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Respondent



This is a public consultation by the Civil Justice Council.

The consultation is open until 24 December 2021 at 10am. **UPDATE - The CJC's consultation on pre-action protocols has been extended for 4 weeks. The consultation will close on Friday 21 January at 12 noon.**

Consultees do not need to answer all questions if only some are of interest or relevance. This form contains branching so you will be able to skip sections that you do not wish to respond to.

Answers should be submitted through the online form. Please note that responses are limited to 4,000 characters per question (around 650 words). Any individual question response longer than 4,000 characters will be cut off at 4,000 characters. If you want to supply any response not in text form please email cjc.pap@judiciary.uk for details on how to do so.

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Please let us know if you wish your response to be anonymous or confidential.

1. My response is: *

- ☒ Public
- ☐ Anonymous
- ☐ Confidential

About you

2. First Name *

3. Last Name *

4. Your location (name of town/city) *

5. Your role *

- ☐ Judge
- ☐ Lawyer
- ☐ Insurer
- ☐ Paralegal/Legal Assistant
- ☐ Litigant
- ☐ Policy maker/civil servant
- ☒ Legal Policy Manager

6. Your job title

7. If relevant, whose interests do you predominantly represent? *

- ☒ Claimants
- ☐ Defendants
- ☐ Not applicable

8. Your organisation

9. Are you responding on behalf of your organisation? *

- ☒ Yes
- ☐ No

10. Your email address *

Questions relevant to all protocols

11. Do you agree that the Overriding Objective should be amended to include express reference to the pre-action protocols (PAPs)?

- ☒ Yes
- ☐ No
- ☐ Other

12. Do you agree that compliance with PAPs should be mandatory except in urgent cases? Do you think there should be any other exceptions generally, or in relation to specific PAPs?

There needs to be flexibility within the rules, so a requirement that compliance is mandatory except in "urgent" cases may not allow for the necessary level of flexibility.

If there is to be a requirement for mandatory compliance, there should be an exception for parties who are vulnerable, with vulnerability left undefined so that it can properly capture all types of vulnerability. There will be situations where a person's vulnerability may mean that timescales, for example, cannot be complied with because more time is required to gather evidence. There must be flexibility to ensure that these groups of people are not penalised because of their characteristics or circumstances.

There would also need to be flexibility in relation to what "urgency" means. Urgency means different things in different cases and to different parties, and it must be recognised that this may relate to issues other than limitation. For example, urgency could relate to the need to obtain or approve an interim payment due to lack of capacity, and this needs to be reflected.

It is already recognised in the current Disease & Illness PAP that the timescale of the protocol is likely to be too long in some asbestos disease cases. This is an important recognition given the court system provides a specialist 'Asbestos List' to deal with such claims on an urgent basis, and it should not be over-ridden by well-meaning reforms.

Whilst compliance with the PAP is desirable in most cases, there may be other reasons, such as limitation, where compliance with the PAP is inappropriate and this reinforces the need for flexibility.

13. Do you agree there should be online pre-action portals for all cases where there is an online court process and that the systems be linked so that information exchanged through the PAP portal will be automatically accessible to the court (except for those designated as without prejudice)?

- ☐ Yes
- ☐ No
- ☒ We are supportive of anything that helps the par

14. Do you support the creation of a new summary costs procedure to resolve costs disputes about liability and quantum in cases that settle at the PAP stage? In giving your answer, please give any suggestions you might have for how such a costs procedure should operate.

There would be benefit in including a provision, in the pre-action protocol, which encourages the parties to prepare a breakdown of costs post settlement, as would be the case for a summary assessment of costs, and parties should be encouraged to reach agreement on this breakdown within a certain time-frame. This reflects current practice, and we would welcome it being put on a more formal footing.

We are concerned, however, about the link that is made between the summary costs procedure and the point at which a case settles. Simply because a case settles at pre-action stage does not necessarily mean that it was not a complex case that would benefit from a properly scrutinised bill. There may be unintended consequences to linking the summary costs procedure with settlement at pre-action stage, with parties discouraged from settling at pre-action stage, if they consider a detailed assessment of costs would be more appropriate. We suggest that more thought may be required here.

We have not seen evidence justifying the need for a further level of costs procedure beyond that already available via the SCCO (detailed assessment and summary assessment).

15. Do you agree that PAPs should include mandatory good faith obligation to try to resolve or narrow the dispute? In answering this question, please include any views you have about the proper scope of any such obligation and whether there are any cases and protocols in which it should not apply.

While we agree that one of the aims in the pre-action stages should be to try to resolve or narrow the issues in dispute, we do not think a mandatory good faith obligation to do so would be workable. Further, there is an implied duty of good faith, already, within the protocols, if the parties are assisting the courts with furthering the overriding objective. An additional obligation is unnecessary. As we have mentioned in previous responses to both the Civil Justice Council and Ministry of Justice, regarding dispute resolution, personal injury practitioners already work well to resolve and narrow the issues in dispute – evidenced by the high rate of settlement in these cases (on average, between 2016 and 2020, 16 per cent of personal injury cases went to trial in England, Wales and Scotland), and the success of initiatives such as the Serious Injury Guide (evidenced by a recent survey of participants which found that 74 per cent felt that the guide leads to easier access to rehabilitation, and 81 per cent said that the guide leads to greater collaboration between the claimant and defendant). However, there are some cases in which it is simply not possible to resolve the dispute outside of court. A mandatory obligation to attempt to do so could be problematic, particularly if this obligation arose before there was full disclosure of evidence.

We also query how the good faith obligation would operate in cases in which the defendant will simply maintain that they can legitimately defend the case, and do not wish to make any offers. In *Cameron v Hussain* [2017] EWCA Civ 366 for example, the defendant made no comment at all and simply denied being the driver. A good faith obligation would surely involve the defendant parting with any information they believe would be useful to help the resolution of the case – if they knew who was driving the car, they should be obligated to share this information, but it is unlikely that the obligation would be interpreted in this way.

We are also concerned that a mandatory good faith obligation would simply result in a fishing exercise for the defendants to gather information in order to make an early and inappropriate Part 36 offer.

16. Do you agree that, unless the parties clearly state otherwise, all communications between the parties as part of their good faith efforts to try to resolve or narrow the dispute would be without prejudice? Invitations to engage in good faith steps could still be disclosed to the court demonstrate compliance with the protocol, and offers of compromise pursuant to Part 36 would still be governed by the privilege rules in Part 36.

- ☐ Yes
- ☐ No
- ☒ No. If there is to be a requirement for good faith,

17. Do you agree that there should be a requirement to complete a joint stocktake report in which the parties set out the issues on which they agree, the issues on which they are still in dispute and the parties' respective positions on them? Do you agree that this stocktake report should also list the documents disclosed by the parties and the documents they are still seeking disclosure of? Are there any cases and protocols where you believe the stocktake requirement should not apply? In giving your answer please also include any comments you have on the Template Joint Stocktake Report in Appendix 4.

We agree in principle that a stocktake should take place, however it is important that this does not become a procedural burden or hurdle which results in satellite litigation or fetters the Claimant in progressing proceedings. The stocktake process should be focused purely on identifying the issues still in dispute. The idea of the stocktake report also needs to be fleshed out further. We query the status of the document, and what happens if parties do not comply with the timescales and instead complete the report within say 15, rather than 14, days. Further, following our comments above about the need for flexibility in compliance with the PAP, there must be exceptions to the requirement to complete a stocktake report where there are issues of limitation and in other urgent circumstances such as limited life expectancy / asbestos cases or where an interim payment is required.

