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Subject: CPRC Rule 12.3 Entry of Default Judgment

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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 Civil Procedure Rule Committee’s (“CPRC”) consultation on this important subject. Please accept our sincere apologies for initially overlooking the consultation. We are most grateful for the extension of time to respond.

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 handle a large volume of repossession claims, particularly those brought by mortgage lenders. Our members include businesses operating within the financial services sector, utilities, legal firms, insolvency practitioners, enforcement agents, plus many others.

## **Approach**

The CCUA welcomes this consultation as it believes that the rule should be changed to provide clarity for court users. Our membership reports experiences of arguments with court staff about the interpretation of the current rule. Clearly this is not a good use of time and resource, and therefore it is a positive development that the rule be clarified.

## **Response**

We do not propose to comment on the history of the rule or the case law. The CCUA believes that this is an opportunity to start afresh and that when considering the appropriate amendment, the key principles are:

1. That the rule should be clear and will not lead to satellite litigation
2. That it is workable for the parties and the court
3. That it is a fair balance of the interests of Claimants and Defendants

## **The Options**

“The issue is one of the proper construction of the conditions fixed by CPR 12.3(1) for the obtaining of judgment in default. Three suggested constructions emerge from the prior decisions (“the three meanings”)...”

The CPRC concluded that the three available options are-

- 1) To leave the rule as presently drafted;
- 2) To amend rule 12.3(1) to provide that an acknowledgement of service/ defence will be a bar to the entry of judgment in default provided it is filed before judgment is entered; (“the first meaning”)

- 3) To amend rule 12.3(1) to provide that an acknowledgement of service/ defence will be a bar to the entry of judgment in default but only where that acknowledgement of service/ defence is filed before the claimant lodges a request/ application for judgment; (“the second meaning”)
- 4) To amend rule 12.3(1) to provide that default judgment may be granted where no acknowledgement of service or defence has been filed within the time permitted by CPR 10.3/ CPR 15.4 (“the third meaning”).

## **Response**

The CUA ranks these options in the following order of preference-

### **1) Option 3**

This seems the fairest and most practicable approach. Once the time for filing as permitted by CPR10.3/ CPR 15.4 has expired, the Claimant is obviously entitled to request to enter Judgment. However, if the acknowledgement of service/ defence has been filed by the point that this request is made, then clearly the Defendant wishes to Defend. They may not have filed their acknowledgement of service/ defence within the time required and they may or may not have been culpable for that delay, but surely the interests of justice would be ill served by ignoring that defence.

We agree with the proposition that this amendment could lead to a reduction in applications for an extension of time and in applications to set aside default judgment.

This would be straightforward for the court to adopt, as the date of filing would hopefully be clear and unlikely to be disputed. Clearly it will be important that the court office lodges any document received on the date of receipt and that court backlogs do not affect the proper and effective operation of this rule.

Nonetheless, it is noted that concern has been raised as to whether this approach could lead to arguments about exactly when the request for Judgment was lodged relative to the timing of the acknowledgement of service/ defence, i.e. that the acknowledgement of service was in fact lodged first and was mislaid for example. We would suggest that unless it can be proved that the acknowledgement of service/ defence was filed within the time permitted by CPR10.3/ CPR15.4, no such argument should be entertained. In other words, whilst the court will take a fair and practical approach in not entering Judgment if a late acknowledgement of service/ defence arrives before receiving the request for Judgment, the risk is with the Defendant if they fail to lodge in the time required by the rules. They should only be entitled to raise subsequent argument if they claim to have complied with CPR 10.3/ CPR15.4.

No doubt the CPRC will consider these thoughts and whether this could be incorporated into the rules in some way.

The overriding objectives of the CPR of enabling the court to deal with cases justly and at proportionate court would be best met by the “second meaning” (option 3) being adopted. The CCUA believes that this strikes the right balance of fairness between the parties, as well as being the most straightforward to operate in practice.

## **2) Option 2**

This is obviously very similar to Option 3.

There are understandable sensitivities amongst members regarding delays with administration within the court service, which are unfortunately far too common. Whilst CCUA members wish to be as fair as possible to prospective Defendants as set out above, they would not consider it fair to find that a request for Judgment is delayed whilst it sat in the court office for several days, and that the Judgment is then ultimately prevented by an acknowledgement of service/ defence which was filed several days after the Judgment request. For these reasons we believe that Option 3 provides the better compromise between the interests of each party.

## **3) Option 4**

We agree that this is the clearest, most certain and robust of the rules and is therefore highly commendable on that basis. As the CCUA predominantly represents Claimants, it would also be the option of most benefit to our members, if viewed from an entirely partisan perspective. However, the CCUA prides itself in considering the right and proper approach to take, for the benefit of all court users and the court itself. As above, we believe that to be option 3. Option 4 seems unnecessarily harsh where the Defendant has already taken steps to lodge their acknowledgement of service/ defence by the time in question, albeit late, particularly as the reasons for the lateness may or may not have been within their control.

## **4) Option 1**

We do not believe that the rule should remain as currently drafted. Our members confirm that it currently gives rise to considerable confusion and argument, which is not in the interests of any party and leads to a waste of time and resources for all concerned.