

Subject: Fresh ideas for 21st Century Justice

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Response to: campaigns@lawsociety.org.uk

CCUA Contacts: Rob Thompson, Chair
Email: robertt@ccua.org.uk

Claire Stokes, Association Administrator
Email: claires@ccua.org.uk

Representation: The CCUA has drawn upon the views of the CCUA membership including those of the Policy and Reform Committee. See further detail under “introduction” below.

Introduction

The Civil Court Users Association (“CCUA”) welcomes the opportunity to contribute to this green paper from The Law Society.

The CCUA seeks to work with other stakeholders in a constructive and balanced manner, to achieve an efficient and cost-effective court service which is fair and proportionate for all court users.

Our members participate in around 85% of all money claims in the County Court in England and Wales, as well as being involved in a wide range of other litigation including, for example, repossession and return of goods claims. They include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

Overall thoughts

The CCUA broadly welcomes the suggestions made in this green paper. The supposed court reform programme which has been underway since 2016 has been underwhelming, so any ideas for positive change are worthy of consideration.

We agree with the suggestion in the foreword that the court system is currently not fit for purpose. Access to justice continues to be a major concern to the Civil Court Users Association and court users in general.

We have further specific points to make regarding the following sections of the paper.

2.1 The Civil Justice Gap

The CCUA agrees that the expense of the legal system is a major access to justice issue. This is not simply impacting those individuals or businesses with limited means. The outcome of litigation is never certain. Neither is the ability to effectively enforce any award which may ultimately be granted by the court. This means that even potential litigants with substantial means often choose to walk away rather than risk further substantial losses.

2.4 The digitalisation of justice

The Association has been concerned for some time that the HMCTS reform programme is driven more by cost savings to HMCTS rather than any attempt to provide a superior service to the court user. This view is supported by the findings set out in this section.

The reform programme effectively represents digitisation, centralization and streamlining. This has and will provide some benefits. However, it is far from the proper, substantial reform which court users were led to believe would be implemented. In many cases, long outdated processes have simply been carried across with little thought or consideration of improvement.

Much of the work of the reform programme, as well as many of the ideas set out in this green paper, touch on areas surrounding the courts and how the court system interacts with other areas of dispute resolution. Whilst that is welcome, it should not be seen as a reason to ignore or forget about the need for proper reform of the court system itself.

3.1 Public insights

We do not disagree that there is often an imbalance of power in the court system. However, we would suggest that it is more wide-ranging than suggested in the paper.

For example, it is true that there will be litigants in person who struggle to understand the process. However, there are also litigants in person who understand only too well how to frustrate and delay court proceedings and use their position of supposed ignorance to their advantage.

The courts will offer leniency to litigants in person which they do not extend to represented parties, which risks creating an unfair and unbalanced system.

The situation is not assisted by the Civil Procedure Rules, which provide little or no comfort to a party who is playing by the Rules, against an opposing party who is doing everything possible to delay and frustrate an action, often with the clear and obvious intent of rendering it uneconomic. Even where sanctions exist, they are frequently not exercised by the judiciary even in the most obvious of cases.

4. Proposals for reform

Again, we do not disagree with the proposals.

However, we believe that there is also an urgent need for a systemic review of much of the legal process, especially enforcement. This is something which we have argued for many years and which was supported by the Civil Structure Review by Briggs LJ.

4.1 The “Solutions Explorer”

We have argued for many years that there is a need for accurate and reliable information to guide litigants, available from a source which is clearly impartial.

There is currently far too much incorrect and damaging information on the internet, causing people and businesses to act to their detriment, especially those who owe money. A clearly impartial source could counter that.

Response to questions

We would ask that the following responses are considered within the context of the overall points made above.

We have only answered those questions where we feel we have value to add.

Question 1: Where should an online portal like the “Solutions Explorer” be hosted to foster trust and address the concerns raised by legal services consumers?

It would need to be obviously impartial, but beyond that it wouldn't really matter. It could be part of HMCTS, a separate government department or it could be outsourced to a business within the private sector which was clearly unconnected to any vested interests.

Question 2: Which areas of law would be the best candidates for early incorporation into the "Solutions Explorer"?

We don't necessarily see a limit to that. Obviously, more complicated areas will need referral to more direct assistance at an earlier stage.

Question 3: To what extent will the "Solutions Explorer" help to address the unmet legal need of individuals on low incomes and small businesses?

This could be of substantial assistance. Many may currently be dissuaded from seeking advice/ solution due to the perceived cost, or unable to access less costly or free advice due to lack of availability.

Question 7: What other changes could make online court systems work better for a) legal professionals and b) the public.

Better engagement by MOJ and HMCTS with organisations such as The Law Society and the Civil Court Users Association (CCUA). The CCUA is constantly offering to assist, yet too often systems and processes are designed before being shared, or rolled out before they are properly ready. Proper engagement and a real interest in providing a better service to the court user would go a long way.

Question 16: Are there any areas where the proposals could go further?

Much of the paper talks about the cost of litigation, but does not address one of the major factors, court fees.

The CCUA believes that there should be a full review of court fees, which are often extortionate and front loaded. The cost of issuing a Claim Form alone can be more than the price of a small car, even though it is often the case that no further work is required from the court whatsoever.

To compound this point, in recent years the courts have also been charging "enhanced fees" in certain situations, charging court users a greater fee than the cost of providing the service. Whilst we understand that those additional sums are then used to finance other areas such as the criminal and family courts, it is hardly fair on that party, or indeed upon civil court users generally. This is particularly the case whilst such a dire service is currently being received in return.

Successive Governments have argued that they do not believe that civil litigation should be a burden to the tax payer. However, we argue that the provision of civil justice should be seen as an important function of the state. Also, the fees are often paid by UK businesses and ultimately end up being paid in increased prices to their customers, so the distinction between whether funded by the tax payer or not is partly illusory.

Ultimately, we've ended up with a situation where court users pay huge fees for an under-resourced and poorly performing service. It is convenient to the Government to be

able to claim that there is no burden to the tax payer, but that does not alter the fact that the current court fee system does not really work. It needs a complete re-think.

A handwritten signature in black ink, appearing to be 'Rob Thompson', with a long horizontal line extending to the right.

Rob Thompson

CCUA Chair

5th January 2024