We are also concerned about defendant behaviour around the degree of engagement. A stocktake procedure is a pre-litigation red flag before which they may refuse to engage. Similarly, such a procedure is in conflict with the cases which currently run under fixed costs regimes (or indeed may do so in the future). Additional work pre-issue must be factored into fixed costs to maintain the access injured people have to full and appropriate recompense

18. Do you agree with the suggested approach to sanctions for non-compliance set out in paragraphs 3.26-3.29? In particular please comment on:

- a) Whether courts should have the power to strike out a claim or defence to deal with grave cases of non-compliance?
- b) Whether the issue of PAP compliance should be expressly dealt with in all Directions Questionnaires, or whether parties should be required to apply to the court should they want the court to impose a sanction on an opposing party for non-compliance with a PAP?
- c) Whether the PAPs should contain a clear steer that the court should deal with PAP compliance disputes at the earliest practical opportunity, subject to the court's discretion to defer the issue?
- d) Whether there are other changes that should be introduced to clarify the court's powers to impose sanctions for non-compliance at an early stage of the proceeding, including costs sanctions?
- e) Whether you believe a different approach to sanctions should be adopted for any litigation specific PAPs and, if so, why?

a) We agree that the courts should have the power to strike out a claim or defence to deal with grave cases of non-compliance. Following *Cable v Liverpool Victoria* [2020] EWCA Civ 1015, it is clear that not following the protocol can be an abuse of process. We would, however, suggest that there is a staged approach to sanctions, depending on the severity of non-compliance. There should be the opportunity to impose a proportionate sanction. For example, one level of sanction could be that a party should not be permitted to rely on a particular aspect of their evidence, if they have not complied with the protocol. Other sanctions could be an award of indemnity costs, or recording non-compliance for the purposes of budgeting.

b) Parties should be required in the Directions Questionnaire to state whether the other side has complied with the protocol. There should also be provision within the Directions Questionnaire for a party to request the court to impose a sanction for non-compliance.

c) We agree. PAP compliance disputes should be dealt with at the first case management conference, and this should be expressly stated in the pre-action protocol.

d) As above, costs sanctions should be fully utilised where there is non-compliance.

e) It is important that the approach to sanctions is dealt with differently in a small claims track protocol. Costs based sanctions would obviously be unworkable in a small claims track case, therefore other sanctions must be considered

19. Do you agree that PAPs should contain the guidance and warnings about pre-action conduct set out in paragraphs 3.8-3.13?

- ☐ Yes
- ☐ No
- ☒ We agree. However, paragraph 3.9 suggests that

20. Do you think there are ways the structure, language and/or obligations in PAPs could be improved so that vulnerable parties can effectively engage with PAPs? If so, please provide details.

We agree. The work that the Civil Justice Council has already undertaken on vulnerable witnesses and parties did not define vulnerability, deliberately keeping the approach broad so as to cater for the range of vulnerabilities there are. The same approach should be used here – there must be flexibility for parties to do what is necessary to share the information they have, regardless of their (or their client's) vulnerability. It would be counter-productive to amend the protocol in a narrow manner so as to cater for only a set number of vulnerabilities.

There must be consideration given to how litigants in person who are unable to access the internet for whatever reason – perhaps either because they do not have access to a device that connects to the internet, or they lack the confidence or knowledge to engage with an online process, can take part in the process, particularly if there is a move towards all protocols being online.

21. Do you believe pre-action letters of claim and replies should be supported by statements of truth?

- ☐ Yes
- ☐ No
- ☒ No. Currently, letters of claim do not have the st

22. Do you believe that the rule in the Professional Negligence Protocol giving the court the discretion to impose sanctions on defendants who take a materially different position in their defence to that which they took in their pre-action letter of reply should be adopted in other protocols and, if so, which ones?

We do not believe that there should be a sanction here.

23. Do you think any of the PAP steps can be used to replace or truncate the procedural steps parties must follow should litigation be necessary, for example, pleadings or disclosure? Are there any other ways that the benefits of PAP compliance can be transferred into the litigation process?

It would be helpful for some PAP steps to be used to replace or truncate the procedural steps that may be necessary later. The key to efficient resolution of disputes is early and full disclosure and early and full exchange of witness evidence where it is appropriate to do so – if as much disclosure and witness evidence (where appropriate) as possible can be provided before litigation, this will be of benefit to both parties, helping them to narrow the issues and identifying what expert evidence might be needed to address the issues, before costs are incurred on both sides in making enquiries with and/or instructing experts in contemplation of the litigation and issues which might still be live. We would suggest that defendants should be required to identify early on whether they would need any expert evidence, for example. There should be clarity though, on what status documents being completed at pre-action stage would have in subsequent litigation.

Practice Direction - Pre-Action Conduct

24. Do you wish to answer questions about Practice Direction - Pre-Action Conduct? *

- ☒ Yes
☐ No

25. Do you support the introduction of a General Pre-action Protocol (Practice Direction)? In giving your answer please do provide any comments on the draft text for the revised general pre-action protocol set out in Appendix 4.

The General Pre-action Protocol as drafted is not well-suited to PI claims. Personal Injury should have an overarching pre-action protocol specifically for personal injury claims, where some of the sanctions and compliance issues are dealt with in an easily accessible way. There should then be specific protocols for specific work areas that will sit under the general protocol.

26. Do you agree parties should have 14 days to respond to a pre-action letter of claim under the general PAP, with the possibility of a further extension of 28 days where expert evidence is required? In cases of extension, the defendant would still be required to provide a reply within 14 days disclosing relevant information they had in their possession and confirming that a full reply would be provided within a further 28 days. Claimants would have 14 days to respond to any counterclaim. If you do not agree with these timeframes, what timeframes would you propose?

27. Do you think that the general PAP should incorporate a standard for disclosure, and if so, what standard? For example, documents that would meet the test for standard disclosure under CPR 31, or meet the test for "Initial disclosure" and/or "Limited Disclosure" under Practice Direction 51U for the Disclosure Pilot. In giving your answer we are particularly interested in respondents' views about whether the standard should include disclosure of 'known adverse documents'.

Personal Injury Protocols

The sub-committee were very conscious, as a final point worth stressing, that there is a need for evidence to underpin any changes that might be suggested in response to the questions below.

28. Do you wish to answer questions about the personal injury (PI) protocols? *

- ☒ Yes
☐ No

29. Do you agree that there should be a generic PI protocol that incorporates relevant general principles from the general PAP but also identifies PI specific objectives not applicable to other litigation (Part A) with users being directed to a subject specific "Part B" rules for each specialist area?

- ☐ Yes
- ☐ No
- ☒ We do not agree and suggest this is change for c

30. Do you agree that all PI protocols should include a good faith obligation more prominently in the introduction to try to resolve or narrow the dispute?

- ☐ Yes
- ☐ No
- ☒ See our response to question 15.

31. Do you agree that all PI protocols should include an obligation to a complete a joint stocktake report/list of issues and should this be:

- a) before or after ADR, and/or
- b) filed with the Directions Questionnaire?

There will not always be a formal round of ADR in personal injury claims, and there are already processes in place that help to resolve cases efficiently. Tying the stocktake requirement to a round of ADR could then mean that parties have to engage in a round of ADR, even where it would be wholly unnecessary. Instead, there should be a requirement to consider a stocktake before issue of proceedings, with a formal requirement to lodge any stocktake forms completed with the Directions Questionnaire, which could include a pre-issue stocktake and an update at the time of the Directions Questionnaire. The Directions Questionnaire should be amended to require a more descriptive response than yes or no the party has/has not complied, by requiring parties to explain how they have complied with the protocol and any reason for non-compliance.

32. Do you agree that any revisions to the PI protocols need to be approached with great care to ensure workstreams for multi-track cases are clearly separated out from fast-track work? If so:

- a) How could there be effective, referencing to and integration with the Serious Injury Guide where appropriate?
- b) How can the current protocols be updated to reflect moderately severe cases as well as catastrophic injury cases despite workflows for each being significantly dissimilar?

a) The Serious Injury Guide is successful in achieving its aims because it is a voluntary guide. If there is further integration with the pre-action protocol and the guide becomes mandatory with sanctions attached to non-compliance, there is a danger that it will lose its effectiveness. There are also risks with further integration of the Guide as it is not drafted by or in the charge of the Civil Procedure Rule Committee, and could potentially be developed in ways that have unintended consequences. We suggest that compliance with the Serious Injury Guide should be taken into account when determining whether the parties have complied with the good faith obligation, but that this is as far as integration should go.

b) It would not be helpful to update the protocol in this way. In future, following any extension of fixed costs, there will be cases that fall within the fixed costs regime, and cases that do not, and this will not necessarily be related to the severity of the case. A different approach is needed depending on whether the case is handled within a fixed costs environment or outside. In fixed costs cases, there is a need to have tight and definitive protocols with sanctions, to prevent bad behaviours that ultimately lead to conduct which would have the effect of claimants being priced out of continuing with a case. There will be greater scope to cater for issues of vulnerability in cases outside of a fixed costs regime.

It is also likely to become increasingly difficult to ascertain from the outset whether a claim falls within the fixed costs regime – even the Government in its response on the extension of fixed costs shied away from giving further guidance on the cases that would fall within the intermediate bands of fixed costs. There must be an ability for claims to transfer smoothly between the fixed costs and multi-track regimes.

33. Do you agree that there should be better integration of each protocol with the Rehabilitation Code? If so, should the protocols require a claimant to identify any rehabilitation they consider would be beneficial, with estimated costs if possible and should it require a defendant to supply reasons if they refuse, or fail to provide assistance with rehabilitation?

We agree that there should be better integration with the Rehabilitation Code. However, we are cautious about the need to provide estimated costs about any treatment. We would not want claimants to be restricted if an early indication on costs turned out to be inaccurate further down the line. We agree that defendants should be required to supply reasons if they refuse or fail to provide assistance with rehabilitation. Claimants should be asked whether the defendant has been asked to comply with the Rehabilitation Code, and whether they agreed to do so.

