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Respondent



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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](mailto: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
- ☐ Other

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?

JUSTICE does not object to making compliance with PAPs mandatory, given that there is already an expectation that they should be followed (with costs consequences for not doing so). In the context of certain types of disputes, e.g., housing, JUSTICE considers that making PAPs mandatory will substantially improve outcomes for both sides. Nonetheless, we envisage there being a few exceptions which should be acknowledged. For example, it should be made clear that this does not apply to urgent cases, where immediate court action is necessary. We are also conscious that in some instances, where strict time limits apply to litigation, it may not be possible to adhere to a mandatory PAP. There could be circumstances in JR where a claim needs to be issued without full compliance because of the strict time limits, provided that there are good reasons for this. This would have to be justified by the claimant but the rules should be flexible enough to allow this in certain, limited circumstances.

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
- ☐ Other

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.

We consider that current public law practitioners are best placed to respond on the specific summary costs procedure that you have proposed. However, we would emphasise the importance of ensuring a balance between a requirement to provide early disclosure and costs remaining proportionate at the pre-action stage. It is important that claimants of limited funds are not discouraged from submitting a meritorious PAP because of costs consequences, especially in areas where legal aid is not available. Specifically in relation to JR, it is important that there be full representation legal aid funding available for any new PAP process so that claimants benefit from costs protection.

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.

In principle, yes. However, JUSTICE considers that a flexible approach, accommodating the nuances of dispute areas and parties' circumstances, should be adopted. In particular, JUSTICE agrees that the list of good faith steps should not be exhaustive and neither should the obligation require any one particular step (for example formal ADR) to be taken. It is important that no party is expected to engage in any formal ADR process which involves financial contributions, where it is unreasonable for them to expend the money doing so. What constitutes reasonable may depend on parties' circumstances and financial resources.

Whilst JUSTICE supports introducing good faith obligation to engage in a good faith step to narrow the dispute, JUSTICE strongly believes that such an obligation would be significantly more likely to be productive at resolving or narrowing the dispute if parties had access to early legal advice alongside this process. JUSTICE therefore supports the findings at paras 2.31 - 2.33 of the CJC's interim report. ADR will be most successful (i.e. fair and sustainable rather than just leading to a settlement) where it empowers parties to resolve their disputes in a manner that is appropriate, convenient and beneficial to them. However, parties will only feel empowered if they have choices. This includes choices about how to progress their dispute and choices about how to settle. To understand their choices, parties must understand their legal position and know their rights. Expecting parties to understand complex laws and legal rights in order to engage in ADR without access to a legal advisor to appraise them of their position, is unrealistic and may produce unfair results. Therefore, if PAPs are to include a good faith requirement that parties engage in ADR, this must be coupled with investment in legal aid if it is to produce successful outcomes.

JUSTICE considers that there is value in tailoring the good faith requirements for different types of dispute. For example, in the context of housing, the Solving Housing Disputes Working Party found that it should be incumbent on housing providers to engage meaningfully with tenants to resolve underlying problems, such as debt or benefits, before initiating a claim for possession based on rent arrears. Incorporating tailored good faith requirements that account for such nuances would help to ensure that pre-action engagement is effective and relevant to the issues at stake.

In relation to JR, we reiterate that it is important that there be no prescriptive steps as to how to comply with this duty given the unique nature of JR proceedings (as acknowledged by the report).

Furthermore, for good faith requirements to serve their intended purpose, they must be accompanied by a requirement for parties to detail the steps that they have taken to comply with them on the forms. It is not enough for parties to say they have complied, they must evidence this to the court. This is especially important given research by Bright and Woodhouse that shows that the information supplied to court via claim forms in housing disputes, is often inadequate. A judge interviewed advised that "we don't get much other than what we elicit by our own questioning really, the documents aren't going to help us."

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

☐ Other

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.

As discussed in response to the previous question, JUSTICE has heard concerns from practitioners and judges that the information provided via claim forms is often inadequate in terms of reflecting the nuances of the dispute.

