Civil Court Users Association
Unit 14, The Business Centre
Edward Street
Redditch
Worcestershire
B97 6HA

18th September 2020

Dear Sirs,

The Civil Court Users Association expresses its gratitude to Just Digital Marketplace Limited ("Just") for serving notice of their Part 8 Application to the High Court, in which they request confirmation from the Court that they are not prevented from undertaking "virtual" enforcement visits and that Controlled Goods Agreements may be entered into during a "virtual" visit.

It is recognised that this is a sensitive issue in that there are other CCUA members who are also directly involved in High Court Enforcement who may have alternative views. However, this is clearly an issue which is of considerable interest to a wide range of CCUA members and having accepted notice of the Application on behalf of its membership, it is clear that the Association has a duty to make the membership aware and to make enquiries regarding their views. We have therefore communicated the issue to the entire membership and requested their feedback.

It is noted that the Association is not listed amongst the "interested parties" and "potentially interested parties" who have been invited to make submissions directly to the court in the Order dated 25th August 2020. We have therefore decided to send this letter to Just, along with the 3 interested parties to the Application, namely the High Court Enforcement Officers Association, the Civil Enforcement Association and the Ministry of Justice. We hope that all 4 parties will find the following of assistance and we confirm that we have no objection to any of them including this letter, or the contents therein, in their submissions to the court.

The Association received 9 written submissions from the membership. We would point out that CCUA members are only usually motivated to respond to an issue when it is of considerable importance to them and that 9 responses does in fact constitute a high level of interest compared to other issues which have been raised with the membership over recent years.

The responses came from corporate members in the following sectors-

- 3 x High Court Enforcement firms
- 2 x Solicitor firms
- 2 x water companies

- 1 x trade creditor firm
- 1 x debt collection agency/ debt purchaser

The Association received 1 response which gave conditional support to the thinking behind the proposals, recognising that there could be potential benefits in avoiding a physical visit, such as avoiding stress, anxiety, particularly during the COVID pandemic. However, the response went on to raise practical concerns, which are captured amongst the other responses below.

All other responses were entirely against the proposals, summarised as follows-

- All 9 respondents expressed concerns as to how assets could accurately be found, identified, valued and catalogued during a virtual visit.
- 6 respondents expressed concern regarding the fees. It was felt that many Judgment debtors would not understand the seriousness of entering into a Controlled Goods Agreement during a virtual visit. This in turn would be likely to lead to a greater failure rate of instalment agreements, even compared to those entered into without a CGA. This could mean the case escalating further through the fee structure, meaning that this could actually mean greater fees ultimately being charged to the debtor, rather than less.
- 6 respondents expressed concern regarding equalities legislation, where vulnerable or less technically aware debtors could be disadvantaged.
- 5 respondents pointed out that many High Court Enforcement Officers already accept instalment arrangements during the compliance stage and/or without the need for a CGA.
- 5 respondents expressed doubt that a debtor who failed to engage at compliance stage would agree to a virtual visit anyway, making the entire proposition flawed.
- 5 respondents directly responded to the suggestion in the Application that instalment agreements cannot be entered without a CGA because the Writ "commands" that control be taken of goods. Comments included that instalment arrangements are already entered into without a CGA, the command point only becomes relevant if the writ has to proceed, and it is the Regulations which control how this happens, not the Writ.
- 2 respondents expressed concerns regarding identifying vulnerability. Whilst creditors generally try to identify vulnerability at an early stage, sometimes it only becomes apparent during a physical visit.
- 2 respondents commented that "virtual" contact already exist within the existing processes and framework, by way of letters, emails, SMS texts, webchat and telephone calls.
- 2 respondents felt that the proposal undermines the fee scale, with its inbuilt focus on keeping the fees down by encouraging the situation to be settled as soon as possible and with minimal use of the powers.
- 1 respondent raised a similar but not identical point, that with agreement on whether a case should proceed physically or virtually to be reached between creditors and debtors, that represents a move towards commercial style fee agreements rather than the carefully

  considered fee structure which currently exists, together with the protections which that structure provides.

- 1 respondent pointed out that if IT is to be supplied to debtors without their own digital capability, that in itself requires a physical attendance and defeats the purpose.
- 1 respondent was concerned that debtors would not understand the seriousness of a virtual visit or the consequences of entering into a CGA.
- 1 respondent felt that debtors may feel pressurised into agreeing a CGA during a virtual visit, precisely to avoid the possibility of a future physical visit.
- 1 respondent felt that as there would be uncertainty regarding whether the address and goods were actually present as believed (the first point above), this could undermine the validity and enforceability of the CGA.
- 1 respondent pointed out that there could be a conflict where 2 writs were held for 2 different creditors, one who wanted a physical visit and the other wanting a virtual one.
- 1 respondent suspected that debtors might challenge the situation if a creditor failed to offer a virtual visit.
- 1 respondent was concerned that the potential changes could have a financial impact on High Court Enforcement Officers, with any increased cost of supplying the overall service ultimately being passed on to creditors generally.
- 1 respondent cited the case of Evans v South Ribble BC 1992 QB 757 as requiring a physical attendance.
- 1 respondent interprets Schedule 12, paragraph 9 of the Regulations as requiring a physical attendance.
- 1 respondent states that it seems that Schedule 13, paragraph 12 (d) is being used to potentially permit virtual attendance. However, they feel that cannot apply unless Schedule 12, paragraph 12 (a), (b) and (c) are also complied with and in their view that would require a physical attendance.

In summary, all responses received raised concerns regarding virtual visits. No responses were in overall favour.

In addition to the above responses from the general membership, the issue was also discussed during a routine meeting of the Association's Policy and Reform Committee on 11th September 2020. That committee comprises representatives from member firms who regularly meet to consider matters of policy and proposed legislative changes. The members of the committee who were present during the discussion included representatives from firms in the following sectors,

- 4 x full service law firms
- 2 x in house law firms for debt purchasers
- 1 x High Court Enforcement (1 of the same firms who responded above)

The unanimous view of those present in the committee was that there were concerns in a number of areas, in particular,

- Identifying vulnerability

- Identifying assets
- Fees
- Moving direct to a CGA, thereby allowing forced entry and moving up the fee structure, to the possible detriment of the customer (whereas other providers collect instalments at the compliance stage anyway).

In summary, aside obviously from the views of Just themselves, it appears that there is little or no support amongst the membership of the Civil Court Users Association for the concept of "virtual visits". There are instead the range of concerns as set out above, which could adversely impact the interests of court users, both Judgment Creditors and Judgment Debtors.

As stated, we hope that these views may be of assistance.

Yours sincerely,

Robert Thompson

CCUA Vice Chair

Chair of the CCUA Policy & Reform Committee