

20th January 2022

Judicial Office
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Strand
London WC2A 2LL
[REDACTED]

Dear Civil Justice Council

LMA response to review of Pre-Action Protocols Interim Report

The Lloyd's Market Association (LMA) represents the 52 managing agents at Lloyd's, with 93 active syndicates underwriting in the market, and also the three members' agents which act for third party capital. Managing agents are "dual regulated" firms by the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA) and members' agents are regulated by the FCA. For 2021 the premium capacity represented by our members totalled £36.5bn. We expect similar estimated figures to be announced for the year 2022. Lloyd's underwriters have extensive experience writing lines of business such as personal injury, disease and illness, professional negligence and construction and engineering. Lloyd's syndicates' claims and legal specialists have experience of many of the Pre-Action Protocols being consulted on and are able to provide extensive insight as to how these changes would affect the types of claims they deal with

Summary

We welcome and support the CJC's initiative to strengthen the Pre-Action Protocol process as we consider it is in both insurers and insureds interests to resolve disputes quickly to reduce costs and concerns about the length of time taken to settle claims. It is also in insurer's interests when acting as claimants in subrogated claim matters to recover sums from third parties for them to be concluded efficiently and this is likely to lead to reduced claims costs.

We are supportive of the suggestion of a mandatory good faith requirement subject to more detail as to exactly what is envisaged (see response to question 15), and a joint stock take at the close of the process (again subject to more detail as to how this exercise can be ensured to be short and cost effective). We feel that the inclusion of these steps could certainly help in achieving the overarching objective.

The area where we have significant concern is on the proposals regarding the defendants' time frame for reply, which we believe to be impracticable. We believe that, given the only allowing a defendant 14 days to reply to a Claimant's case at this stage is likely to hinder the settlement process as it will not allow the defendant to prepare a substantive response to allow the dispute to be properly discussed in the settlement process.

We would also like to stress that whatever changes are recommended need to be drafted and then enforced in a manner that will reduce litigation and costs for the parties. If the changes increase front end costs at the pre-action protocol stage but do not encourage settlement (for instance by creating a mini- court process prior to commencement of proceedings) this will be counter-productive, and could ultimately result in increased costs being passed onto insureds.

Below we provide detailed response to the consultation questions.

Review of the Pre-Action Protocols – Interim Report

- **Your response is:**
 - Public
- **Your first name**
[REDACTED]
- **Your last name**
[REDACTED]
- **Your location (town/city)**
 - London
- **Your role:**
 - Legal
- **Your job title**
[REDACTED]
- **If relevant, whose interests to you predominantly represent?**
 - Claimants
 - Defendants
- **Your organisation**
 - Lloyd's Market Association
- **Are you responding on behalf of your organisation?**
 - Yes
[REDACTED]
- **Do you agree that the Overriding Objective should be amended to include express reference to the pre-action protocols?**
 - Yes

The pre-action protocols already contribute to most of the aims set out in the Overriding Objective. However, we agree that it would be better if there was express reference. We would suggest both CPR 1.3 and CPR 1.4 should expressly mention the pre-action protocols.

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?

We agree that compliance with pre-action protocols should be mandatory except in urgent cases. It would be useful if the protocols could set out instances agreed to be urgent as a guideline to claimants in assessing what is urgent and appropriate sanctions in the event that the claimant fails

to make a reasonable assessment that a case needs to be commenced without complying with the PAP. Where a case is too urgent to avoid commencing proceedings, we consider the parties should be able to agree to suspend the proceedings to enable them to go through a PAP like procedure, however, this should not be compulsory.

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

We agree that there should be online pre-action portals for all cases where there is an online court process and that the systems should be automatically accessible to the Court. Creating such a system should:

1. Promote compliance with the pre-action protocols.
2. Assist litigants in person.
3. Improve consistency of approach.
4. Reduce the administrative burden placed on those using the system.

We would note that the Ce-file platform is generally quite satisfactory for the online filing of documents, and users of the Commercial Court particularly with online hearings, where good-quality electronic bundles have been more important than ever during the pandemic. Our members' experience is that the system is effective. Users have, however, seen litigants-in-person struggle with the existing Ce-file platform.