JUSTICE therefore welcomes attempts to widen the range of information collected via the PAP process. This is especially true in the context of housing disputes where disputes are rarely one-dimensional; they are usually the result of a combination of inter-related or 'clustered' problems. For instance, research has found that problems with housing are usually closely related or caused by problems with benefits, debt and relationship breakdowns. If only one of those issues is brought to the court's attention, then any litigated outcome is likely to simply treat the symptom as opposed to the cause.

The stock-take report is one means of ensuring that the court is live to the relevant issues and the respective positions of the parties. However, JUSTICE considers that it could be further enhanced by including a section that asks defendants whether there are any other issues that they consider relevant or that contribute to the problem complained of. In a housing context, the report could be updated to include a section asking a tenant to outline the circumstances that led them to fall into rent arrears. This could include simple open questions about general difficulties, work, benefits, family and debt, which would prompt tenants to explain to their situation and help identify solutions.

JUSTICE also draws attention to the Immigration Appeals Chamber (IAC) pilot which requires appellants to produce a skeleton argument, following which the Home Office is meant to review the document and narrow the issues. Whilst findings emerging from the pilot suggests that the Home Office has often failed to engage in the part of the process, there is also evidence that the process has led to the Home Office withdrawing unsustainable decisions. Whilst occurring at a much later stage of the court process once an appeal has been lodged, learning from the IAC pilot may be of use. g.

JUSTICE is also very aware of the imbalance of power and resource that exist in respect of parties to disputes. Care should be taken to ensure that any duty to complete a stocktake report is not overly complex or onerous. Research has shown high illiteracy rates amongst many litigants in person and the requirement to complete what could be a lengthy report, may intimidate litigants in persons. Litigants in person who experience difficulties should not be penalised for their inability, perceived or real, to complete such reports.

As well as ensuring that the forms are written in simple, straightforward language, it is imperative that the question of legal representation at pre-action stage be revisited. For reasons provided elsewhere in this response, the success of pre-action initiatives will depend on whether parties can access free, legal aid advice to assist them with the process.

In relation to JR, given the strict deadlines for issuing a claim and the separate procedural processes which exist (including duty of candour and pleadings), we agree with the report's finding that that there should be no formal requirement for a stocktake report at the pre-action stage. Instead, the focus in JR should be on ensuring that parties set out their position as comprehensively as possible in pre-action correspondence (unless the matter is urgent).

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?

When applying sanctions for non-compliance, it is important that the courts consider the interests of justice (especially in a JR claim which could be of wider public importance), the seriousness of the breach, the reasons for non-compliance and the full circumstances of the case. This should include where a pre-action letter or response is plainly inadequate and does not provide the other party with clear information about the nature of their claim or response to the claim. However, we would emphasise that leeway should be expressly given to litigants in person, especially where the breach is due to a lack of legal knowledge. In relation to JR, the permission stage seems an appropriate time to deal with these issues, although it may need to be considered earlier if there are issues of interim relief or preliminary hearings.

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
- ☐ Other

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.

Yes. Improving lay users' ability to engage with courts processes is a key theme across all of JUSTICE's work and was the subject of the Understanding Courts working party in 2018 (JUSTICE, Understanding Courts (2018)).

To be effective PAPs should be accessible and in a format that encourages their use by both parties, regardless of their position in terms of legal representation. However, pre-actions Protocols are frequently complex, and presuppose the availability of legal advice and assistance before commencing a claim. For many claimants, especially in the context of housing disputes, this assumption no longer holds true.

It is crucial that PAPs are understandable and easy to access for the significant number of people who come before the courts without housing advice and representation. Whilst we acknowledge that detail may be necessary to cover all elements of pre-action conduct, PAPs should be designed so that they are simple and user-friendly. Where legal terminology cannot be avoided, the PAP should provide an easy-to-understand explanation or definition. When considering the format of PAPs, expertise should be sought from those developing best practice in terms of vulnerable persons. User testing should also be conducted with litigants in person and engagement groups.

