this proposal? If you do not, please explain your answer.

We note that the consultation paper suggests that if a Defendant pays the full Judgment amount owed within 28 days, the entry is removed from the Register of Fines, Orders and Judgments. We believe that the rule is actually one calendar month rather than 28 days. It is not uncommon for 28 days to be referred to and it appears that the mistaken belief that the period is 28 days seems fairly widely held. Returning to early questions in the consultation paper, this is a fine example of where wider publicity of correct information could be beneficial.

Turning to this question, yes, the Association wholeheartedly supports the proposal, providing mechanisms are in place to prevent abuse.

It is already a fairly regular occurrence for CCUA members to effectively agree this approach on cases, albeit currently they can do no more than to advise the court that they have no objection to Judgment being set aside, whereupon it is then up to the

court to consider the situation further. It would be beneficial to have more structure and certainty around this.

However, this could be open to abuse by Defendants who were in fact previously aware of the Judgment, but are belatedly claiming ignorance at a later stage. It is not unheard of for defendants to suggest that they never previously received the Claim Form, only for the Claimant to find, for example, that Judgment was originally entered on admission! Any process therefore needs to be robust to ensure that abuse is not possible, as this would seriously undermine both the position of creditors and the credibility of the court.

We would suggest the following process –

- Defendant makes an application on notice to the court. We would suggest a much reduced fee given that most can be dealt with on paper.
- As notice will be given to the Judgment creditor, the creditor will then have the opportunity to consider the content and advise the court if they have any doubts about the validity of what is being suggested.
- There would need to be real and tangible evidence that the original claim form was not received, for example, a witness statement or at least a statement of truth, exhibiting documentary evidence that a house move occurred prior to service, or similar. Mere suggestions that the claim form "must have been lost in the post" or similar are highly unlikely to be credible given that other communications are likely to have been made in addition, and these must not be entertained.
- If the Judgment Creditor is satisfied with the situation then there should be a mechanism for that to be communicated to the court, thereby avoiding the need for a hearing.
- In the hopefully unlikely event that the Judgment Creditor does have concerns, then there should be provision for those to be communicated to the court, with any evidence that may be relevant. The court can then consider whether to reject the application immediately or whether (hopefully highly unlikely) a hearing may in fact be necessary.
- The Judgment debt should be paid in full prior to the application being made, inclusive of any interest. Once the procedure has been followed and the court is satisfied, the court can then set aside immediately.
- Alternatively, if not already paid prior to the application, the court could then make a conditional order that Judgment be set aside providing the judgment debt is paid in full within say 14 days of the order.
- Payment must be made in full, there should not be any provision for payment by instalments, as that would put the Judgment Debtor in a better position than if they had originally received the claim form (whereupon a Judgment on Admission would have been entered).
- Any costs arising from the Application which are payable by the judgment Debtor would also need to be paid within the timeframe before the Judgment is set aside.

We would have no objection to Judgment being set aside in these circumstances, strictly providing that there is absolutely no possibility that this would adversely impact the validity of any costs awarded at the time that Judgment was originally entered. If that is likely to cause a technical difficulty, then we would suggest that a slightly different Order is considered instead, simply ordering the removal of the entry at Registry Trust and thereby placing the Judgment Debtor in the same practical position as if Judgment had not been entered.

The Association is very concerned that whilst they see the merit of this proposal and are willing to wholeheartedly support it, it absolutely must not become a mere "tick box exercise" where the Judgment is always set aside regardless of the circumstances. There must be proper structure and safeguards, along the lines suggested above.

Question 7

How should a defendant satisfy the Court that they did not have prior knowledge of the County Court Judgment?

As set out in our answer to question 6.

There should be witness statement or at least a statement of truth exhibiting tangible documentary proof of, for example, a house move, or that the Judgment debtor was overseas, or some other reason which clearly demonstrates that the Claim Form would not have reached them.

Question 8

Does the current six-year period for County Court judgments remaining on the Register strike the balance between, on the one hand, ensuring that people do not experience excessive detriment from past debts, while on the other ensuring that banks and other lenders have the information they need to decide who to lend to?