34. Do you agree the transitional integration clauses for injury claims exiting fixed recoverable processes and slotting into the main injury protocol require greater clarity?

- ☐ Yes
- ☐ No
- ☒ We agree. To improve clarity, the transitional inte

35. Is there value in being more specific within protocols about the level of quantification work to be undertaken without a route map agreed with the other party and the timetable for commencing proceedings following an admission of liability?

- ☐ Yes
- ☐ No
- ☒ No. Claimant representatives need to be able to

36. Do you agree the management of disclosure pre-issue needs to be strengthened to encourage greater compliance with the protocol? Paragraph 7.1 of the protocol expects the claimant to identify which documents are relevant and why. Should there be equal obligations on defendants to give reasons why they consider a document is not relevant/why they will not disclose a document?

Disclosure by the defendant, when liability is not admitted, is an important way of helping, where possible to resolve that issue of liability. Accordingly, where a defendant considers a document requested is not relevant or is not to be disclosed it would be helpful for that to be supported by reasons.

37. Should the claimant's letter of claim state what medical records have been obtained and are available for disclosure and what medical records are still to be obtained?

- ☐ Yes
- ☐ No
- ☒ Disclosure by the defendant, when liability is not

38. Do you agree that a working group should be established, as a priority, to consider a specific protocol for abuse claims?

- ☒ Yes
- ☐ No
- ☐ Other

39. Do you agree that a working group should be established to consider a specific protocol for foreign accident cases?

- ☒ Yes
- ☐ No
- ☐ Other

40. Should initiatives with third party organisations such as the expert witness community and HMRC be considered to reduce delays in the resolution of injury disputes?

- ☒ Yes
- ☐ No
- ☐ Other

41. Should the PI PAPs deal with the question of what to do where a Claimant obtains medical evidence prior to issue but elects not to serve, and if so, what steps should be open to the Defendant?

The defendant is not entitled to privileged documents. It is already clearly set out in the protocol and there is no rationale to change this. There is no evidence that this is a problem that warrants a solution, and amending this will have unintended consequences.

42. Prior to commencement of proceedings by the Claimant should the Defendant be entitled to obtain a medical report on the Claimant if the Claimant does not disclose a medical report?

- ☐ Yes
- ☐ No
- ☒ There is no legal basis for the defendant to obtain

43. Do you agree that the protocol should include provision that for the purposes of rehabilitation the claimant solicitors should give reasonable access for medical assessment when requested by the defendant insurer?

- ☐ Yes
- ☐ No
- ☒ It should first be considered whether the defendant

44. If you consider any change to the PI PAP expert evidence process in multi-track cases would be beneficial what would the new process look like?

We have provided our thoughts in the preceding questions. We do not consider the expert evidence process needs to change. The protocols largely work well in the majority of cases, evidenced by the high settlement rate for personal injury claims - on average, between 2016 and 2021, only 16 per cent of PI claims per year were issued in the courts in England, Wales and Scotland. The Serious Injury Guide is working well to achieve its aims, because it is consensual - in a recent survey of participants to the guide, 74 per cent said that the guide leads to easier access to rehabilitation and 81 per cent said that it lead to greater collaboration between the parties. To introduce mandatory requirements in cases that depend upon the individual circumstances of the person is not going to work. The flexibility of the current arrangements works well.

45. Would an ability to have pre-litigation court case management help dispute resolution in multi-track PI cases?

- ☐ Yes
- ☐ No
- ☒ This is well intentioned, but not well thought out

Housing Protocols

46. Do you wish to answer questions about housing protocols? *

- ☐ Yes
- ☒ No

Judicial Review Protocol

47. Do you wish to answer questions about the judicial review (JR) protocol? *

☐ Yes

☒ No

Debt Protocol

48. Do you wish to answer questions about the debt protocol? *

☐ Yes

☒ No

Construction and Engineering Protocol

49. Do you wish to answer questions about the construction and engineering protocol? *

☐ Yes

☒ No

Professional Negligence Protocol

50. Do you wish to answer a question about the professional negligence protocol? *

☐ Yes

☒ No

Proposed low value small claims track

51. Do you wish to answer a question about the proposed low value small claims track protocol? *

☐ Yes

☒ No

Any other comments

52. Please include here any other comments you wish to make not covered by the questions already posed.

A pre-action protocol for foreign accident claims

A pre-action protocol is warranted in foreign accident claims given the likelihood of an overseas defendant – perhaps not represented by a solicitor in England and Wales – being unfamiliar with the existing pre-action protocols. Consideration should be given to how a specific protocol should deal with arguments from some defendants that the protocol should not apply because the case falls outside of the jurisdiction of the courts of England and Wales. This is a common occurrence and in order for a protocol in these cases to be effective in encouraging early dispute resolution, narrowing of issues and efficient settlement, there must be a provision within the protocol addressing the issue.

Thought must also be given to the length of time that is permitted for defendants to investigate claims. In the current pre-action protocol for personal injury claims, the time-frame for the defendant to investigate accidents outside of England and Wales is six months. This is unnecessary, with advances in technology meaning that the defendant will be able to carry out most investigations remotely, and that most information will have been received by email. It is also inappropriate to have this length of time for investigations, particularly in cases where the limitation period is shorter, for example Athens Convention cases and Montreal Convention cases and in cases where a foreign law applies, such as Spain where the limitation period for accidents is only one year.

A pre-action protocol for abuse claims

A protocol for abuse claims is required for a number of reasons. Firstly, claims for child sexual abuse tend to be brought many years after the abuse took place, for a variety of well documented reasons. The three-year limitation period is therefore problematic, with the problem being exacerbated in cases where a claim under the Human Rights Act is brought against the local authority for failure to remove/protect the claimant – in Human Rights Act cases the limitation period is one year. A provision within a dedicated protocol providing for a limitation moratorium would be hugely beneficial, effectively allowing the clock to be stopped, evidence to be gathered and the case to be established. If proceedings need to be issued immediately due to limitation, this can cause problems with obtaining funding for the case and may lead to claimant lawyers being unable to take on the case. A protocol would also provide guidance as to the reasonable timescales for pre-action disclosure of documents e.g. social services and police records. Currently claimants face significant delays in this regard. A protocol would also assist those parties who may not be experienced in abuse cases to handle a claim. Because fixed costs are being extended to other areas but not abuse cases, there are likely to be entrants to the abuse claims arena who are not experienced. While we would always advocate that claimants seek advice from an experienced abuse claims specialist, a protocol would help those who are less experienced to navigate the process and alleviate some of the problems they may have otherwise experienced.

Attached to this response is a copy of a draft pre-action protocol for abuse claims, developed by a working group of claimant lawyers. There were discussions with defendant representatives about the protocol, and although nothing concrete was agreed, there was a broad measure of agreement about what was put forward in the attached draft. A great deal of work has gone into the development of a protocol, soundings have been taken from a variety of specialists in the area, and we believe it is a valuable starting point for any discussions. This is notwithstanding that the draft was based on the current protocols so would need to be amended to fit with the direction of travel on the content of the protocols going forward.

Draft Abuse Pre Action Protocol (drafted by the Claimant group for the Historic Abuse Litigation Forum)

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Annex A: Limitation Moratorium template

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Annex C: Undertaking as to records

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Annex H – Specimen Letter of Instruction to Expert

1. INTRODUCTION

1.1 This Protocol is intended to apply to all abuse claims brought by children and adults against any defendant, which involve an injury that is alleged to be the result of deliberate abuse or neglect. It is also intended to apply to claims against individuals, whether in conjunction with a claim against an institution or against that individual alone or made as part of Part 20 proceedings against that individual by an institution, although in the latter case against an individual, some of the provisions of the Protocol will not be applicable. It is also intended to be sufficiently broad-based and flexible to apply to all defendant sectors, both public and private.

1.2 The Protocol is not intended to apply to claims, which proceed under the other protocols for personal injury, clinical disputes and disease and illness claims. These are listed below—

(a) the Pre-Action Protocol for Personal Injury Claims

- (b) the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents from 31 July 2013;
- (c) the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims;
- (d) the Pre-Action Protocol for the Resolution of Clinical Disputes; and
- (e) the Pre-Action Protocol for Disease and Illness Claims.

For the avoidance of doubt, this Protocol takes precedence where an allegation of deliberate abuse is made against a healthcare professional.

1.3 This Protocol sets out conduct that the court would normally expect prospective parties to follow prior to the commencement of proceedings. It establishes a reasonable process and timetable for the exchange of information relevant to a dispute, sets standards for the content and quality of letters of claim, and in particular, the conduct of pre-action negotiations.