In addition to providing parties with more information about what is involved in the PAP process or going to court, there must also be better signposting of support for users who are unable to adequately grasp the process on the basis of information provided on the papers alone. JUSTICE welcomes the inclusion of guidance which explains to users where they can find additional information or support. If forms are to be electronic, then signposting should be provided via hyperlinks. Telephone numbers should also be provided for those struggling to navigate online. Given the work currently being carried out by MOJ in terms of updating certain housing advice sections of the Gov.uk website, JUSTICE recommends that relevant parties work together to ensure that developments with PAPs integrate and line up with developments elsewhere when it comes to providing accessible, understandable information and guidance.

Finally, JUSTICE considers that all PAPs, and especially housing PAPs, should be amended to ensure that they provide the opportunity for parties to provide information about any barriers that they are experiencing which prevent them from engaging with the process, or any reasonable adjustments they may require. This Information should also be collected in claim / defence forms. Ensuring that such vulnerabilities are captured at an early stage in the dispute means adjustments can be provided throughout the dispute process. Were an online PAP portal to be introduced for housing, JUSTICE considers that it should include a section that provides tailored guidance for those who require additional assistance. This could be achieved by ensuring that any decision tree incorporates questions asking whether users require additional support / allow users to identify barriers that they may be experiencing. Were a party to indicate that they have additional support needs – automated signposting could then direct them to appropriate support services. This would also serve to alert the court to measures that they could take to mitigate against vulnerable parties being disenfranchised or excluded.

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

☐ Yes

☐ No

☒ On the one hand, we can see how this would foc

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?

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?

In relation to JR, the benefits of the PAP and early disclosure would be to limit the issues in dispute and to ensure that cases which can be settled are done so at the earliest opportunity. However, there are already clear and distinct rules about pleadings and disclosure for JR claims which should remain because of the unique nature of JR proceedings.

In the context of housing, PAPs provide an opportunity to identify the various clustered issues that commonly lead to housing disputes and are often inadequately explored via the housing dispute process. Please see our response to housing-specific questions below for more information.

## 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.

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?

In relation to Judicial Review, we would have concerns about a defendant being able to extend their response period by 28 days, as the parties cannot presently agree between themselves to extend the time limit for issuing a Judicial Review and the claimant would be understandably concerned about the strict time limits for issuing their claim. As is correctly pointed out in Appendix 8, the properly acting claimant in a Judicial Review cannot assume that the Court will agree to 'stop the clock' and needs to file much of his evidence with the initial claim form. There should be sufficient flexibility that a claimant is able to issue a Judicial Review without fully complying with the PAP process if timing is an issue, though this should not be the norm and will be case-sensitive. If the time limit is approaching, we would agree that it would often make sense for a stay after the claim is issued to allow the PAP process to be completed (unless the matter is urgent), though this is dependent on the facts of the individual case, the Courts approving such an approach and the defendant(s) being co-operative.

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'.

In relation to Judicial Review, we have made detailed submissions about the duty of candour below. In summary, we consider that it would be helpful to clarify at what point during proceedings the duty of candour arises. In our view, the duty of candour should commence once the PAP process has begun because transparency in decision-making is positive for public administration, it assists narrowing or resolving disputes and because meritorious claims may be refused if relevant information is withheld before a decision on permission is made.

However, we acknowledge that the intensity of the duty should vary according to the stage of proceedings. At the pre-action stage, the public authority should be required to provide information and documents which are proportionate and properly necessary for the claimant to understand why the challenged decision has been taken and/or to present the claim in a manner that will properly identify the issues, unless there is good reason for it not to do so.

## 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

## Housing Protocols

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

☒ Yes

☐ No

30. Disrepair/Housing Conditions PAP - Do you agree that large corporate landlords should be required to publish an address to which PAP letters should be sent?

☒ Yes

☐ No

☐ Other

31. Landlord Possession Claim PAP - Do you agree that the existing PAP should include information for landlords relating to the rules and procedure when a Defendant may lack capacity?