From a technological perspective, we would note that if the Ce-file platform, or something similar, was to be used to also host PAP information:

- the Ce-file platform includes some features which are relatively straightforward to legal professionals but might not be for litigants-in-person (for example, on the current platform, the range of filing categories is not exhaustive and it might prompt confusion from inexperienced users if their 'category' of filing is not immediately apparent). This might increase if an online platform is also used for PAP information, given the potentially-broader range of items that parties might wish to exchange. We have seen litigants-in-person struggle with the platform, hence they are not currently obliged to use it in the Commercial Court; and
- if a platform such as Ce-file is used to facilitate the exchange of PAP information, it should be clarified whether filings would be subject to admin approval (as on Ce-file) or whether the parties could unilaterally upload material. The latter approach would align more closely with the intention and nature of the PAP, but we note there may be technological limitations to what can be uploaded. In particular, our experience of Ce-file has been that the 50mb upload size limit is usually appropriate for largely-text-based litigation filings, but it may be too small for PAPs where the parties are often sharing files directed more at ascertaining facts (e.g. videos or images, as well as text, which can be much larger). The technical limitations of any online platform must not inadvertently constrain the substance of the PAP process.

The interim report has already mentioned that the accuracy of the portal would be maintained by the Online Procedure Rule Committee (if approved by parliament). We would want the system to be centralised and created in a user-friendly format. If this is not achieved, then a portal could easily become an expensive hindrance. It needs to be accessible to all litigants in person, including those not computer literate.

There will need to be consideration of privacy, ensuring that documentation is confidential to the PAP parties and not accessible by third parties. There will need to be a very clear section for without prejudice correspondence that is not accessible to the Courts and gives adequate guidance to the parties as to what can be designated without prejudice.

The Courts should give clear guidance as to what actions they would take if an accidental failure of the system/process led to the release of confidential documents, both in terms of the impact on the proceedings and more generally. Under the Ce-file process, for example, some of our members have seen parties reluctant to file confidential documents (e.g. settlement agreements) due to their perception that these documents might inadvertently be made public through an error on the part of HMCTS' administrative processes.

We would also suggest that in assisting the litigants in person, the system should emphasise the duty of the parties to tell the truth. Highlighting the *Jet2 Holidays Ltd v Hughes* [2019] EWCA Civ 1858 judgment, the system should contain warnings that being deliberately misleading through the process could carry costs penalties or amount to perjury.

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 the existing Part 8 procedure, in theory, covers most situations. However, the apparent current lack of use in relation to the PAP stage suggests that it would be better to have a specific procedure. It would also be helpful to have more specific provisions as to what costs can be recovered and perhaps the Courts could consider making these more biased to the defendant than might be the case after commencement of proceedings to encourage settlement.

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.

We agree that in principle pre-action protocols should include a mandatory good faith obligation to try to resolve or narrow the dispute. However, we believe that this obligation as currently articulated is too vague for us to properly consult with our members on. It is not clear as to what lengths the parties would need to go to, to avoid a breach of the duty. It isn't clear whether this would be a legal duty or something else. We would be supportive of a very restrictive definition and guidance as to how the courts expect parties to act in a good faith manner as well as highlighting what could constitute a breach. There would need to be a clear indication as to where the bar is to be set. A lack of clear definition in this principle could lead to satellite litigation. Furthermore the duty needs to be clearly differentiated from the insurance principle of good faith and clear that a breach does not amount to bad faith. Our members are concerned that this could be used in satellite US litigation. In summary we would want to understand how the duty of good faith would be defined- i.e. would the standard be the reasonable person looking at what has passed between the parties in the PAP phase or some other standard?

On the assumption that it can be appropriately delineated the mandatory good faith obligation should apply in all cases.

However, we consider that it should be clear that it is not anticipated that there can be a breach of the duty where a point of law has arisen that requires judicial determination, nor where the issues in dispute are entirely binary and not capable of being compromised or narrowed.

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 to 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

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 6.

We agree that it would be beneficial if there was a requirement to complete a joint stocktake report. Recording pre-action disclosure may, in certain cases, remove the need for a formal disclosure stage or at least narrow its scope. The main concern would be to ensure that such a step is not overly burdensome.

