View results

Respondent

[redacted]

[redacted]

Time to complete

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.

About the Civil Justice Council:
The Civil Justice Council (CJC) is a non-departmental advisory body, which was established by the Civil Procedure Act 1997, to advise the Government and the Judiciary on the civil justice system in England and Wales.

For information about how the CJC handles your personal data, please see our privacy notice at https://www.judiciary.uk/wp-content/uploads/2019/12/CJC-PRIVACY-POLICY-Nov-2019-f.pdf.

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Consultation responses are most effective where we are able to report which consultees responded to us, and what they said. If you consider that it is necessary for all or some of the information that you provide to be treated as confidential and so neither published nor disclosed, please contact us before sending it. Please limit the confidential material to the minimum, clearly identify it and explain why you want it to be confidential. We cannot guarantee that confidentiality can be maintained in all circumstances and an automatic disclaimer generated by your IT system will not be regarded as binding on the Civil Justice Council.

Alternatively, you may want your response to be anonymous. That means that we may refer to what you say in your response, but will not reveal that the information came from you. You might want your response to be anonymous because it contains sensitive information about you or your organisation, or because you are worried about other people knowing what you have said to us.

We list who responded to our consultations in our reports. If you provide a confidential response your name will appear in that list. If yo
is anonymous we will not include your name in the list unless you have given us permission to do so.

More options for Responses

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 *

[redacted]

3. Last Name *

[redacted]

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

[redacted]

5. Your role *

- ◯ Judge
- ◯ Lawyer
- ◯ Insurer
- ◯ Paralegal/Legal Assistant
- ◯ Litigant
- ◯ Policy maker/civil servant
- ◯ Other

6. Your job title

[redacted]

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

- ◯ Claimants
- ◯ Defendants
- ◯ Not applicable

8. Your organisation

Feltons Law

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

- ◯ Yes
- ◯ No

10. Your email address *

[redacted]

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
- ◉ It is of no consequence because litigants in persc

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?

I repeat my comments above, yes they should be mandatory compliance however litigants in person are unaware of the protocols, if they are aware they don't understand them and when we get in front of the court the court does not sit through because they are poor hard done by litigants in person

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.

Yes. There should be a costs penalty, especially in small claims, where a defendant ignores any pre-action protocol letter and simply holds out until judgment is entered. In the most basic terms it's cheap money to delay payment having particular regard to the delays and the court process generally. The judiciary are loath to properly exercise their discretion with regards to costs in circumstances where a party has acted unreasonably and simply required court action before payment is made

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 are there are any cases and protocols in which it should not apply.

Is there not good faith obligation in any event? How will this be enforced? This is the purpose of litigation when a court decides whether a party has acted in good faith or not. Parties tend to be entrenched in their position which is why the litigation process is engaged. We know the parties do not agree it doesn't matter how many times you ask them to agree they will not. This is just another delay in the process

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
- ◉ The issue arises from litigants in person. Many of

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.

No, what would be of significantly better use would be a pre-trial review by the court. There is no reason why these should not be undertaken by remote hearings, in the famous words of the bionic man "we have the technology". Why do we need this handholding? The parties will know where they agree and where they disagree, where there is disagreement that is the purpose of the litigation. The insertion of a hearing before a member of the judiciary who is considered to be unbiased is essential

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?

All the sanctions in the world are only of any application when the judiciary apply them. In my experience of dealing with small claims and applications made in the course of enforcement, significant time and court resource could be saved if the court actually engaged its case management powers at the outset. I am frequently faced with claims which fail to comply in any meaningful way with CPR 16. When this is raised with the court the stock answer is make an application. Why should I do the court's job on its behalf at significant expense to my clients. These are matters which should properly be dealt with at a very early stage.

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
- ◉ There is no point when dealing with litigants in p

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.

It's not just vulnerable parties, it's litigants in person generally. One might consider that a vulnerable party was one who was not represented. The point is the litigant in person simply won't comply with any obligation set out in a PAP firstly because they don't understand and secondly because they want their day in court

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

- ◉ Yes
- ◯ No
- ◯ Other

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?

Any defendant that materially changes its position should be the subject of sanction. The problem is a defendant will ignore any pre-action correspondence and, as I comment above, simply push the claimant into making a claim with a view to avoiding making payment. There should be a costs penalty in circumstances where a defendant ignores pre-action correspondence

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?

No, the parties want their day in court. The way to properly manage cases is for the court to engage at an early stage so that claims which simply don't stand up on their pleadings are filtered out. When I started in litigation, one used to go to court with your claim form and hand it in at the court counter the court counter clerk would read it and if it didn't work would hand it back to you. That filter must have saved enormous amounts of judicial and court time. Instead we now have monosyllabic and entirely unjustified claims issued online which puts defendants to considerable expense. The online court is not even set up for defendants to be represented. The court has case management powers it should do what it is meant to do and not simply try and push everything away. A functioning civil justice system is an essential prerequisite of a functioning democracy

Practice Direction - Pre-Action Conduct

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

- ◯ Yes
- ◉ No

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.

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

- ◯ Yes
- ◉ No

Housing Protocols

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

- ◯ Yes
- ◉ No

Judicial Review Protocol

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

- ◯ Yes
- ◉ No

Debt Protocol

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

- ◉ Yes
- ◯ No

29. Do you support the introduction of a good faith obligation to try to resolve or narrow the dispute and the requirement to file a joint stocktake report, on condition that debtors have access to legal assistance to complete both requirements?

- ◯ Yes
- ◯ No
- ◉ All this will do is increase the costs to claimants a

30. 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 including legal advice)? What changes, if any, would you make to the rules on when litigation can be commenced?

No. This would simply further delay a claimant being paid and increase costs to the claimant which are currently irrecoverable. With the greatest of respect you are missing the point about debt actions. It's really simple you come into my business and asked me to provide goods or services. I provide those goods or services and render an invoice. If you don't tell me there is a problem with the goods or services I can't guess. If you don't pay me I am just being kept out of my money. More often than not there is no dispute it is merely a delaying tactic on the part of the debtor.

31. Do you think the contents of the pre-action letter of claim should be more prescriptive and, if so, what content should be prescribed?

There should be a financial penalty for non-response to the pre-action letter.

32. Do you think the language of the PAP should be made more user friendly and do you support changing the terms creditor and debtor to claimant and defendant?

- ◯ Yes
- ◯ No
- ◉ It doesn't matter whether you call them a credito

33. Do you support integrating the PAP for debt claims into the Money Claims Online (MCOL) portal (or any successor platform)?

- ◯ Yes
- ◯ No
- ◉ Why? By the time you get to the money claims o

Construction and Engineering Protocol

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

- ◯ Yes
- ◉ No

Professional Negligence Protocol

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

- ◯ Yes
- ◉ No

Proposed low value small claims track

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

- ◉ Yes
- ◯ No

37. Would you support the exclusion of the stocktake requirement and the inclusion of the good faith obligation to try to resolve or narrow the dispute in a new PAP for low value small claims case worth £500 or less?

- ◉ Yes
- ◯ No
- ◯ Other

Any other comments

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

The idea of protocols is all very well and good but do not work in practice. The judiciary failed to take any account of non-compliance. The point is that litigation is adversarial. People want their day in court. All the protocols seem to do is to seek to enable the court to delay the issue of process when in fact the court should be actively engaging at an early stage