☒ Yes

☐ No

☐ Other

32. Do you agree that the existing PAP should be amended to require landlords to file a checklist at court when issuing a claim, confirming compliance with the PAP and/or that the Claim Form or Particulars of Claim be amended to require the landlord to confirm compliance?

☒ Yes

☐ No

☐ Other

33. Do you agree that the Landlord Possession PAP should be extended to apply to possession claims brought by a private landlord (with the exception of claims brought under the accelerated procedure)?

☐ Yes

☐ No

☒ JUSTICE supports the proposal to introduce a PA

34. If so, do you agree that such a PAP should include information for landlords about the rules as to which bodies are authorised to conduct litigation?

☒ Yes

☐ No

☐ Other

35. Do you agree that the existing PAP should apply to claims for possession on grounds other than rent arrears grounds?

☒ Yes

☐ No

☐ Other



36. Mortgage Possession PAP - Do you agree that the PAP should be mandatory?

- ☐ Yes
- ☐ No
- ☒ In principle, JUSTICE agrees that making it mandatory

37. Do you agree that the PAP should apply to all mortgage possession claims relating to residential property, including 'buy to let' mortgages?

- ☐ Yes
- ☐ No
- ☐ Other

38. Do you agree that the PAP should be amended to require that occupiers are notified of steps taken under the Protocol that are likely to lead to a possession claim being made?

- ☐ Yes
- ☐ No
- ☐ Other

39. Do you agree that the PAP should be amended so as to provide standard information to borrowers about the powers of the court?

- ☒ Yes
- ☐ No
- ☐ Other

40. Do you agree that the PAP should be amended to require lenders to write to the borrowers to inform them of the time and date of the hearing and the importance of attending?

- ☒ Yes
- ☐ No
- ☐ Other

41. Do you agree that the PAP should be amended to make reference to other forms of ADR available, such as the Business Banking Resolution Service?

- ☒ Yes
- ☐ No
- ☐ Other

Judicial Review Protocol

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

☒ Yes

☐ No

43. Do you agree or disagree with the approach set out by the subcommittee in chapter 4?

JUSTICE largely agrees with the approach set out by the sub-committee. In particular, the sub-committee was correct to state that a “higher degree of flexibility and a less rigid mandatory approach” is required in the Judicial Review PAP Protocol (“PAP”) process.

JUSTICE does not object to making the PAP process mandatory, given that there is already an expectation that it should be followed (and there can be costs or other consequences for not doing so). However, it should be made clear this applies to both the claimant and the proposed defendant. It should also be emphasised that this does not apply in urgent cases, where immediate court action is necessary, and the urgent courts procedure should continue to apply.

If the time limit is approaching, we would agree that it would often make sense for a stay after the claim is issued to allow the PAP process to be completed (unless the matter is urgent), though this is dependent on the facts of the individual case, the Courts approving such an approach and the defendant(s) being co-operative. We would have concerns about a defendant being able to extend their response period by 28 days, as the parties cannot presently agree between themselves to extend the time limit for issuing a JR and the claimant would be understandably concerned about the strict time limits for issuing their claim. There should be sufficient flexibility that a claimant is able to issue a Judicial Review without fully complying with the PAP process if timing is an issue, though this should not be the norm and will be case-sensitive. As is correctly pointed out in Appendix 8, the properly acting claimant cannot assume that the Court will agree to ‘stop the clock’ and needs to file much of his evidence with the initial claim form.

JUSTICE agrees with the principles behind the “good faith” duty and sees no reason why it could not apply to JR. We would agree that, within JR proceedings, it should be flexible and avoid prescriptive steps. The stocktake duty would be impractical and should not apply, for the reasons you have set out. The permission stage would be a useful time to consider the appropriate sanctions for non-compliance with PAPs.

JUSTICE would also emphasise the importance of a balance between a requirement to provide early disclosure and costs at the pre-action stage remaining proportionate (especially when the claimant has limited funds). It is important that claimants are not discouraged from pursuing meritorious JRs because of defendants incurring sizeable costs at the pre-action stage. In relation to a summary costs procedure, we consider that current public law practitioners are best placed to respond on the effectiveness of what is proposed.

