Ministry of JUSTICE

Solving disputes in the county courts: creating a simpler, quicker and more proportionate system

Questionnaire

We welcome responses to the following questions set out in the consultation paper. We would be grateful if you would consider, in the first instance, responding via the on-line questionnaire at: http://survey.euro.confirmit.com/wix/p625833348.aspx

However, if you prefer, you can return this questionnaire by email to civiltj@justice.gsi.gov.uk or in hard copy to Judith Evers, Ministry of Justice, Post point 4.12, 102 Petty France, London, SW1H 9AJ.

Please send your response by 12:00 noon on 30 June 2011.

About you

Full name	Mark West, Martin Farber, Julia Beer, James Davies
Job title (or capacity in which you are responding to this consultation exercise)	☐ Academic ☐ Advice sector/Debt Adviser ☐ Bank/Financial Institution ☐ Business/Commercial ☐ Claims Management Company ☐ Consumer Representative Organisation ☐ Government Department/Non-Departmental Public Body ☐ Insurer ☐ Judiciary ☒ Legal Profession ☐ Local Authority ☐ Mediator/Mediation service provider ☐ Member of public ☐ Other – please specify
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☒ If you would like us to acknowledge receipt of your response please tick this box (emailed responses will be acknowledged automatically).

Address to which this acknowledgement should be sent, if different from above	Radcliffe Chambers, 11 New Square, Lincoln's Inn, London WC2A 3QB

Section 2 – Preventing cost escalation

Question 1: Do you agree that the current RTA PI Scheme's financial limit of £10,000 should be extended?

☐ Yes ☐ No

Please give reasons.

N/A

Question 2: If your answer to Question 1 is yes, should the limit be extended to:

(i) £25,000 ☐ Yes ☐ No

(ii) £50,000 or ☐ Yes ☐ No

(iii) some other figure (please state with reasons)? ☐ Yes ☐ No

Please give reasons.

N/A

Question 3: Do you consider that the fixed costs regime under the current RTA PI Scheme should remain the same if the limit was raised to £25,000, £50,000 or some other figure?

☐ Yes ☐ No

Please give reasons.

N/A

Question 4: If your answer to Question 3 is no, should there be a different tariff of costs dependent on the value of the claim? Please explain how this should operate.

☐ Yes ☐ No

N/A

Question 5: What modifications, if any, do you consider would be necessary for the scheme to accommodate RTA PI claims valued up to £25,000, £50,000 or some other figure?

Please give reasons.

N/A

Question 6: Do you agree that a variation of the RTA PI Scheme should be introduced for employers' & public liability personal injury claims?

☐ Yes ☐ No

Please give reasons.

N/A

Question 7: If your answer to Question 6 is yes, should the limit for that scheme be set at:

(i) £10,000 ☐ Yes ☐ No

(ii) £25,000 ☐ Yes ☐ No

(iv) £50,000 ☐ Yes ☐ No

(v) some other figure (please state with reasons)? ☐ Yes ☐ No

Please give reasons.

N/A

Question 8: What modifications, if any, do you consider would be necessary for the scheme to accommodate employers' and public liability claims?

Please give reasons.

N/A

Question 9: Do you agree that a variation of the RTA PI scheme should be introduced for lower value clinical negligence claims?

☐ Yes ☐ No

Please give reasons.

N/A

Question 10: If your answer to Question 9 is yes, should the limit for the new scheme be set at:

(i) £10,000 ☐ Yes ☐ No

(ii) £25,000 ☐ Yes ☐ No

(iii) £50,000 or ☐ Yes ☐ No

(iv) some other figure (please state with reasons)? ☐ Yes ☐ No

Please give reasons.

N/A

Question 11: What modifications, if any, do you consider would be necessary for the scheme to accommodate clinical negligence claims?

Please give reasons.

N/A

Question 12: Do you agree that a system of fixed recoverable costs should be implemented, similar to that proposed by Lord Justice Jackson in his Review of Civil Litigation Costs: Final Report for all Fast Track personal injury claims that are not covered by any extension of the RTA PI process?