1.4 The timetable and the arrangements for disclosing documents and obtaining expert evidence may need to be varied to suit the circumstances of the case. Where one or both parties consider the detail of the Protocol is not appropriate to the case, and proceedings are subsequently issued, the court will expect an explanation as to why the Protocol has not been followed, or has been varied.

2. EARLY ISSUE AND LIMITATION MORATORIUMS

2.1 The Protocol recommends that a defendant be given 21 days to acknowledge the claim from service of the Initial Letter of Notification and then up to three months (the maximum period) from the service of a Letter of Claim to serve a Letter of Response before issuing Court proceedings.

2.2 If this is not possible, where a claimant only consults a legal representative after the end of any relevant limitation period and needs to stop the limitation "clock" running, or where a claimant is close to the expiry of primary limitation, then in these circumstances, the parties should agree to a limitation moratorium as soon as is practicable. Alternatively if protective proceedings have to be issued, then the parties should consider whether the court might be invited to extend time for service of the claimant's supporting documents and for service of any defence, while the recommended steps in the Protocol are followed.

2.3 This Protocol does not alter the statutory time limits for starting court proceedings. If a claim is issued after the relevant statutory limitation period has expired, the defendant will be entitled to use that as a defence to the claim. If proceedings are started to comply with the statutory time limit before the parties have followed the procedures in this Protocol, the parties should apply to the court for an extension of time to serve the proceedings while they so comply, or alternatively if proceedings have been served, then a stay of proceedings.

2.4 Any limitation moratorium or extension of time for service of proceedings can be agreed between multiple claimants and defendants.

2.5 Annexe A contains the suggested text of the limitation moratorium (to be adapted as necessary).

3. ENFORCEMENT OF THE PROTOCOL AND SANCTIONS

3.1 Where either party fails to comply with this Protocol, the court may impose sanctions. When deciding whether to do so, the court will look at whether the parties have complied in substance with the Protocol's relevant principles and requirements, including failure to agree to a limitation moratorium. It will also consider the effect any non-compliance has had on any other party. It is not likely to be concerned with minor or technical shortcomings (see paragraph 4.3 to 4.5 of the Practice Direction on Pre-Action Conduct and Protocols).

4. LITIGANTS IN PERSON AND MULTIPLE PARTIES

4.1 If a party to a claim does not seek professional advice from a solicitor they should still, in so far as is reasonably possible, comply with the terms of this Protocol. In this Protocol “solicitor” is intended to encompass reference to any suitably legally qualified person.

4.2 If a party to a claim is aware that another party is a litigant in person, they should send a copy of this Protocol to the litigant in person at the earliest opportunity. Where the defendants are an institution and an individual, those defendants will be expected to discuss their respective positions, and where possible with a view to minimising the duplication of work and the sharing of information.

4.3 The claimant or any Part 20 claimant should also send the litigant in person a list of solicitors specialising in acting for uninsured defendants maintained from time to time by the Law Society whose website address is www.solicitors.lawsociety.org.uk [the Forum of Insurance Lawyers whose website address is www.foil.org.uk]

4.4 Where there multiple claimants/defendants, those parties with a common interest are expected to discuss their respective positions, and where possible with a view to minimising the duplication of work and promoting the sharing of information.

5. THE AIMS OF THE PROTOCOL

5.1 The general aims of the Protocol are –

- (a) to reduce delay and ensure that costs are proportionate to the financial value of the claim and its complexity and importance; and
- (b) to resolve as many disputes as possible without the issue of proceedings and use of the court's time whilst recognizing that access to formal justice and judicial determination remains a permitted objective;
- (c) to minimise the emotional impact of these types of claims on claimants, defendants, their families and relevant witnesses.
- (d) to resolve disputes by joint settlement meetings

5.2 The specific objectives are–

- (a) to ensure that sufficient information is disclosed promptly by the parties so as to enable each of them to understand the other's perspective and case, and to encourage early resolution or a narrowing of the issues in dispute;
- (b) to provide an early opportunity for institutions to identify cases where an investigation is required and to carry out that investigation promptly;
- (c) to encourage institutions to involve their insurers at an early stage and individuals to seek legal advice and/or consult with any institution with whom they are or have been involved;
- (d) to enable the parties to avoid the issue of proceedings and the use of court time on by agreeing a resolution of the dispute;
- (e) to enable the parties to explore the use of mediation/ADR or to narrow the issues in dispute before proceedings are commenced;
- (f) to support the efficient management of proceedings where they cannot be avoided;
- (g) to discourage the prolonged pursuit of unmeritorious claims and the prolonged defence of meritorious claims;
- (h) to promote the provision of treatment and therapy to address the needs of the claimant at the earliest opportunity; and
- (i) to encourage the defendant to make an early apology to the claimant if appropriate.

5.3 This Protocol does not—

- (a) provide any detailed guidance to institutions on risk management or the adoption of risk management systems and procedures;
- (b) provide any detailed guidance on which adverse outcomes should trigger an investigation; or
- (c) recommend changes to the codes of conduct of professionals in safeguarding.

6. THE STRUCTURE OF THE PROTOCOL

6.1 The Protocol begins from the service of an Initial Letter of Notification on the defendant. This letter gives the defendant sufficient information to begin its investigation of the claim and make disclosure. The defendant will have 21 days from service of the letter to acknowledge receipt of the Initial Letter of Notification. In its acknowledgment, the defendant must confirm that it will follow this Protocol.

6.2 Where the abuse and/or neglect occurred outside England and Wales and/or where the Defendant is outside the jurisdiction, the time for acknowledgment of the Initial Letter of Notification should be extended to 42 days.

6.3 Whereafter (from the end of the 21/42 days), the Defendant will then have three months from service of the Letter of Claim to serve a Letter of Response.

6.4 This Protocol does not prevent:-

- (a) a course of correspondence taking place between the parties ;
- (b) the claimant from sending a Letter of Claim at the outset, if the claimant has sufficient information to do so, or a defendant sending a Part 20 Letter of Claim on a Part 20 defendant in the same circumstances;
- (c) the defendant from sending a Letter of Response to either the Initial Letter of Notification or the Letter of Claim, if it has sufficient information to do so.
- (d) any of the parties obtaining expert evidence. .
- (e) a claimant (or Part 20 claimant) issuing proceedings against a defendant who has not acknowledged the Initial Letter of Notification or in circumstances where it becomes clear that the defendant will not comply with the Protocol, or in circumstances where prompt action is required - for instance where a freezing order is required, or where a limitation moratorium is required but none is forthcoming from the defendant.

6.5 There are two types of Letters of Claim as follows:-

- (a) a claim based on a direct claim against a defendant for abuse or against a defendant for their vicarious liability in relation to abuse perpetrated by a servant or agent.
- (b) a claim based on the breach of duty on the part of a defendant resulting in abuse.

6.6 An illustrative flowchart is attached at Annex B which shows each of the stages that the parties are expected to take before the commencement of proceedings.

6.7 Attached at Annexes D, E and F are templates for the suggested contents of the Initial Letter of Notification, and the two types of Letters of Claim.

6.8 The time limit set out in this Protocol shall not be shortened or extended, except by consent to allow these issues to be addressed

7. PRE MEDICAL REPORT OFFERS

7.1 There shall be no offers of settlement made by the Defendant prior to the service of any expert medical evidence, unless specifically invited in writing by the Claimant.

8. THE INITIAL LETTER OF NOTIFICATION

8.1 Annex D contains the suggested text of the Initial Letter of Notification. The claimant or his legal representative should notify a defendant as soon as they know a claim is likely to be made, but before they are able to send a detailed Letter of Claim. An institutional defendant may have no or very limited knowledge of the incident(s) of abuse giving rise to the claim. In all cases the Initial Letter of Notification should contain sufficient information for the defendant to know that a claim is being made against it, any other defendants, brief details of that claim sufficient to enable the defendant to initiate investigations and make disclosure, and the basis of the claim. The letter should also provide the opportunity for the parties to avoid the issue of proceedings by agreeing a limitation moratorium.

8.2 The Initial Letter of Notification should provide the defendant with an undertaking in relation to the disclosure of social services records (if appropriate). Appendix C contains the suggested text of the undertaking (to be adapted as necessary).

Where the defendant is an individual or institution who is likely to be uninsured, then the Initial Letter of Notification should provide the defendant with a copy of this Protocol and the list of solicitors referred to in paragraph 4.3 of this Protocol. It may also invite the defendant to make disclosure of its personal assets and enter into a restriction on any property that he owns.