Finally, JUSTICE would stress the importance of there being properly funded legal aid available for any new PAP process. It is submitted that proper legal representation at the pre-action stage could assist everyone by narrowing the contested issues and even reducing the need for litigation if possible. We agree that it is imperative that the MoJ should urgently review the availability of full representation legal aid funding at the PAP stage of JR litigation. Implementing reforms, without simultaneously ensuring that adequate provision of legal aid is available, risks undermining any amended PAP process and claimants’ ability to pursue JR. We are also concerned that, without this, there may not be legal aid costs protection for PAP work should there be a summary costs assessment.

44. Are there any factors specific to JR that should be considered?

We consider that it would be helpful to clarify at what point during proceedings the duty of candour arises. At present, it is not clear whether, and to what extent, the duty of candour arises prior to permission being granted. The Treasury’s Solicitors Guidance states that it applies “as soon as the department is aware that someone is likely to test a decision or action affecting them” and that it applies at every stage, including the pre-action stage. However, the authorities are less clear on whether, and to what extent, the duty arises prior to a grant of permission.

The point at which the duty arises has significant implications for judicial review. For example, if the duty only arises after permission is granted, this may require a claimant to take a significant costs risk without understanding the full context of the decision. In our view, the duty of candour should commence once the PAP process has begun because transparency in decision-making is positive for public administration, it assists narrowing or resolving disputes and because meritorious claims may be refused if relevant information is withheld before a decision on permission is made.

However, we acknowledge that the intensity of the duty should vary according to the stage of proceedings. We suggest, at the pre-action stage, in accordance with the pre-action protocol, the public authority should be required to provide information and documents which are proportionate and properly necessary for the claimant to understand why the challenged decision has been taken and/or to present the claim in a manner that will properly identify the issues, unless there is good reason for it not to do so.

We are also already concerned that claimants have limited time to file a judicial review, especially when the matter is publicly funded given the delays in decision-making by the Legal Aid Agency. Research by Bondy and Sunkin (UK Constitutional Law Association Blog, January 2013) found that practitioners who act for both the Government and claimants felt that the three-month time limit often cut short negotiations which could have resulted in an out-of-court settlement. Constraining the ability of parties to comply with the PAP process is counterproductive as, even when it does not lead to settlement, it can play a valuable role in clarifying issues, enabling robust advice on the merits of a claim and reducing late amendments of claims. This helps the courts and all parties deal with Judicial Reviews more efficiently. We oppose any further cuts to time limits on this basis and recognise that claimants need confidence that they will not be penalised on timeliness for engaging substantively with the pre-action process before issuing their claim.

45. Do you agree or disagree that there should continue to be a separate and bespoke PAP for judicial review?

☒ Agree

☐ Disagree

☐ Other

46. What elements of the proposed General Principles in Chapter 3 do you consider it is possible and/or desirable to include in the JR PAP?

Despite its unique status, we would largely agree that the Judicial Review PAP process can follow the general principles set out in Chapter 3 of the review if those principles can be applied flexibly.

Judicial Review is recognised as a remedy of last resort and should not be commenced if there is an alternative remedy. Unless the matter is urgent (where there is rightly a separate procedure), there is already an expectation that a pre-action process will be followed before a Judicial Review is issued. Expressly referring to this in the Overriding Objective seems a sensible clarification.

We would emphasise the importance of the pre-action process being accessible and having clear guidance on what should be included (and the consequences of providing false information), particularly for litigants in person. We would also strongly support the recommendation that all public bodies should be required to publish, in a clear and accessible location (such as their website), the correct address for sending pre-action letters of claim.