☐ Yes ☐ No

Please give reasons.

N/A

Question 13: Do you consider that a system of fixed recoverable costs could be applied to other Fast Track claims? If not, please explain why.

☐ Yes ☒ No

Please give reasons.

The Fast Track covers a broad range of disputes. Allocation to the track is predominantly determined by value and a trial length of a day or less. Fixing costs in arbitary manner creates a real risk of parties being left to bear substantial unrecovered costs even where they have been successful. This would be seen as particularly unjust by successful defendants who have done nothing to bring the situation on themselves. It also creates a risk that in straightforward cases the amount of recoverable costs may lead to legal representatives not monitoring costs levels as rigorously as they might if a summary assessment was to be faced at the end of trial. The proposed system also does not take account of the conduct of the parties save through the power to award indemnity costs. Indemnity costs is a high and uncertain threshold for both parties.

Question 14: If your answer to Question 13 is yes, to which other claims should the system apply and why?

Please give reasons.

N/A

Question 15: Do you agree that for all other Fast Track claims there should be a limit to the pre-trial costs that may be recovered?

☐ Yes ☒ No

Please give reasons.

See the answer to question 13.

Question 16: Do you agree that mandatory pre-action directions should be developed? If not, please explain why.

☐ Yes ☒ No

Please give reasons.

The most powerful incentives to parties to resolve matters prior to the commencement of proceedings are a swift resolution and the saving of costs. A system of mandatory fixed directions that must be complied with will serve to increase pre-commencement costs where a resolution is not achieved. It will lead to delay which is a particular concern for small and medium sized enterprises in business disputes. As set out in the Consultation Paper 75% of debt claims are currently undefended. Compelling a potential claimant to go through a process with an unresponsive or uncooperative potential defendant will simply increase costs that may never be recovered. It is wrong to assume that a model which may work for RTA PI cases will necessarily apply to a broad range of disputes where issues are infinitely varied and or all levels of complexity. Pre-action conduct is better addressed by a more rigorous application of costs sanctions to prematurely issued litigation.

Question 17: If your answer to Question 16 is yes, should mandatory pre-action directions apply to all claims with a value up to:

(i) £100,000 or ☐ Yes ☐ No

(ii) some other figure (please state with reasons)? ☐ Yes ☐ No

Please give reasons.

N/A

Question 18: Do you agree that mandatory pre-action directions should include a compulsory settlement stage? If not, please explain why.

☐ Yes ☒ No

Please give reasons.

If parties are going to settle a claim they will do so. A compulsory settlement stage, similar to the one month stay box on the current Allocation Questionnaire, will simply delay resolution for parties unable to settle.

Question 19: If your answer to Question 18 is yes, should a prescribed ADR process be specified? If so, what should that be?

☐ Yes ☐ No

Please specify and give reasons.

N/A

Question 20: Do you consider that there should be a system of fixed recoverable costs for different stages of the dispute resolution regime? If not, please explain why.

☐ Yes ☒ No

Please give reasons.

A fixed cost matrix again creates the risk of irrecoverable costs. Parties with valid claims or defences may be dissuaded from proceeding even at the earliest stage. It is also difficult to conceive of a fair regime which could be constructed to cover the broad range of cases involved.

Question 21: Do you consider that fixed recoverable costs should be:

(i) for different types of dispute or ☒ Yes ☐ No

(ii) based on the monetary value of the claim? ☒ Yes ☐ No

If not, how should this operate?

Please specify and give reasons.

Notwithstanding the answer to Question 20 if a system of fixed recoverable costs were to be introduced it would need to separated out both by types of dispute and monetary value. It would also need to be set at realistic levels and regularly revised in the way that solicitors' guideline hourly rates are rather than left unaltered for considerable periods of time as the fixed costs under the CPR have been at times.