8.3 The following is a non-exhaustive list of the information and requests to be made in the Initial Letter of Notification to the defendant:-

- (a) The name of the claimant
- (b) The claimant's residential address, and where that address is withheld from one or all the parties, the reason
- (c) The claimant's date of birth
- (d) The claimant's national insurance number
- (e) Whether the claimant will be seeking an anonymity order (to cover not just the parties but also any potential witnesses) if proceedings are issued and attaching the form to be used - PF10 within the Civil Procedure Rules depending on the circumstances.
- (f) The approximate periods of time that the abuse/neglect took place.
- (g) The name of the alleged abuser(s) and if relevant, their position within any institution.
- (h) A request for documentation i.e. the claimant's social services file
- (i) Any documentation in the claimant's possession
- (j) Whether the claimant requires an immediate needs assessment for treatment or therapy,
- (k) A copy of any letter sent to another defendant

8.4 Where any of the documentation described above is not in the claimant's possession, the claimant should give the defendant an indication as to when these records will be forwarded to the defendant. Alternatively, the claimant will provide the defendant with an explanation as to why such records are not to be obtained, or cannot be obtained, or why they cannot be disclosed to the defendant. For instance it may not be necessary to obtain all of the records in the list above for the successful resolution of the claim.

8.5 The Initial Letter of Notification will request a limitation moratorium (if required) in the terms set out in Annexe A.

8.6 The Initial Letter of Notification should be acknowledged within 21 days (42 days for a defendant residing in a foreign country) of receipt by the defendant, who will include within its acknowledgement the identity of its insurers (if any). The defendant will also confirm that it will follow the terms of this Protocol.

8.7 The Initial Letter of Notification should enclose a copy of any other letter to another defendant.

9. THERAPY AND MEDICAL TREATMENT

9.1 The parties should consider as early as possible whether the claimant has

reasonable needs that could be met by therapy or medical treatment

9.2 Any immediate needs assessment report or associated documents, which are obtained for the purposes of therapy or medical treatment shall not be used in the litigation except by consent and shall in any event be exempt from the provisions of the paragraphs of this Protocol that relate to the instruction of experts. Similarly, persons conducting the immediate needs assessment shall not be a compellable witness at court.

9.3 Consideration of therapy or other medical treatment, by all parties, should be an ongoing process throughout the entire Protocol period.

10. THE LETTER OF CLAIM

10.1 The Letter of Claim should include all the information that was contained in the Initial Letter of Notification, but with expanded and more detailed information as required by the circumstances. Annexes E and F contain the text of the Letters of Claim and that additional information. In all cases there should be sufficient information for the defendant to assess liability and likely heads of claim. .

10.2 This letter should contain—

- (a) a clear summary of the facts on which the claim is based, including the alleged abuse and/or neglect, the time at which they occurred and the main allegations relating to the establishment of direct liability, vicarious liability and breach of duty;
- (b) a description of the claimant's injuries (psychiatric and/or physical), and if known, his present condition and prognosis;
- (c) heads of loss incurred by the Claimant.;

10.3 The Letter of Claim should refer to any relevant documents, including social services records, and if possible enclose copies of any of those which are not already in the potential defendant's possession.

10.4 Sufficient information must be given to enable the defendant to focus on whether there should be an admission, to put an initial valuation on the claim and to consider an apology.

11. STATUS OF INITIAL LETTERS OF NOTIFICATION, LETTERS OF CLAIMS AND RESPONSE

11.1 Initial Letters of Notification and Letters of Claim are not intended to have the same formal status as a Statement of Case. No sanctions should necessarily apply if the Initial Letter of Notification, any Letter of Claim or Particulars of Claim in the proceedings differ. The Initial Letter of Notification, Letters of Claim and the Response are not intended to have the same formal status as a Statement of Case in proceedings. It would not be consistent with the spirit of the Protocol for a party to 'take a point' on this in the proceedings, provided that there was no obvious intention by the party who changed their position to mislead the other party.

12. THE RESPONSE

12.1 Attached at Annexe G is a template for the suggested contents of the Letter of Response: the level of detail will need to be varied to suit the particular circumstances.

12.2 The structure of this Protocol provides that the defendant will always have a maximum period of 21 days from the date of the Early Notification Letter and a further three months in which to provide a Letter of Response. Whilst the claimant can send a Letter of Claim prior to the expiry of the maximum period, the defendant is not obliged to answer it until that period has expired.

The Letter of Response should provide a reasoned reply to the claimant's Letter of Claim, in which the defendant should—

- (a) if the claim is admitted, say so in clear terms;
- (b) if only part of the claim is admitted, make clear which issues are admitted and which are denied and why;
- (c) state whether it is intended that any admissions will not be binding;
- (d) if the claim is denied, include specific comments on the allegations and, if a synopsis or chronology of relevant events has been provided and is disputed, the defendant's version of those events;
- (e) whether the defendant intends to pursue a limitation defence.
- (f) if known, state whether the defendant requires copies of any relevant records obtained by the claimant (to be supplied for a reasonable copying charge);
- (g) provide copies of any additional documents relied upon; and
- (h) inform the claimant of any other potential defendants to the claim.
- (i) offer the Claimant a joint settlement meeting, and if not, explain why

12.3 If the defendant requires an extension of time for service of the Letter of Response, a request should be made as soon as the defendant becomes aware that it will be required and, in any event, within three months of service of the Letter of Claim.

12.4 The defendant should explain why any extension of time is necessary.

12.5 The claimant should adopt a reasonable approach to any request for an extension of time for provision of the reasoned answer.

12.6 If the claimant has made an offer to settle, the defendant should respond to that offer in the Letter of Response, preferably with reasons. The defendant may also make an offer to settle at this stage, subject to the restriction on making offers of settlement prior to the disclosure of expert medical evidence. Any offer made by the defendant should be made in accordance with the legal and procedural requirements of CPR Part 36 (possibly including any costs incurred to date). If an offer to settle is made, the defendant should provide sufficient medical or other evidence to allow the claimant to properly consider the offer. The level of detail necessary will depend on the value of the claim.

12.7 If the parties reach agreement on liability, or wish to explore the possibility of resolution with no admissions as to liability, but time is needed to resolve the value of the claim, they should aim to agree a reasonable period of time.

12.8 If the parties do not reach agreement on liability, they should discuss whether the claimant should start proceedings. .

12.9 Following receipt of the Letter of Response, if the claimant is aware that there may be a delay of three months or more before the claimant decides if, when and how to proceed, the claimant should keep the defendant generally informed.

12.10 If the defendant is aware of any significant omissions from the Letter of Claim they should identify them specifically. Similarly, if the defendant is aware that another defendant has also been identified whom they believe would not be a correct defendant in any proceedings, then they should notify the claimant without delay, with reasons. Compliance with this paragraph will be taken into account on the question of any assessment of the defendant's costs.

12.11 An admission made by any party under this Protocol may well be binding on that party in the litigation. Further information about admissions made under this Protocol is to be found in Civil Procedure Rules ("CPR") rule 14.1A.

13. DISCLOSURE

Documents

13.1 The aim of early disclosure of documents by the defendant is not to encourage ‘fishing expeditions’ by the claimant, but to promote an early exchange of relevant information to help in clarifying or resolving issues in dispute. The claimant’s solicitor can assist by identifying in the Initial Letter of Notification or the Letter of Claim or in any other letter the particular categories of documents which they consider are relevant and why, with a brief explanation of their purported relevance if necessary.

13.2 The examples of disclosure provided in the Initial Letter of Notification are non-exhaustive. There is nothing to prevent the parties agreeing to limit disclosure depending on the circumstances of the case. In cases where liability is admitted in full, disclosure will be limited to the documents relevant to quantum, the parties can agree that further disclosure may be given. If either or both of the parties consider that further disclosure should be given but there is disagreement about some aspect of that process, they may be able to make an application to the court for pre-action disclosure under Part 31 of the CPR. Parties should assist each other and avoid the necessity for such an application.

13.3 There is a requirement that the defendant is under a duty to preserve the disclosure documents and other evidence. If the documents are destroyed, this could be an abuse of the court process.

13.4 Requests for copies of documents shall be made with the undertaking (enclosed at Annex C), to be adapted as necessary.

13.5 The documents to be provided by the defendant should be provided within three months of the date of service of the Initial Letter of Notification, or the Letter of Claim whichever is the earlier.

The parties will follow the following principles:-

(a) The claimant will inform the defendant as to what documents he already possesses. (b) If possible, the documents should be disclosed in an un-redacted form. Where redaction and removal is deemed strictly necessary then the defendant shall give the claimant a reasonable explanation as to the nature and the form of each and every redaction.

(c) The documents should be disclosed for a cost not exceeding the charges permissible under the Data Protection Act 1998.

(d) The parties should give consideration to the computerised scanning of records via a secure data room.