It should not apply in relation to the judicial review protocol or the proposed low value small claims track protocol.

In terms of the template, we consider that section 2 where there is reference to whether or not there has been an offer of compromise is too vague and will lead to disagreement between the parties, particularly in light of the good faith obligation being considered. We would like the form to refer to whether or not a formal Part 36 offer has been made to encourage use of these and draw them to the attention of litigants in person as a way of encouraging settlement.

Our members have commented that this process needs to be kept very simple to avoid significant costs being incurred in parties trying to agree the joint stocktake.

18. Do you agree with the suggested approach to sanctions for non-compliance set out in general principles from para 3.26? 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?

We agree that the courts should have this power to strike out a claim or defence but expect that, if courts are encouraged to use the other enforcement powers they already have, there is likely to be a reduction in non-compliance with the PAP procedures. There will need to be consistency and guidance as to the test for "grave 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?

We believe that the issue of PAP compliance should be expressly dealt with in all Directions Questionnaires.

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?

We agree that the PAPs should contain a clear steer.

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?

The Pre-Action protocols should include a statement, identically worded and prominently positioned, which summarises the court's powers to impose sanctions for non-compliance and the nature of the sanctions available. It should also mention that when imposing a sanction that should in most cases be imposed at the start of the proceeding, not the end, unless the court considers there to be good reason to postpone the issue. As the Interim Report notes, there is an inconsistency across the current PAPs in terms of the "ADR" wording and the positioning of that wording within the Protocol. Some effort to improve clarity would be sensible.

e) Whether you believe a different approach to sanctions should be adopted for any litigation specific PAPs and, if so, why?

We believe that the current available sanctions are sufficient.

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

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.

Pre-Action protocols should be clear, comprehensible and as user friendly as possible. We agree there could be improvements in terms of length, consistency and language.

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

- No

We do not believe that a statement of truth should be required at the pre-action stages. Attaching a statement of truth could incentivise parties to make the documents more vague and overly cautious in the pre-action stages. It may also lead to front loading of legal costs and earlier instruction of lawyers due to the severe consequences of getting something wrong. This could inadvertently deter settlement. There will need to be a statement of truth if the PAP documentation is subsequently used after commencement of proceedings.

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 agree that this rule should be adopted in other pre-action protocols. The consultation correctly makes the point that a court can already take into account a party's change in position when giving directions as part of its overriding obligation to deal with cases justly and at proportionate cost. We consider adopting this rule specifically might be counter-productive in leading the parties to be conservative in how they put their case in the PAP stage and hinder a narrowing of the arguments being run as a consequence of information received at the PAP stage.

We have not been able to establish why this rule was introduced into the professional negligence protocol and perhaps an explanation would assist us in understanding the proposal that it should be adopted more generally. .

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?

We agree that, where appropriate, certain pre-action protocol steps could be used to replace or truncate the procedural steps parties must follow should litigation be necessary. We would expect, however, that there would be certain safeguards in place (for instance, a party should be entitled to re-plead their case without the leave of the court should they wish to do so with appropriate costs consequences should this not ultimately be found to have been necessary) and the court should retain the power to order conventional pleadings where appropriate.

Similarly, in relation to disclosure, we agree with the interim report's suggestion that parties who have complied with the relevant pre-action protocol should have the option not to provide any further disclosure. The exception would be where the courts believe there is a need to order specific disclosure.

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.

We would support a general pre-action protocol being introduced and a requirement that where no specific protocol applies, or where the parties are unclear on which protocol should apply, then the parties must comply with the general pre-action protocol before starting proceedings. We would ask the CJC to consider in the future whether a general pre-action protocol may be used to as the primary PAP, replacing specific protocols and streamlining the system. This could potentially assist litigants in person by reducing the amount of graduality and complexity they would experience when bringing a claim.

26. Do you agree parties should have 14 days to respond to a pre-action letter of claim under the general pre-action protocol, 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 counter claim. If you do not agree with these timeframes, what timeframes would you propose?

We agree that 14 days would be appropriate in terms of a standard response time for a defendant to acknowledge receipt of the pre-action letter of claim and confirming that they intend to issue a pre-action defence statement or counterclaim.