Whilst the principles behind a “good faith” obligation to narrow or resolve a dispute are relevant, it should be remembered that JR is unique because litigation is already required to be a remedy of last resort and there is a permission stage to filter unmeritorious claims. Whilst there could potentially be a role for dispute resolution, given the tight timeframe for claimants and issues of wider public importance, this should not be prescriptive. Similarly, many of the “good faith” steps set out are likely to be impractical in a JR context where there are strict time limits and summary grounds of defence are due within twenty-one days of a claim being issued.

JUSTICE would also agree that the courts should be able to impose sanctions for non-compliance with the pre-action process; though this will depend on the seriousness of the breach, the reason for non-compliance and the full circumstances (including the wider public interest of the claim). This should include where a pre-action letter or response is plainly inadequate and does not provide the other party with clear information about the nature of their claim or response to it. This should ensure that the pre-action process is not a ‘box-ticking’ exercise. We would agree that leeway should be expressly given to litigants in person, especially where the breach is due to a lack of legal knowledge. It is also important that consequences for non-compliance are set out clearly in the guidance. The permission stage seems an appropriate time to deal with these issues, however it may need to be considered earlier should interim relief or other preliminary hearings (such as a disclosure request) be required.

## Debt Protocol

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

- ☐ Yes
- ☒ No

## Construction and Engineering Protocol

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

- ☐ Yes
- ☒ No

## Professional Negligence Protocol

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

- ☐ Yes
- ☒ No

## Proposed low value small claims track

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

☐ Yes

☒ No

### Any other comments

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

JUSTICE would like to draw the CJC's attention to its long-term proposal, contained within its Solving Housing Disputes report, for a new, one-stop shop model of dispute resolution for housing, the Housing Disputes Service (the 'HDS'). It is envisaged that the HDS be fully integrated with the court process and therefore PAPs and the CJC's proposed PAP portal have a crucial role to play in encouraging engagement with ADR as part of systems like the HDS. The HDS seeks to intervene early at the pre-action stage of a housing dispute, investigate the underlying issues that give rise to the claim (e.g., welfare and benefits issues, debt issues and mental health needs) and provide holistic support to achieve lasting solutions.

By doing so, the aim of the HDS is to de-escalate housing disputes, 'nip problems in the bud,' and thereby sustain relationships between tenants and landlords, mortgage lenders and debtors, beyond the lifetime of the dispute.

The proposal for the HDS envisages incorporating elements of ADR models utilised elsewhere in the justice system, at home and abroad, to resolve disputes through a staged approach. Following a holistic investigation, there would be an initial and provisional assessment (providing a preliminary view of what should follow from it in terms of resolution), before moving on to an ADR stage (employing several ADR methods including open discussion, negotiation, and mediation) and if necessary, concluded by final determination.

To help identify the underlying issues and ensure that parties have access to expert advice and support, the HDS would be serviced by a range of professionals from various sectors such as housing, benefits, and the health sector as well as legal experts funded by separate legal aid contracts. The involvement of such persons also performs a crucial role in ensuring fairness – especially in circumstances where there might otherwise be an imbalance in resource or power between parties.

Rather than being seen as an alternative to court, it is anticipated that in its final form, the HDS would become fully integrated as a mandatory first step in the current court process. JUSTICE recommends that it become fully integrated by replacing the role of the First-tier Tribunal (Property Chamber), the County Court and Magistrates' Court in housing disputes and that it takes on the DR function from redress providers and tenancy deposit schemes. Doing so ensures that the HDS becomes an effective, streamlined mandatory gateway, replacing parts of the existing court pathway. Parties' right to progress their claim in the way they see fit would be retained through the right of appeal from the HDS to a court or tribunal for a final determination.

JUSTICE considers that creating online portals such as the one proposed by CJC for PAPs will provide excellent opportunities to not only streamline the pathway between pre-action ADR and the court process, but also provide valuable data in terms of how such portals best suit the needs of parties. The increased use of PAPs and PAP portals in housing will also influence and evidence proposals for the HDS. For example, it is anticipated that online pre-action or claim portals might be expanded to serve benefits in terms of information provision and signposting services. It is envisaged that such portals will continue to feed into proposals for a new form of ADR for housing disputes, along the lines described above.