13.6 Social services records should be released in the order that they were originally organised by the local authority. This is because social care experts have commented that they find it easier to read and understand these records when they are in this order.

13.7 At the earliest opportunity, copies of the claimant’s medical, educational and other records should be disclosed to the defendant. This bundle should be kept up to date.

13.8 In circumstances where the defendant is in difficulty in complying with the request within the relevant time periods, the problem should be explained quickly and details given of what is being done to resolve it.

13.9 If the defendant fails to provide the documents or an explanation for any delay within the relevant time periods, the claimant or their adviser can then apply to the court under rule 31.16 of the Civil Procedure Rules 1998 (‘CPR’) for an order for pre-action disclosure.

13.10 If either the claimant or the defendant considers additional records are required from a non party, in the first instance these should be requested by or through the claimant and defendant. Non parties are expected to co-operate. It may be necessary to issue a claim form for the purposes of non party disclosure and stay the claim within the protocol.

13.11 In circumstances where there is a criminal trial, the parties should give consideration to instructing one person jointly to attend the trial for the purposes of taking a note of the proceedings for the benefit of all parties in the action.

13.12 Where the parties are considering an anonymity order for the proceedings, consideration should be given not only to anonymising the names of the parties but also those of vulnerable witnesses.

Expert

13.13 Before any party instructs an expert, they may give the other party a list of the name(s) of one or more experts in the relevant speciality in circumstances where they consider it appropriate to instruct an expert on a joint basis. A time limit may be set for the other party to reply to this invitation. At this stage, and particularly in a low value case, the parties should actively consider whether a joint expert would be suitable.

13.14 Where a medical expert is to be jointly instructed, the claimant's solicitor will organise access to relevant medical records – see specimen letter of instruction at Annexe H. When instructing that expert, the parties should consider whether the expert needs to see the entirety of the records or simply selected extracts that will assist the expert in reaching his opinion.

13.15 Any party may send to a joint expert written questions on the report, via the first party's solicitors. Such questions must be put within 28 days of service of the expert's report and must only be for the purpose of clarification of the report. The expert should send answers to the questions simultaneously to each party.

13.16 Unless liability has been admitted the cost of a report from a joint expert will be paid jointly by the parties. If liability has been admitted, the cost of a report from a joint expert will be paid by the defendant.

13.17 If necessary, after proceedings have commenced and with the permission of the court, the parties may obtain further expert reports. It would be for the court to decide whether the costs of more than one expert's report should be recoverable. Any party putting questions to an expert should pay the costs of that expert arising out of those questions.

14. NEGOTIATIONS FOLLOWING AN ADMISSION

14.1 Where a defendant admits liability which has caused damage, before proceedings are issued, the claimant should send to that defendant—

- (a) any medical reports obtained under this Protocol on which the claimant relies; and
- (b) a schedule of any past and future expenses and losses which are claimed, even if the schedule is necessarily provisional. The schedule should contain as much detail as reasonably practicable and should identify those losses that are ongoing. If the schedule is likely to be updated before the case is concluded, it should say so.

14.2 CPR Part 36 permits claimants and defendants to make offers to settle pre-proceedings, subject to the restriction on pre medical expert evidence above. Parties should always consider if it is appropriate to make a Part 36 Offer before issuing. If such an offer is made, the party making the offer must always try to supply sufficient evidence and/or information to enable the offer to be properly considered.

The level of detail will depend on the value of the claim.

15. ALTERNATIVE DISPUTE RESOLUTION

15.1 Paragraph 5.1 of this Protocol sets out the general aims. . As part of this Protocol, the parties should throughout the case consider whether negotiation or some other form of alternative dispute resolution ('ADR') might enable them to resolve their dispute without commencing proceedings.

15.2 Some of the options for resolving disputes without commencing proceedings are—

- (a) discussions and negotiation (which may or may not include making Part 36 Offers or providing an explanation and/or apology);
- (b) mediation, a third party facilitating a resolution and;
- (c) early neutral evaluation, a third party giving an informed opinion on the dispute.

15.3 If proceedings are issued, the parties may be required by the court to provide evidence that ADR has been considered. It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR, but a party's silence in response to an invitation to participate in ADR might be considered unreasonable by the court and could lead to the court ordering that party to pay additional court costs.

15.4 Information on mediation and other forms of ADR is available in the Jackson ADR Handbook (available from Oxford University Press) or at—

- <http://www.civilmediation.justice.gov.uk/>
- http://www.adviceguide.org.uk/england/law_e/law_legal_system_e/law_taking_legal_action_e/alternatives_to_court.htm

16. QUANTIFICATION OF LOSS – SPECIAL DAMAGES

16.1 In all cases, if the defendant admits liability, the claimant will send to the defendant as soon as reasonably practicable a schedule of any past and future expenses and losses which he claims, even if the schedule is necessarily provisional. The schedule should contain as much detail as reasonably practicable and should identify those losses that are ongoing. If the schedule is likely to be updated before the case is concluded, it should say so. The claimant should keep the defendant informed as to the rate at which his financial loss is progressing throughout the entire Protocol period.

17. STOCKTAKE

17.1 Where the procedure set out in this Protocol has not resolved the dispute between the parties, each party should undertake a review of its own position and the strengths and weaknesses of its case. The parties should then together consider the evidence and the arguments in order to see whether litigation can be avoided or, if that is not possible, for the issues between the parties to be narrowed before proceedings are issued. Where the defendant is insured and the pre-action steps have been taken by the insurer, the insurer would normally be expected to nominate solicitors to act in the proceedings and to accept service of the claim form and other documents on behalf of the defendant. The claimant or their solicitor is recommended to invite the insurer to nominate solicitors to act in the proceedings and do so 7 to 14 days before the intended issue date.

ANNEXE A – LIMITATION

In [a Proposed action / Court]

Claim No:

Claimant
-v-
Defendant

LIMITATION MORATORIUM AGREEMENT

The Defendant(s) agree(s) that as from xxxx the Defendant(s) will not take any point arising out of the Limitation Act 1980, either now under the Pre-Action Protocol or following the issue of proceedings in relation to any delay on the part of the Claimant(s) to issue proceedings, such delay being limited to the period beginning from the date specified by this agreement up to the issue of proceedings or termination of the limitation agreement.

This limitation moratorium shall be terminable by the giving of at least 28 days' notice in writing from one party to another.

Dated:

Signed:.....

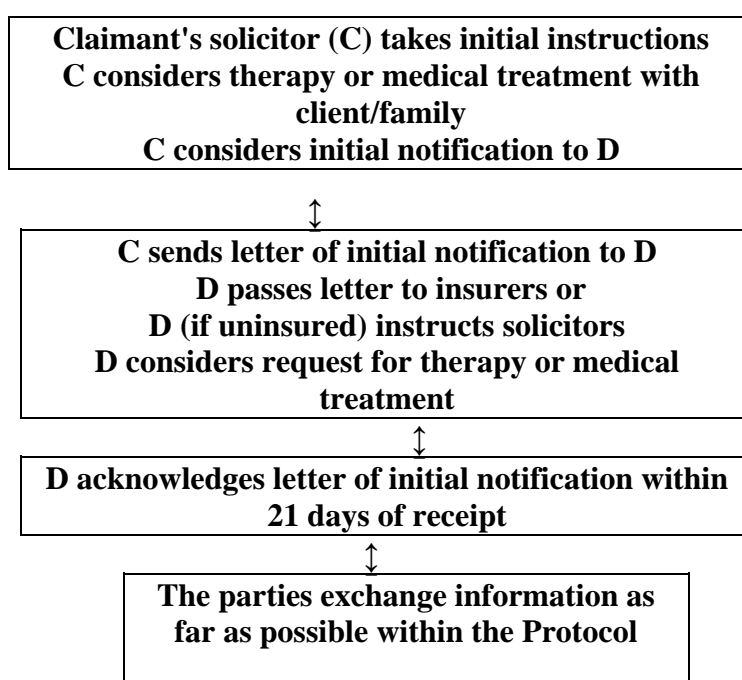
Solicitors for the Claimant(s)