Question 22: Do you agree that the behaviours detailed in the Pre-Action Protocol for Rent Arrears and the Mortgage Pre-Action Protocol could be made mandatory? If not, please explain why.

☐ Yes ☒ No

Please give reasons.

The principle concern identified in the Consultation Paper is that tenants or borrowers are not engaging with the process. It is difficult to see how making protocols mandatory will assist with that problem. It is also questionable whether it is appropriate to apply procedural sanctions to individuals some of whom will be in very difficult circumstances. Landlords and lenders should retain the flexibility to commence proceedings without going through the stages of a protocol where appropriate - for example where the occupants are failing to engage with the process. A mandatory settlement stage, particularly in the case of rent arrears, may simply serve to increase arrears which a landlord has little prospect of recovering. The protocols are serving a useful purpose which would be diminished by making them mandatory.

Question 23: If your answer to Question 22 is yes, should there be different procedures depending on the type of case? Please explain how this should operate.

☐ Yes ☐ No

Please give reasons.

N/A

Question 24: What do you consider should be done to encourage more businesses, the legal profession and other organisations in particular to increase their use of electronic channels to issue claims?

Please give reasons.

To encourage commencing court proceedings electronically a user friendly App. could be devised and available to download from HMCS website. It should be possible to pay Issue fees by using a 'Paypal' service or other methods of permitting electronic payments.

Question 25: Do you agree that the small claims financial threshold of £5,000 should be increased? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

The ChBA supports a limited extension to the small claims limit but only if it is accompanied by a proportionate change in the allocation of court resources and the proposed changes to the existing rules as set out below.

Question 26: If your answer to Question 25 is yes, do you agree that the threshold should be increased to:

(i) £15,000 or ☐ Yes ☐ No

(ii) some other figure (please state with reasons)? ☒ Yes ☐ No

Please give reasons.

The ChBA proposes that the threshold be raised to £10,000. This represents a 100% uplift in the threshold and incorporates 50% of the existing Fast Track claims. Current track allocation is determined by quantum. Underpinning that is the notion that the higher the quantum the greater the complexity is likely to be. While there may be exceptions (as there inevitably will be in any general approach), it is generally felt that £10,000 is the right watershed. If the incorporation of the lower end fast Track (cases with a value of between £5,000 - £10,000) successfully transfers into the small claims procedure, then the track could be extended in to £15,000 in due course.

The ChBA makes the following recommendations;-

i) A preliminary hearing should be built into the case management for all claims issued with a time estimate of one day plus. This will safeguard against valuable court time being lost if the case is not trial ready. It is anticipated that the increase in value of claims will result in an increase in volume in the number of cases with a longer time estimate. It is anticipated that the higher value claims are likely to exceed the normal allowance of one day for a hearing. Provision should be made for this in CPR 27.

ii) The value of any Counterclaim should be added together with the value of the claim and if the total exceeds £15,000 the claim should be allocated to fast track. It is unlikely that it will be proportionate for a claim and counter claim which exceeds £15,000 to be heard under the small claims procedure by virtue of the allocation of court time. The judge should however retain discretion at allocation stage.

iii) There is likely to be an increase in applications being made for permission to rely upon expert evidence in the higher value cases at allocation stage. This could be dealt with at the compulsory preliminary hearing (advocated at (i) above). The rules should be revised to more readily permit the use of expert evidence if it is necessary. This should again form part of the allocation procedure.

iv) Adherence to standard directions given by the court should be more rigorously enforced. In particular rule 27.4(a)(i) the direction that each party shall file and serve the documents upon which they intend to rely upon at least 14 days before the date of hearing. The increase in volume of small claims and in particular in those country courts with rolling lists and the increase in the number of litigants in person means that it is vital that trials are effective and timescales adhered to. The importance of complying with the directions must be stressed in the new material available for litigants in person identified at Paragraph 114 of the consultation paper.