However, we do not agree with the proposed timeframes with regards to producing the pre-action defence statement and/ or counter-claim. A claimant is able to take an unlimited amount of time (subject to time bar) to work on their claim. A claimant is able to investigate, gather documentation and obtain the services of an expert. At no point will the claimant be obliged to alert the defendant that they are taking any of these actions until the letter of claim is issued. Allowing the defendant only 14 +28 days to respond in comparison, does not seem equitable and is counter to the overriding objective of fairness.

We feel it is likely to hinder settlement rather than encourage it, if the defendant is not given sufficient time to respond and obtain appropriate expert evidence. We agree with the ABI's position that 3 months is the minimum time that should be allowed.

We would also suggest that the Claimant should have to consider a request for an extension as part of their duty of good faith, so that if the defendant has presented a good case for an extension to allow a proper PAP process to take place and the Claimant refuses reasonably to agree the extension, it can be considered a breach of their duty of good faith.

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’?

We support the idea that the general pre-action protocols should incorporate a standard for disclosure. We believe that the standard test of disclosure found in CPR 31 would be the best option, allowing our members to properly respond to the issues being raised. We consider that having to produce known adverse documents would be compatible with the proposed duty of good faith.

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

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

31. Do you agree that all PI protocols should include an obligation to 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?**

We agree that all PI protocols should include an obligation to complete a joint stocktake report/list of issues. It should be required after ADR, should the parties elect to engage in ADR. We agree that the purpose of informing the court of what had been agreed and narrowed is beneficial to the process. We ask that this is created in such a way as to avoid being burdensome or a tactical move as discussed in previous questions. The joint stocktake report/list of issues should also be filed with the Directions Questionnaire.

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

We agree.

- a) How could there be effective, referencing to and integration with the Serious Injury Guide where appropriate?**

We agree the incorporation of a statement, under a clear sub-heading “Conduct of cases involving serious injury” early in the PAP, which directs parties to the Serious Injury Guide would be effective.

- b) How can the current protocol be updated to reflect moderately severe cases as well as catastrophic injury cases despite workflows for each being significantly dissimilar?**

We consider that the Protocol is sufficiently flexible to accommodate a range of injury values and integration of the Serious Injury Guide, as referred to above, provides the additional process requirements needed to

manage large and catastrophic injury claims. We suggest greater sub-division within the PAP to accommodate the different types of cases.

33. Do you agree that there should be better integration of each protocol with the Rehabilitation Code? If so, should the protocol 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.

The Rehabilitation Code is already referenced at section 4 of the personal injury Protocol. We consider that it is adequately integrated. This would be strengthened, for cases at the higher end, by incorporation of the Serious Injury Guide as discussed in response to Q32 (a).

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

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

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?

We agree that the management of disclosure pre-issue needs to be strengthened. There should be the same obligation on both parties to give reasons as to why a document is not relevant/ should not be disclosed. There is a need to improve judicial monitoring of adherence to protocols in addition to greater consistency in enforcing compliance.

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

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

- Yes

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

- No- we do not consider that a specific protocol is required.

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

41. Should the personal injury 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?

We agree that the personal injury pre-action protocols should deal with this question out of fairness to defendants. It is not appropriate for there to be no consequences if a claimant representative delays service until it is too late in the protocol period for the defendant to have any realistic prospect of responding. This should also discourage expert shopping and enforcement of 7.3 of the personal injury protocol.

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

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

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 believe that, if it is necessary to obtain expert evidence, then the parties should consider using a single expert. This would allow them to be jointly instructed and the cost shared equally between the parties. We consider that the use of a single expert may not be appropriate in some cases so we would not support making use of a single expert mandatory. However, it should be standard practice for the parties to consider using one. It should also be allowed that the defendant can seek their own medical expert evidence, if the claimant delays the process of gathering an expert for a significant period of time. This would enable the defendants to obtain sufficient information to take a pragmatic view on the claim at an early stage.

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

- No- we agree with the FOIL position on this.

