Civil Court Users Association
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Civil Justice Council, Civil Justice Council Room, E205, Royal Courts of Justice, Strand, London WC2A 2LL

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Civil Procedure Rule Committee

Carl Poole
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Dear Sirs,

Following the publication of the Civil Justice Committee's (CJC) Phase 2 final report on Pre-Action Protocols, this has now been considered by the Civil Court Users Association (CCUA). This includes consideration by the Association's Policy and Reform Committee and it was also considered and discussed by the general membership during regional meetings in December 2024.

Whilst we appreciate that this is the final report of the CJC, the CCUA does have some concerns and we feel that it would be remiss of us not to share our thoughts with the CJC and also with the Civil Procedure Rules Committee (CPRC).

These observations and comments only address section 8 of the report, Pre-Action Protocol for Debt Claims. They will follow the same numbering and format as contained in the report.

Introduction of dispute resolution obligation and formal stocktake requirement

The Association welcomes the decision not to include the debt pre-action protocol within these changes.

Alignment of Timeframes with the General PAP

Again, the CCUA welcomes the decision to leave the current Debt PAP timeframes as they currently are. There has always been concern that the existing 30 day timeframe for a response to the letter of claim is too long, failing to convey the urgency and seriousness of the situation. To have extended even further would have been even more counter-productive.

However, we do also welcome the extension of the time frame when and where required in appropriate circumstances, such as language, disability, illness, being abroad or the late receipt of documents due to change of address.

Should the Debt Protocol be more prescriptive in its obligations on creditors?

The vast majority of debt claims are not even responded to, much less defended. The CCUA is therefore extremely disappointed by the suggestion that yet further bureaucratic burden should be placed upon potential Claimants who are simply trying to exercise their legal rights. The economic cost of this will be a potential barrier to justice, damages to the interests of UK business and is likely to thereby increase cost to consumers.

Where necessary, creditors have to comply with the requirements set out as examples in the report, such as default notice, notice of termination, notice to keeper or notice of assignment, where appropriate. Failing to do so is either a regulatory failure punishable elsewhere and/or may provide a defence to the claim. To require a creditor to repeat a step already previously taken and further state and give detail that they have complied with their obligations, seems to provide no worthwhile benefit.

We hope and trust that the requirements will not become even more disproportionate and unjustified, such as by requiring copy documents.

We disagree in the strongest terms with the suggestion that creditors provide generic information about legal defences which may be available. The English legal system is supposed to be adversarial and whilst it would clearly be incorrect for any party to bring a claim which is without merit or to take advantage of an opponent who may not be fully aware of their rights, it seems bizarre and beyond reason why a party would be expected to argue the opposite party's case for them. More importantly, the CCUA understood that the purpose of pre-action contact was to attempt to narrow and resolve issues, not to increase them by providing ideas for spurious argument. This whole proposal seems wildly reckless and counterproductive, likely to lead to even more spurious or ill-advised defences, which will require summary Judgment applications or similar to resolve, likely leading to a detrimental situation to the debtor with the award of additional, unnecessary costs. We would urge that this be reconsidered.

However, the CCUA is in full agreement with the decision to extend the same last known address requirements to the PAP, as which already exists within the Civil Procedure Rules when it comes to issuing proceedings against the debtor. Namely, that where a creditor has reason to believe that the debtor has left the address, there be a positive duty to take reasonable steps to find a new address. After all, the purpose of the PAP is to hopefully obtain contact and resolution.

Making the PAP more user friendly; changing some of the language

Previously the CCUA has argued that the responses to the PAP should not be particularly prescriptive. It is often more beneficial for the debtor simply to pick up the telephone to their creditor, or to seek debt advice, rather than follow the very prescriptive response process and form.

However, we recognize that if and when this process becomes incorporated into an online platform, then more prescription may be required.

We believe that "creditor" and "debtor" are neutral terms which have legal meanings which are not in any way prejudicial. "Debtor" is not in itself a derogatory term. For example, if a customer has money in their current account at the bank, the bank is technically the debtor of that customer. We therefore believe that these terms remain the most suitable and appropriate.

"Claimant" and "Defendant" could on the other hand be confusing, given that legal action has not yet been commenced. Nonetheless, we do understand that some may consider that there is a stigma attached to the term "debtor" . Whilst we therefore do not find it particularly correct, we have no strong feeling regarding the recommended change.

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Possible integration with MCOL

We believe that there are important factors regarding the possible integration into the MCOL portal (and presumably also other platforms such as OCMC) which do not appear to have been considered.

Will there be a fee for this? Will this de facto become the future commencement of litigation itself, with fees and costs all running from this point? This seems likely. If so, this would be hugely counter-productive. Rather than helping to limit cost and the time spent in litigation, it will end up extending the time frame and increasing costs.

For these reasons, we are firmly of the view that pre-action (as its name suggests) should remain independent from legal action itself, as well as from any portals facilitating legal action. It should also remain free from court fees.

As regards use of email, we would suggest that this should remain optional, unless email has been regularly used during the course of dealings between parties. Practitioners often report seeing the PAP "weaponized" due to the slightest perceived error or omission. Parties should not be criticized for overlooking a "known" email address if it hasn't been used regularly, particularly as it may have been genuinely overlooked and given that data handling requirements may well have led to it having been deleted from the record.

Other Issues – Compliance

We have no concerns regarding the proposed change to the wording.

Recommendations

We have addressed the recommendations in our responses to the individual sections above.

Summary

These thoughts are shared for consideration in good faith and with the greatest of respect. We hope that they may be helpful. We would be very happy to provide any further assistance if desired, including participation in the drafting process, or other activities associated with the implementation of the proposals.

Yours sincerely,

Rob Thompson FCICM
CCUA Chair