v) Paragraph 115 of the consultation paper indicates that 83% of all defended cases currently fall within the £15,000 ceiling. Under the proposal 83% of defended cases within the county court would therefore fall within the small claim procedure. Wherever the ceiling is fixed there must be a comparable reallocation of court resources. On the proposal 83% of judicial and administrative resources should be allocated to the small claims procedure to deal with 83% of defended cases. In particular greater resource will need to be afforded to the allocation stage. At final hearing It is anticipated that the increase in volume of cases, will either lead to an increase number of small claims being heard by Circuit Judges or increasing the number of

District Judges to cope with the increased volume. The ChBA recommends that Circuit judges should hear the more complex small claims those with a time estimate of a day. The ChBA repeats its recommendation that small claims are limited to £10,000.

vi) It is likely that increasing the limit for claims which that can be brought under the small claims procedure will increase the volume of litigation. The extension of the small claims procedure will be welcomed by litigants with a cavalier attitude towards litigation. There is a risk that there will be an increase in the volume of unreasonable claims commenced and pursued with de-minimum loss to the claimant and enormous nuisance value often to companies who will be unable to recover their costs. Costs will not now act as a deterrent for claims over £5,000. To safeguard against this abuse far greater use should be made of rule 27.14(2)(g) which applies a costs sanction where a party has behaved unreasonably and costs warnings given at the allocation stage. The Rule should be revised accordingly

Question 27: Do you agree that the small claims financial threshold for housing disrepair should remain at the current limit of £1,000?

☒ Yes ☐ No

Please give reasons.

Question 28: If your answer to Question 27 is no, what should the new threshold be?

Please give your reasons.

N/A

Question 29: Do you agree that the fast track financial threshold of £25,000 should be increased? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

The current Fast Track allocation incorporates a £20,000 bracket (claims between £5,000 and £25,000). The ChBA is of the view that the size of the bracket is sufficiently wide. It would support raising the ceiling of Fast Track claims to £30,000 and the continuation of the £20,000 bracket. For the reasons stated in answer to Questions 25 and 26 of this consultation paper therefore the starting point for the Fast Track bracket should be £10,000 and its ceiling £30,000.

Question 30: If your answer to Question 29 is yes, what should the new threshold be?

Please give your reasons.

See above.

Section 3 – Alternative dispute resolution

Question 31: Do you consider that the CMC's accreditation scheme for mediation providers is sufficient?

☐ Yes ☒ No

Please give reasons.

It is better than nothing but does not go far enough. The acquisition or absence of CMC accreditation appears to make no difference to the standing of mediators or to the level of case they mediate.

Question 32: If your answer to Question 31 is no, what more should be done to regulate civil and commercial mediators?

Please give reasons.

There are many "mediators" and their mediation abilities vary considerably. Mediation ability is a function of training and personality. It is possible to "qualify" as a mediator through any one of a number of courses some of which involve a higher standard of training than do others. The starting point should be to have accredited training courses. This requires a governing body.

Training should include personality tests (e.g. the gladiatorial and judgmental instincts of many high flying practitioners, litigators in particular, actually makes them unsuitable to be mediators).

Training should involve a longer and more varied experience acting as an assistant mediator than is presently the case. A governing body will be able to arrange and vet assistantships ensuring a suitable mix of cases.

Consider grading mediators with an arrangement akin to "membership" and "fellowship" levels based on further training and experience.

Judges and DJs should be required to undergo some form of mediation training to enable them to recognize cases that are and are not suitable for mediation and, in particular, to enable them to explain the advantages of mediation properly.

Question 33: Do you agree with the proposal to introduce automatic referral to mediation in small claims cases?

☐ Yes ☒ No

Please give reasons.

Paragraph 157 of the Consultation Paper says that there would be a fee for using the pre-issue mediation service.

Generally speaking, many litigants (particularly individuals/small businesses who are one-time only litigators) in the small claims court have difficulty with funding their claims. This is so even where they do not engage lawyers – court fees are substantial.