Questions specifically related to housing protocols

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

- No

Questions specifically related to the JR protocol

59. Do you wish to answer questions about the judicial review protocol?

- No

Questions specifically related to the debt protocol

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

- No

Questions specifically related to the construction and engineering protocol

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

- Yes

71. Would you support aligning the time limits for responding to the pre-action letter of demand to those suggested for the revised general PAP (14 days with a right to extend for a further 28 days to obtain further information)?

- Other

We disagreed with the time limits proposed for the general PAP and also disagree for this PAP. We would support the deletion of Clause 10.1 of the Protocol, to bring it in line with the other PAPs.

The proposed tighter time limits would be prejudicial to the resolution of claims against construction professionals. This is because:

- While it might be appropriate to impose a strict time limit in relation to contractual disputes under a construction contract which contains a detailed framework for raising and dealing with issues relating to delays, payment and defects correction during the life of the project. It is, however, not workable in relation to claims against construction professionals. Our member's experience is that such claims are frequently made with little prior notice.
- Claims against professionals are frequently brought as third party or contribution claims. If the main claim has to go through the Protocol process over a short time frame there is a real risk that this will need to proceed to litigation before there is sufficient time to set up a proper mediation involving all relevant parties
- Our member's experience is that Letters of Claim under the Construction Protocol have become much less informative, are not supported by expert evidence and frequently do not set out all of the key ingredients of a professional negligence claim. The result is that time is needed to demand information and documentation which brings the Letter up to the level of particularisation needed for a proper Letter of Response to be prepared to give the opportunity for ADR to succeed.
- Construction professionals usually have Insurers who need to be notified, and coverage and the incurring of defence costs needs to be confirmed. This can take considerably more than 14 days in itself.
- The authorities make it clear that expert evidence is critical to the resolution and adjudication of claims of professional negligence. In specialist cases or in matters where there is a high demand for expert support the Protocol it needs to include realistic timescales for the production of Letters of Response, whether that is to the primary claim or a counterclaim.

72. Do you support the retention of the referee procedure?

- No strong opinion

Our member's experience is that the referee procedure is rarely used.

73. Would you support the formal incorporation of a standard of disclosure and, if so, which standard?

- Yes.

Questions specifically related to the professional negligence protocol

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

- Yes

75. Would you support aligning the time limits for responding to the pre-action letter of claim to those suggested for the revised general PAP (14 days with a right to extend for a further 28 days to obtain further information)?

- No

For all the reasons already articulated in this response, we consider that 14 days is not sufficient time for the Defendant to engage with its liability Insurers, and makes no allowance for the fact that key individuals within the Defendant may be on leave or be engaged in urgent matters/ have a large case load to handle which will require reorganisation to respond effectively to the claim. The Professional Negligence PAP currently envisages a further step between Letter of Claim and Letter of Response. This is considered important because it gives the professional time to notify its insurers, for coverage to be evaluated and for defence lawyers and experts to be appointed. It is unclear what would happen to this part of the Protocol if the 14 days proposal was to be implemented.

We anticipate that the likely outcome is that it will force the Defendant to produce a Letter of Response which amounts to little more than a broad rebuttal, which complies with the letter of the PAP but does not sufficiently set out the defendant's issues for ADR to be successful.

We also believe that the proposed change will work inequitably as between the parties. In particular:

- Our member's experience is that it is not uncommon for a pre-action letter of claim to come as a surprise to a Defendant.
- The reality is that a Claimant can spend many months preparing its claim. Requiring the Defendant to provide a substantive answer to such a document within 14 days is unrealistic and unfair.
- Limiting the automatic extension of the period for response to 6 weeks to cases where expert evidence is required or where the Defendant needs to gather more information is unhelpful, for the following reasons:
 - It effectively compels the Defendant to call expert evidence to gain the time to disprove an allegation of breach in circumstances where there is no current requirement for the Claimant to adduce such evidence to support it;

- It assumes that in professional negligence cases there are specialist experts that can easily be sourced and briefed, with a view to investigating and reporting on a claim within 6 weeks. This is not our member's experience.
- As we have already set out it is likely to impede early settlement as the issues will not be clearly defined by the time that the Letter of Response is served for ADR to have its best prospect of success. This will be particularly problematic when the Letter of Claim is not sufficiently particularised and there is no provision for the time for Response to be extended while better particularisation is provided,

Yours Faithfully

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]