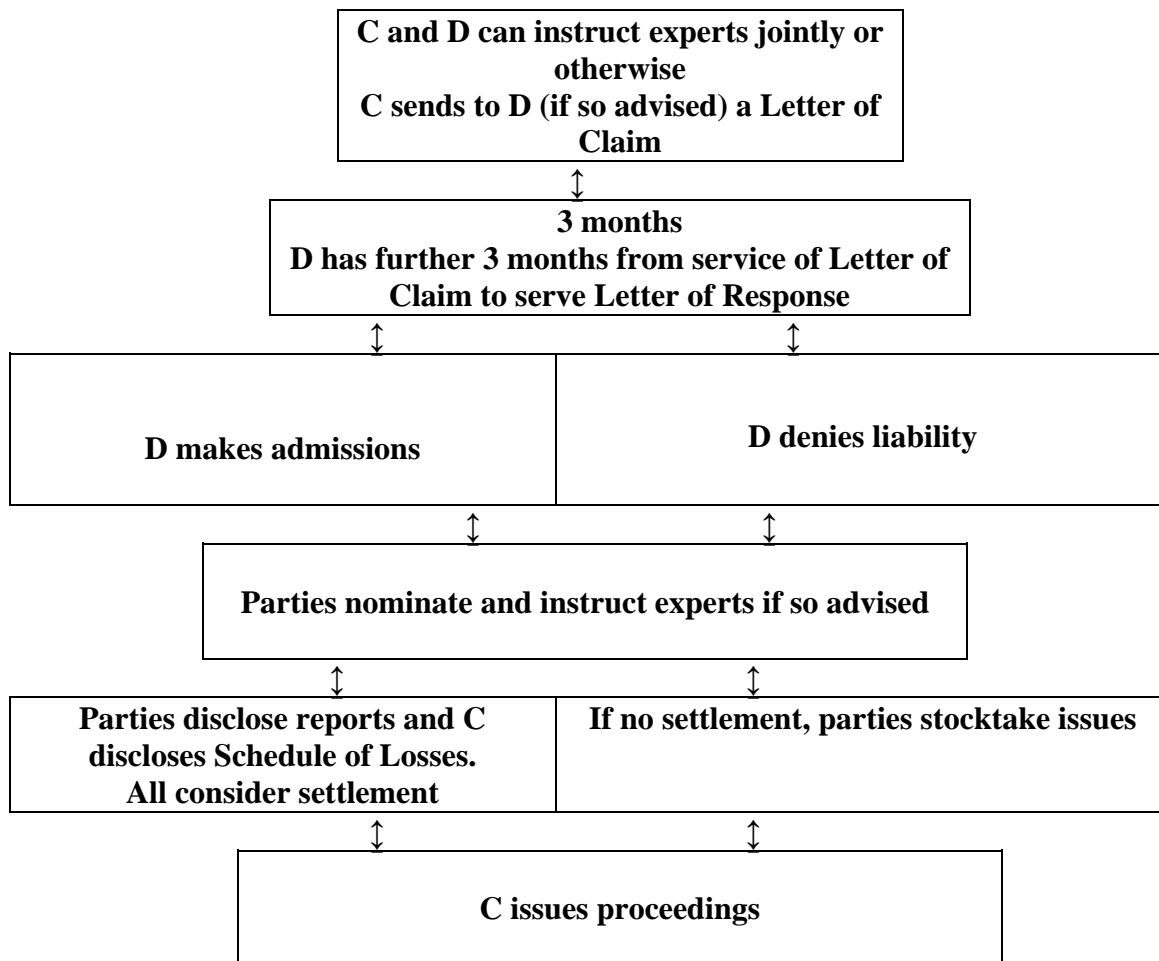
Signed:.....

Solicitors for the Defendant(s)

ANNEXE B – Flowchart

ANNEXE B – ILLUSTRATIVE FLOWCHART OF LIKELY PROGRESSION OF THE CLAIM UNDER THIS PROTOCOL





ANNEXE C – UNDERTAKING IN REQUEST FOR RECORDS

In [a Proposed action / Court]

Claim No:

Claimant

-v-

Defendant

UNDERTAKING

We xxxxxxxxx Solicitors, acting for and on behalf of the Claimant have fully explained the purpose of this undertaking to our client who agrees to abide by it, and who has annexed his signature to this document.

Signed.....

Dated.....

Client

We now hereby acknowledge that the documents in this matter contain both sensitive and confidential material, and in light thereof:

We undertake to ensure that the documents hereinafter disclosed will be diligently handled and will not be disclosed beyond :-

- a) The Claimant and/or his litigation friend
- b) The Claimant's legal representatives and/or any other agent engaged to carry out work on behalf of the said legal advisors
- c) Experts retained by the Claimant for the purposes of this litigation
- d) The Legal Aid Agency or the Claimant's legal expenses insurers
- e) The Criminal Injuries Compensation Authority
- f) The court

For the avoidance of doubt, the undertaking extends to not disclosing outside of the parameters of any intended litigation against the Defendant.

Dated:

Signed:

Print Name:

Capacity:

Solicitors for the Claimant

ANNEXE D – INITIAL LETTER OF NOTIFICATION TO INDIVIDUAL DEFENDANT, INSTITUTIONAL DEFENDANT (VICARIOUS LIABILITY) AND INSTITUTIONAL DEFENDANT (BREACH OF DUTY)

To

Defendant

Dear Sirs

Re:

Claimant's full name

Claimant's full address

Claimant's DOB

Claimant's NI No.

We are instructed by the above named to claim damages in connection with abuse that occurred during the following period(s) of time.

You/the following individuals were the perpetrators of that abuse. [Set out details of any prosecution/conviction/investigation].

Please confirm the identity of your insurers. Please note that your insurers will need to see this letter as soon as possible and that it may affect your insurance cover and/or the conduct of any subsequent legal proceedings if you do not send this letter to them.

We enclose a copy of the Pre Action Abuse Litigation Protocol [uninsured Defendant] together with a list of solicitors referred to in paragraph 4.3 of this Protocol, who may be able to represent you in this matter.

Limitation moratorium – Primary limitation in our client's case expired/is due to expire on the []. We now request that you enter into a limitation moratorium in the terms set out in the document attached to this letter. Please indicate your agreement by signing and dating the document by your name and sending it back to us. If you do not agree to a limitation moratorium, then we will be issuing protective proceedings against you.

Anonymity – If proceedings are issued, we will be seeking an anonymity order to protect our client's identity/the identity of any potential witnesses. We enclose the form of order, which is PF10 to be found within the Civil Procedure Rules. Please indicate whether you agree to that course of action.

Summary of the facts

The approximate periods of time that the abuse/neglect took place

Liability

Individual Defendant - We allege that you are directly liable to our client for the following reasons:-

Institutional Defendant (vicarious liability) - We allege that you are vicariously liable for the following reasons:-

Institutional Defendant (breach of duty) – We allege that you are liable to our client for the following reasons:-

Injuries

A description of our clients' injuries is as follows:

Therapy/medical treatment

Our client is still suffering from the effects of his/her injury. We invite you to participate with us in addressing his/her immediate needs by use of therapy/medical treatment.

Disclosure

Institutional defendant - We enclose an undertaking in relation to the disclosure of documents.

We now enclose/we will provide the following to you as soon as they are to hand and you have acknowledged this letter:-

- (i) certificates of conviction
- (ii) statements given to the police
- (iii) GP records
- (iv) Mental health/therapy records
- (v) DWP records

- (v) Employment records
- (vi) Educational records
- (vii) Prison and Probation records
- (viii) Criminal convictions

At this stage of our enquiries we would expect the following documents to be relevant to this action. Please disclose:-

Letters sent to other defendants

We enclose the following copy letter sent to other defendants.

Individual Defendants – Resources

If you are not covered by any kind of insurance policy, we invite you to give us an account of your assets.

If you are the owner of a property, we invite you to allow us to place a restriction on that property, which will give us advance notice of any attempt on your part to sell it.

Please provide us with an undertaking in relation to the following assets.

If you do not acknowledge this letter and provide an account of your assets, then we reserve the right to apply to the court for a freezing injunction against you.

Experts

We enclose the following list of experts, one of whom we intend to instruct. Please let us know within [] days whether you agree to the joint instruction of any one of these expert.

Apology

We offer the following by way of apology.

Acknowledgment of this letter

You should acknowledge this letter within 21 days of receipt, and include within that acknowledgement the identity of your insurers.

Yours faithfully

ANNEXE E - LETTER OF CLAIM – CLAIM AGAINST INDIVIDUAL AND CLAIM BASED ON VICARIOUS LIABILITY

To

Defendant

Dear Sirs

Re:

Claimant's full name
Claimant's full address
Claimant's DOB
Claimant's NI No.

We refer to our Initial Letter of Notification dated [] which you acknowledged on the [].

In that letter we stated that we were instructed by the above named to claim damages in connection with abuse that occurred during the following period(s) of time.

We refer again to the Abuse Litigation Protocol to which we referred/forwarded in our Initial Letter of Notification.

This is our Letter of Claim.

Anonymity – If proceedings are issued, we will be seeking an anonymity order to protect our client's identity/the identity of any potential witnesses. We enclose the form of order, which is PF10 to be found within the Civil Procedure Rules. Please indicate whether you agree to that course of action.

Clear summary of the facts

Specific allegations - when and where the abuse and/or neglect took place, its frequency and the nature of that abuse and/or neglect and where the Defendant is an institution, the name of the alleged abuser(s).