Generally speaking, LEI and other insurance does not cover the costs of mediation.
The reasoning in the Consultation Paper that the cost of pre-issue mediation will be offset by a notional saving in the costs of proceedings really applies only to litigants who incur the costs of lawyers (irrecoverable).

Mediation is successful and fair when the mediation is conducted by someone with mediation ability (natural or acquired through training) who has full knowledge of the case, and where the parties know the details of each other's case.

(1) This means that the case must be set out in detail by each side. At present, this is done in the Claim Form, Particulars of Claim and Defence and, possibly, witness statements and disclosure documents. Certainly it costs money to reach this stage of preparedness but: (i) if no Acknowledgement of Service or Defence is filed, judgment can be obtained at an early stage thereby saving costs; (ii) the rules of procedure provide a framework and timetable with which the Defendant must comply (or face default judgment) whereas there is no possible way in which pre-issue mediation can have a similar procedural timetable coupled with an effective sanction such as judgment – a reluctant Defendant will be able to ignore the requirement to participate in mediation, provide details of the defence case etc with impunity. Automatic pre-action mediation could be abused and become a charter for delay.

(2) The cost of mediation will be significant for most small claim one-time only litigators because the mediator must read into the case. This takes up time and therefore means cost. The same applies to the actual mediation hearing. This means that private mediators are likely to insist on charging on a time-spent basis which makes the overall cost for each side uncertain. A fixed fee is likely to discourage full reading in and is likely to limit the amount of time a private mediator will give to the case.
It is recognized that a requirement to make some payment can operate to concentrate minds and ensure that a mediation is treated seriously. However, on balance, the cost barrier of an automatic referral to mediation presents problems and mediations can take longer and therefore incur greater cost than e.g. summary judgment via the ordinary court process.

The exceptions to automatic pre-issue mediation identified in paragraph 155 of the Consultation Paper are to narrow. It not only HMRC who have straight forward money/debt claims – vast numbers of small claims are straightforward debt actions brought by individuals or (repeat litigator) corporations. Such cases can achieve fast and inexpensive results through the court process and a requirement for automatic pre-issue mediation will be unfair and do no more than add an unnecessary layer of cost and delay.
In addition to straightforward debt collection, there are many small claims where judgment is obtained quickly and at low cost because there is no defence (so no acknowledgement of Defence is served). Then there are many claims where even if some form of Defence is served, summary judgment is obtained. In such cases, the problem is a defendant who is reluctant to face up to his/her legal obligations or cannot discharge obligations because circumstances have changed – such defendants will not participate in mediation but will seize the requirement for pre-issue mediation as way of delaying the inevitable. There is no purpose to a mediation in such cases – the Claimant who has a valid debt collection claim cannot be expected to give up any part of the money claim and the defendant who is avoiding responsibility is unable to make any compromise offer.

The exceptions will need to include not only straight forward money claims/debt collection by any Claimant (not just HMRC) but all claims in tort/contract where the issues act/default is plain and obvious as well as all cases where some form of injunctive or declaratory relief is needed. In all cases where there is no obvious defence, where summary judgment is likely, where the length of a court hearing is likely to take up much less

time than will a mediation (and this can be so even where there is disputed factual evidence on a narrow point or a short legal point) a requirement for pre-issue mediation will be unfair and unreasonable. It will be impossible to frame a rule that automatically exempts such cases for an automatic requirement for mediation (i.e. the vast group of cases where the court process provides an inexpensive and speedy judgment) because no-one could evaluate a case in such terms at the pre-issue stage.

Accordingly, for all the above reasons, an automatic requirement for pre-issue mediation could operate unfairly, could impose a costs barrier that will deny access to justice for many, could provide an opportunity for delay on the part of reluctant defendants, and is likely to add unnecessary (irrecoverable) costs and delay in a vast number of cases where the claimant has a clear claim that is not susceptible to mediation.