Yes, absolutely.

We are not sure of the relevance and why this query is being raised in this context.

Six years aligns with the period for enforcement of a Judgment without the permission of the court and is used as a practical cut off by many Judgment Creditors beyond which they will no longer seek to enforce unsatisfied Judgments. It is entirely logical that a Judgment should remain on the register for so long as it is likely to be enforced.

It should be recognised that the registration mechanism is vitally important to the interests of all parties concerned. It should also be appreciated that most creditors now employ very sophisticated methods for considering credit applications, which will

take into account not just the existence and age of previously registered entries, but also the size of the debts and the current actions being taken by the debtor.

Question 9

Should other steps be taken to alert a person that a default Judgment has been entered against them? If so what are they, and who should take them?

It is difficult to see what more could be done.

The creditors will be doing everything possible to try to make contact with the debtor to obtain payment, possibly including enforcement.

The Judgment is also registered.

It is difficult to see that wider publicity could be justified and could well have data protection implications.

However, Credit Reference Agencies do offer a service to individuals whereby they are notified of any changes to their credit record. The potential advantages of this could be communicated as part of the improved public information.

Question 10

Do you have experience of, or information about, County Court judgments that have been entered against a debtor without their knowledge where Claimants are deliberately using an old address? If so, please give details.

Only directly in accordance with the Civil procedure Rules, where expressly allowed and where all other possibilities have been exhausted, as set out in the second scenario in our “Overall Summary” above.

In any other context, no, absolutely not. We are extremely doubtful that any creditor would deliberately target an out of date address in preference to an alternative which would be more likely to result in contact and enable payment. The suggestion is fanciful and defies all logic.

Whilst not members of this Association and whilst we do not seek to speak for them, we have heard suggestions that these allegations have mostly been targeted at vehicle parking enforcement companies. Indeed, it is confirmed on page 9 of the consultation paper that almost all the case studies “….cited on unfair County Court Judgments centred on unpaid parking charges…..” We note that there is no explanation as to why additional, wider case studies have not been undertaken. If indeed there is little more than the suggestion of an issue and even then it only relates to one narrow class of court user conducting a specific type of work, then it does seem somewhat disproportionate to have launched a consultation to consider the entire background to default Judgments and setting aside in general.

Whilst again repeating that we have no direct knowledge, we would also assume that most claims in respect of unpaid parking charges would presumably be directed to the keeper of the vehicle's address, as registered at DVLA. We believe that it is a criminal offence for the keeper to fail to keep that address up to date. In those circumstances, we would simply comment that it would seem fairly certain that the address should be able to be relied upon.

Question 11

How can this be avoided?

We do not believe that the situation exists.

The Association fully supports the balance and proportionality of the current service rules.

If abuse is taking place, there is adequate provision in the Rules for that to be addressed. Any remedy for systemic abuse could surely be targeted upon those concerned.

Annex A

We would simply comment that the statistics confirm that only a very small proportion of CCJs are ever challenged by way of an application to set aside judgment. Even then, Judgments are set aside for a multitude of reasons, for example one of the most common will simply be corporate entities sued in the wrong name. This reinforces that any concerns raised by this consultation which may exist will only relate to a tiny proportion of cases. It would surely make more sense to target the circumstances of those cases, rather than upsetting a system which works extremely well for the overwhelming majority.

Conclusion

The Association believes that the basis for this consultation is probably misconceived. However, it has led to some very worthwhile proposals to which we are able to provide our full support in those areas and to the extent set out above, particularly as regards the wider provision of information and the ability to remove the impact of a Judgment in genuine cases, upon payment in full.

However, we must make it clear that we would be extremely opposed to any substantial change to the service rules for Claim Forms. The current service rules have our full support as they provide an extremely fair, balanced and proportionate approach, to the benefit of all parties. Should there be any proposal for changes to the service rules, then a full consultation should be issued on that specific point and a full impact assessment should be conducted.

20th February 2018