Liability

Individual Defendant - We allege that you are directly liable to our client for the following reasons:-

Institutional Defendant (vicarious liability) - We allege that you are vicariously liable for the following reasons:-

Injuries

A description of our clients' injuries is as follows:

We enclose the following expert medical/other reports.

Therapy/medical treatment

Our client is still suffering from the effects of his/her injury. We invite you to participate with us in addressing his/her immediate needs by use of therapy/medical treatment.

Loss of Earnings and other Financial Losses

As a result of the abuse sustained, our client has suffered a loss of earnings/loss of earnings/capacity together with Other Financial Losses.

We enclose a Schedule of Loss dated [].

We attach the following medical/other expert reports.

Disclosure

We now enclose the following records that have not been previously forwarded to you.

- (i) certificates of conviction
- (ii) statements given to the police
- (iii) GP records
- (iv) Mental health/therapy records
- (v) DWP records
- (v) Employment records
- (vi) Educational records
- (vii) Prison and Probation records
- (viii) Criminal convictions

We request the following documents, which have not yet been forwarded to us by you.

Experts

We enclose the following list of experts, one of whom we intend to instruct. Please let us know within [] days whether you agree to the joint instruction of any one of these expert.

Letter of Response

You should send to us a Letter of Response pursuant to the Abuse Litigation Protocol within 3 months of the date on which this letter is served on you.

Yours faithfully

ANNEXE F - LETTER OF CLAIM – CLAIM AGAINST INSTITUTION FOR BREACH OF DUTY

To

Defendant

Dear Sirs

Re:

Claimant's full name
Claimant's full address
Claimant's DOB
Claimant's NI No.

We refer to our Initial Letter of Notification dated [] which you acknowledged on the [].

In that letter we stated that we were instructed by the above named to claim damages in connection with abuse that occurred during the following period(s) of time.

We refer again to the Abuse Litigation Protocol to which we referred/forwarded in our Initial Letter of Notification.

This is our Letter of Claim.

Anonymity – If proceedings are issued, we will be seeking an anonymity order to protect our client's identity/the identity of any potential witnesses. We enclose the form of order, which is PF10 to be found within the Civil Procedure Rules. Please indicate whether you agree to that course of action.

Clear summary of the facts

Specific allegations - when and where the abuse and/or neglect took place, its frequency and the nature of that abuse and/or neglect and where the Defendant is an institution, the name of the alleged abuser(s).

Liability

We now set out a chronology of events relevant to our client's claim.

We allege that you owed to our client the following duties of care:-

[Set out duties of care]

We allege that you breached those duties of care as follows:-

[Set out breaches as precisely as possible]

The harm to our client was caused and/or contributed to and/or permitted to take place by reason of breach of the duties identified above.

Injuries

A description of our clients' injuries is as follows:

We enclose the following expert medical/other reports.

Therapy/medical treatment

Our client is still suffering from the effects of his/her injury. We invite you to participate with us in addressing his/her immediate needs by use of therapy/medical treatment.

Loss of Earnings and Other Financial Losses

As a result of the abuse sustained, our client has suffered a loss of earnings/loss of earnings/capacity together with Other Financial Losses.

We enclose a Schedule of Loss dated [].

We attach the following medical/other expert reports.

We enclose a list of experts that we consider suitable for joint instruction. Please let us have your comments on the experts whom we have nominated.

Disclosure

We now enclose the following records that have not been previously forwarded to you.

- (i) certificates of conviction
- (ii) statements given to the police
- (iii) GP records
- (iv) Mental health/therapy records
- (v) DWP records
- (v) Employment records
- (vi) Educational records
- (vii) Prison and Probation records
- (viii) Criminal convictions

We request the following documents, which have not yet been forwarded to us by you.

Experts

We enclose the following list of experts, one of whom we intend to instruct. Please let us know within [] days whether you agree to the joint instruction of any one of these expert.

Letter of Response

You should send to us a Letter of Response pursuant to the Abuse Litigation Protocol within 3 months of the date on which this letter is served on you.

Yours faithfully

ANNEXE G – LETTER OF RESPONSE

To Claimant's legal representative

Dear Sirs

Letter of Response

[Claimant's name] v [Defendant's name]

We refer to your Initial Letter of Notification dated [] which we acknowledged on the [] and your Letter of Claim dated [].

We confirm that that we will comply with the Abuse Litigation Protocol. This is our Letter of Response.

Anonymity – If proceedings are issued, we will be seeking an anonymity order to protect our client's identity/the identity of any potential witnesses. We enclose the form of order, which is PF10 to be found within the Civil Procedure Rules. Please indicate whether you agree to that course of action.

Parties

We confirm that we have been instructed to act on behalf of [defendant] in relation to your client's allegations. We note that you have also written to [defendant] in connection with this claim.

We [do/do not] believe they are a relevant party because [].

[In addition we believe your claim should be directed against [defendant] for the following reasons:

[We are aware of the following other potential defendants to the claim]

Liability

In respect of our client's liability in relation to your client's allegations we

admit that the abuse/neglect occurred and that our client is liable for loss and damage to the claimant the extent of which will require quantification.

Or

admit that the abuse/neglect occurred but deny that our client is responsible for any loss or damage alleged to have been caused for the following reasons:-

[We offer the following statement by way of apology]

Or

do not admit the abuse/neglect occurred either in the manner described in your letter of claim [or at all] because:

Limitation

We intend to raise a limitation defence. The particulars of that Defence are:-

We do not intend to raise any limitation defence

Documents

We attach copies of the following documents in support of our client's position:

You have requested copies of the following documents which we are not enclosing as we do not believe they are relevant for the following reasons:

It would assist our investigations if you could supply us with copies of the following documents

Next Steps

In admitted cases

We acknowledge receipt of your expert reports/We agree to the joint instruction of [] from your List of Experts.

Please also supply us with your client's schedule of past and future expenses [if any] which are claimed, even if this can only be supplied on a provisional basis at present to assist us with making an appropriate reserve.

If you have identified that the claimant has any immediate need for therapy/medical treatment so that we can take instructions.

In non-admitted cases

Please confirm we may now close our file. Alternatively, if you intend to proceed please advise which experts you are proposing to instruct.

Alternative Dispute Resolution

Include details of any options that may be considered whether on a without prejudice basis or otherwise.

ANNEXE H – LETTER OF INSTRUCTION TO MEDICAL EXPERT

Dear Sir,

Re: (Name and Address)

D.O.B.–

Telephone No.–

Period of Abuse/Neglect –

We are acting for the above named in connection with injuries received as a result of abuse/neglect that occurred during the above period of time. A summary of the main facts of the abuse/neglect is provided below. The main impact of the abuse/neglect appears to have been (describe main abuse/neglect and impact on the claimant's life as in Letter of Claim).

In order to assist with the preparation of your report we have enclosed the following documents:

Enclosures

1. The Letter of Claim
2. GP Records
3. Psychiatric Records
4. Other hospital records
5. Care records
6. (i) certificates of conviction
- (ii) statements given to the police
- (iii) GP records
- (iv) Mental health/therapy records
- (v) DWP records
- (v) Employment records
- (vi) Educational records
- (vii) Prison and Probation records
- (viii) Criminal convictions

We have not obtained [] records yet but will use our best endeavours to obtain these without delay if you request them.

We should be obliged if you would examine our Client and let us have a full and detailed report dealing with any:-

1. The Client's relevant pre-abuse/neglect history
2. The nature of the abuse/neglect sustained
3. The impact on the Client of the abuse/neglect immediately afterwards and in the long term
4. The treatment received by the Client in the past
5. The Client's present condition, dealing in particular with the capacity for work and giving a prognosis.

It is central to our assessment of the extent of our Client's injuries to establish the extent and duration of any continuing disability. Accordingly, in the prognosis section we would ask you to specifically comment on any areas of continuing complaint or disability or impact on daily living. If there is such continuing disability you should comment upon the level of suffering or inconvenience caused and, if you are able, give your view as to when or if the complaint or disability is likely to resolve.

If our client requires further treatment, please can you advise of the cost on a private patient basis, and the likely effect of any such treatment.

Please send our Client an appointment direct for this purpose. Should you be able to offer a cancellation appointment please contact our Client direct. We confirm we will be responsible for your reasonable fees.

In order to comply with Court Rules we would be grateful if you would insert above your signature, the following statement: "I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within

my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer”.

We look forward to receiving your report within _____ weeks. If you will not be able to prepare your report within this period please telephone us upon receipt of these instructions.

When acknowledging these instructions it would assist if you could give an estimate as to the likely time scale for the provision of your report and also an indication as to your fee.

Yours faithfully,