The best step to take to encourage mediation in small claims would be something along the following lines (rule changes – the details will need thinking about):

(1) a procedural rule that every claimant must set out their case in writing sent to the other side and allow, say, 14 days for a reply before the court will issue a Claim Form;

(2) providing an claimant with an written explanation of mediation as part of the written information given to a claimant explaining the process of issuing a Claim Form (no doubt any lawyer acting will provide additional information but do not make this a rule otherwise it will lead to CFA style challenges);

(3) providing boxes for ticking on the Claim Form where the Claimant can indicate whether they are willing to mediate in due course and whether they are prepared to mediate by telephone or otherwise (the cost of mediation must be explained as well);

(4) providing similar boxes for the Defendant to tick when returning the Acknowledgement of Service;

(5) the court documents then coming before a mediation trained DJ who can judge whether the case is suitable for mediation or whether the ordinary court process would be likely to achieve a speedier less expensive judgment;

(6) the DJ, in an appropriate case, directing that mediation takes place, that the parties exchange and file with the court details of their respective cases in writing (adjusting the order as appropriate if Particulars of Claim and/or a Defence set out sufficient details);

(7) if a party has objected to mediation via the tick box, the DJ can arrange a telephone directions hearing to discuss the matter with the litigant: the litigant's view would be a weighty but not determinative factor in the DJ's thinking when deciding whether or not to direct mediation and, no doubt, such a tele-hearing will enable the DJ to decide whether there is any point to a mediation given the litigant's attitude;

(8) there should be a panel of accredited small claims mediators to whom the case could be referred. This will add another layer of cost but only after an experienced lawyer (the DJ) trained in mediation has looked at the case, seen the respective contentions, and evaluated the case in terms of suitability for summary judgment, length of court hearing etc and taken account of the attitude to mediation of each party. Telephone mediations can work but are not as satisfactory as personal attendance. However, cost factors favour telephone mediations. A mediation trained DJ might be able to judge when a telephone mediation is unlikely to work.

Question 34: If the small claims financial threshold is raised (see Question 25), do you consider that automatic referral to mediation should apply to all cases up to:

(i) £15,000 ☐ Yes ☐ No

(ii) the old threshold of £5,000 or ☐ Yes ☐ No

(iii) some other figure? ☐ Yes ☐ No

Please give reasons.

If the small claims limit is extended, the same procedure and approach should apply at all levels of the jurisdiction. There is an indefinable financial point at which a claim appears to be “more serious” and so meriting a Judge but simplicity and consistency of procedure and approach are more important.

Question 35: How should small claims mediation be provided?

Please explain with reasons.

See Q.33 above.

Question 36: Do you consider that any cases should be exempt from the automatic referral to mediation process?

☒ Yes ☐ No

Please give reasons.

Question 37: If your answer to Question 36 is yes, what should those exemptions be and why?

Cases suitable for summary judgment and injunctions.

Question 38: Do you agree that parties should be given the opportunity to choose whether their small claims hearing is conducted by telephone or determined on paper?

☐ Yes ☒ No

Please give reasons.

Telephone hearings do work but are not entirely satisfactory. Let the parties give an indication of their preference in the Claim Form material and the Acknowledgement of Service but leave the final decision to the DJ (see Q35).

Question 39: Do you agree with the proposal to introduce compulsory mediation information sessions for cases up to a value of £100,000? If not, please explain why.

☐ Yes ☒ No

Please give reasons.

It depends how the information is given. Information on paper/electronically is of limited effect. The information needs to be given in person, by a Judge who understands what mediation can and cannot achieve.

Question 40: If your answer to Question 39 is yes, please state what might be covered in these sessions, and how they might be delivered (for example by electronic means)?

Please give reasons.

The judge should identify and discuss the major issues between the parties and call for up-to-date information about past and future costs on both sides.

Question 41: Do you consider that there should be exemptions from the compulsory mediation information sessions?

☒ Yes ☐ No

Please give reasons.

Question 42: If your answer to Question 41 is yes, what should those exemptions be and why?

There are cases where one or other (or both) party/parties need to establish a legal precedent which therefore must go to trial.

Question 43: Do you agree that provisions required by the EU Mediation Directive should be similarly provided for domestic cases? If not, please explain why.

☐ Yes ☒ No

Please give reasons.

The provisions regarding expiry of limitation and prescription periods could be useful but otherwise the regulations do not add anything we do not already have. In 9/10 cases proceedings have been commenced and it is necessary to get a court order to deal with the proceedings therefore making mediation agreements enforceable per se does not really take things forward.

Question 44: If your answer to Question 43 is yes, what provisions should be provided and why?

See Q.43 above.

Section 4 – Debt recovery and enforcement

Question 45: Do you agree that the provision in the TCE Act to allow creditors to apply for charging orders routinely, even where debtors are paying by instalments and are up to date with them, should be implemented? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 46: Do you agree that there should be a threshold below which a creditor could not enforce a charging order through an order for sale for debts that originally arose under a regulated Consumer Credit Act 1974 agreement? If not, please explain why.

☐ Yes ☒ No

Please give reasons.

The present system of judicial discretion should suffice. The court will no doubt be reluctant to grant orders for sale in relations to debts below a certain threshold, but rather than looking at how the debt arose or what its preise amount is it is more important to look at the debtor's circumstances and his conduct on the whole. If a debtor is in a house with plenty of equity and does not have children in the property, or has been objectionable throughout the litigation/has not adhered to an agreement previously reached for no good reason/has ignored proceedings and/or offers to reach a compromise an application for an order for sale should still be available.

Question 47: If your answer to Question 46 is yes, should the threshold be:

(i) £1,000	☐ Yes	☐ No
(ii) £5,000	☐ Yes	☐ No
(iii) £10,000	☐ Yes	☐ No
(iv) £15,000	☐ Yes	☐ No
(v) £25,000 or	☐ Yes	☐ No
(vi) some other figure (please state with reasons)?	☐ Yes	☐ No

Please give reasons.

Question 48: Do you agree that the threshold should be limited to Consumer Credit Act debts? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

If there were to be a threshold, it should be limited to CCA debts and not cast more widely.

Question 49: Do you agree that fixed tables for the attachment of earnings should be introduced? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 50: Do you agree that there should be a formal mechanism to enable the court to discover a debtor's current employer without having to rely on information furnished by the debtor? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 51: Do you agree that the procedure for TPDOs should be streamlined in the way proposed? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 52: Do you agree that TPDOs should be applicable to a wider range of bank accounts, including joint and deposit accounts? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 53: Do you agree with the introduction of periodic lump sum deductions for those debtors who have regular amounts paid into their accounts? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 54: Do you agree that the court should be able to obtain information about the debtor that creditors may not otherwise be able to access? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 55: Do you agree that government departments should be able to share information to assist the recovery of unpaid civil debts? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 56: Do you have any reservations about Information applications, Departmental Information Requests or Information Orders? If so, what are they?

☐ Yes ☒ No

Please give reasons.

Question 57: Do you consider that the authority of the court judgment order should be extended to enable creditors to apply directly to a third party enforcement provider without further need to apply back to the court for enforcement processes once in possession of a judgment order? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 58: How would you envisage the process working (in terms of service of documents, additional burdens on banks, employers, monitoring of enforcement activities, etc)?

It is difficult to envisage how the procees would work at this intial stage, but a standard form document and a designated address for service in respect of financial institutions would be prerequisites of a successful scheme. A designated address would be particularly helpful to stop documents being lost (etc). In terms of employers the process would undoubtedly be more difficult to manage, especially in respect of smaller companies and firms; in order to ensure that the requirement is not too burdensome a simply worded standard form would be of assistance. In addition it may be necessary to provide a sanction for employers who persistently fail adhere to the requirements.

Question 59: Do you agree that all Part 4 enforcement should be administered in the county court? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Section 5 – Structural reforms

Question 60: Do you agree that the financial limit of £30,000 for county court equity jurisdiction is too low? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 61: If your answer to Question 60 is yes, do you consider that the financial limit should be increased to:

(i) £350,000 or ☒ Yes ☐ No

(ii) some other figure (please state with reasons)? ☐ Yes ☐ No

Please give reasons.

But the increase in the equity jurisdiction of the county court must be accompanied by a positive (and practical) recognition that Chancery work is specialist work and requires to be heard by specialist tribunals. The problems engendered by non-specialist tribunals hearing Chancery cases have been graphically illustrated by Mr Michael Templeman in his separate submission, which we endorse and to which we might add the case of the non-Chancery circuit judge who interrupted counsel with the observation "Mr X, I thought the purpose of the 1925 property legislation was to abolish [sic] the difference between legal and equitable interests in land." We have all seen at first hand the unsatisfactory results which arise from non-specialists having to deal with the complexities of subrogation, registration of title, priorities and non est factum, to name but a few. If the limit of the equity jurisdiction is to be raised significantly, it must be on the basis that such Chancery cases have to be heard (unless the parties otherwise agree) by specialist judges with Chancery expertise.

Question 62: Do you agree that the financial limit of £25,000 below which cases cannot be started in the High Court is too low? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 63: If your answer to Question 62 is yes, do you consider that the financial limit (other than personal injury claims) should be increased to:

(i) £100,000 or ☐ Yes ☐ No

(ii) some other figure (please state with reasons)? ☒ Yes ☐ No

Please give reasons.

Given that the subject was revisited as recently as 2009 we are not convinced that the limit needs to be increased significantly, but if it does a modest increase from £25,000 to £50,000 should suffice.

Question 64: Do you agree that the power to grant freezing orders should be extended to suitably qualified Circuit Judges sitting in the county courts? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 65: Do you agree that claims for variation of trusts and certain claims under the Companies Act and other specialist legislation, such as schemes of arrangement, reductions of capital, insurance transfer schemes and cross-border mergers should come under the exclusive jurisdiction of the High Court? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 66: If your answer to Question 65 is yes, please provide examples of other claims under the Companies Act that you consider should fall within the exclusive jurisdiction of the High Court.

Please give reasons.

No others occur to us.

Question 67: Do you agree that where a High Court Judge has jurisdiction to sit as a judge of the county court, the need for the specific request of the Lord Chief Justice, after consulting the Lord Chancellor, should be removed? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 68: Do you agree that a general provision enabling a High Court Judge to sit as a judge of the county court as the requirement of business demands, should be introduced? If not, please explain why.

☒ Yes ☐ No

Please give reasons.

Question 69: Do you agree that a single county court should be established? If not, please explain why.

☐ Yes ☒ No

Please give reasons.

We are not convinced by the alleged merits of a single county court as suggested. Even if there are bulk issuing centres, the files and papers will still have to be physically transferred to individual courts for hearings. The problem with missing papers in some courts is already serious; the proposed scheme runs the risk of yet more papers going missing in transit and thus simply adding to the cost and delay of litigation.

Section 6 – Impact assessments

Question 70: Do you agree that we have correctly identified the range of impacts under the proposals set out in this consultation paper?

☒ Yes ☐ No

Please give reasons.

Question 71: Do you agree that we have correctly identified the extent of impacts under these proposals?

☐ Yes ☒ No

Please give reasons.

Some of the impacts appear to be based on assumptions which may not be justified. For example it is not at all clear how the changes to charging orders and third party debt orders will necessarily lead to more debtors paying.

The impacts of the pre-action directions proposals are based on the views of lawyers operating under the RTA PI scheme which is not comparable with the full range of County Court disputes up to £100,000.
In relation to ADR one of the presumptions for part of the impact assessment is that claimants and defendants are currently unaware of mediation which is not credible.

Question 72: Do you agree have any evidence of equality impacts that have not been identified within the equality impact assessments? If so, how could they be mitigated?

☐ Yes ☒ No

Please give reasons.

Thank you for taking the time to let us have your views.