

## View results

Respondent



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](mailto: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>.

Information provided to the Civil Justice Council: We aim to be transparent and to explain the basis on which conclusions have been reached. We may publish or disclose information you provide in response to Civil Justice Council papers, including personal information. For example, we may publish an extract of your response in Civil Justice Council publications, or publish the response itself. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000. We will process your personal data in accordance with the General Data Protection Regulation.

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 you provide an anonymous response we will not include your name in the list unless you have given us permission to do so.

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 \*

Frances

3. Last Name \*

Lewis

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

[REDACTED]

5. Your role \*

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

6. Your job title

[REDACTED]

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

- ☐ Claimants
- ☒ Defendants
- ☐ Not applicable

8. Your organisation

[REDACTED]

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
- ☐ 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?

Yes. I was taken to court by a dishonest solicitor who showed no regard for the PAPs or indeed, any of the CPRs. It was a false claim for unearned fees (decided by LeO), and in full view of the SRA who had been investigating her for 10 years and even had an advance copy of the bundle. The process took 13 months and involved a significant waste of court time and resources, and was very costly to us. The solicitor filed false evidence (already identified as false by LeO), misdirected the Judge and lied in witness statements. This whole case would have been kicked out at the beginning has there been compulsory compliance with PAP. Despite all this, the solicitor still has a full practising certificate with no conditions on it and is continuing to issue vexatious litigation in full view of the SRA. The SRA should have some power to report this kind of conduct to the court, but it told me it could not get involved.

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.

I am a litigant in person and had to learn everything as i went. I did my best to comply with the CPRs but I found them confusing and difficult to navigate. I submitted costs for what I incurred but the solicitor I was dealing with was obstructive and deliberately difficult. She sent threatening emails. She lied constantly. My costs / time involved escalated because of it. For the appeal (of the decision where she misdirected the judge), she put in a cost statement for £62,000 (a two hour appeal!). There were no consequences for her. She has still not paid our adverse costs order of £5,960. This kind of behaviour should not have been allowed to happen - in full view of the SRA - but as a LiP you don't know what to say to the judge, or what you can ask for.

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.

Yes, absolutely. In our case we chose to use LeO - the PAP says its an alternative to court action, but LeO took 39 months to come to a determination, which is more than half the statute of limitations. The standards of LeO / SRA need to be investigated because there is no accountability in either organisation and both work at a glacial pace. I would be happy to share my story, which is a diabolical indictment of these two organisations which I believe are unfit for purpose.

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.

It sounds like a good idea, but it also sounds expensive. As a LiP you have to hand over responsibility to the represented party and we found that a dishonest barrister (who misdirected the judge) represented a dishonest solicitor (who was representing herself). We didn't stand a chance. We were bullied. The bundles were not fit for purpose (the judge called them "incoherent" and the conduct of the other side was disgraceful throughout. There was nothing we could do. We got blamed for everything. I tried to steer the litigation in the right direction and filed my own bundle but this was not put before the judge. We complained to the court and the behaviour of the court was equally disgraceful and obstructive resulting in a complaint to the parliamentary ombudsman. Solicitors firms acting in litigation should not be allowed to represent themselves - the judge said as much. There should be a gate keeper firm checking the validity of the claim.

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?

I believe the court should have the power to strike out for grave cases of non compliance (which would have to be clearly defined), and for LiP's examples given. The solicitor who filed the false claim would have fallen at the first hurdle and saved a year of everyone's time and costs. There was one vacated hearing (because of her), two two hour hearings + three hours of reading time, 16 court orders, a vexatious interim charging order and numerous email exchanges / telephone calls plus the stress and anxiety we suffered. I do think that PAP compliance disputes should be dealt with at the earliest opportunity - the solicitor served the claim form (deliberately) on the wrong property in order to make a claim for judgment in default. Her conduct was in breach of CPRs and her own professional conduct but we made a mistake (filing the application to dispute jurisdiction one day late) and the court ordered us to trial, without commenting on the solicitor's misconduct. There were no cost sanctions placed on the dishonest solicitor and we were ordered to pay costs. We appealed and won on appeal. None of it should have happened, because it was a false claim for unearned fees, which had been determined by LeO, and investigated by the SRA.

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.

As a LiP I understood the language in the PAP relevant to our case and I asked the solicitor to follow it, but she refused. The Judge wasn't the least bit interested about her failure to comply, and it made no difference to us even though we raised it. We found it very disorientating. We were told we were treated the same as professional litigators but it was the professional litigator who got all the concessions. She lied in witness statements and misdirected the judge - and she is still practising with no conditions on her certificate. In fact she is seeking to launch further litigation against us without following PAP. It will be vexatious and malicious. The SRA/LeO is aware, and yet they have done nothing to assist. They say they can't. They will allow her to waste more court time and resources.

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?

I do. In our case the solicitor claimant was issuing a vexatious claim for unearned fees. The work she claims to have done was done by another SRA regulated firm. She submitted false documents as evidence in the LeO investigation and went on to file them at court (twice). LeO escalated a misconduct report to the SRA and it just ignored it. We suffered a year of trauma and financial expense. It must have cost the justice system tens of thousands, which it will not recover.

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?

I am not a professional litigator so I don't really know. Anything that reduces expense for litigants in person must be a good thing, and of course demands n the court system

## 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

☐ Other

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?

There needs to be legitimate evidence of debt - so that needs to be spelt out. In our case the solicitor submitted false invoices which had not been delivered to us prior to commencing legal action and there was no evidence of any work done. LeO undertook two investigations spanning three years and found no evidence of work done and yet she was still allowed to proceed to court in full view of the SRA who said they could not do anything to intervene - even though it was aware that she had done this before and it was not a legitimate claim for fees (for work done by another legal firm altogether). The SRA / LeO is an absolute shambles. The solicitor was breaking her professional code of conduct and the regulator and the court allowed her to do so.

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?

I am not a professional litigator, but there should be real evidence of the debt owed, not just someone saying that they owe money. The invoice should be shown to be legitimate. Our invoice (which had not been delivered up in advance) had TWO VAT numbers on it, one of them false! The judge said it was a matter for trial when one good look at it would have shown it was not a genuine VAT invoice (confirmed by the VAT authorities). She signed a statement of truth (a lie) but it made no difference. Maybe a barrister would have been able to point these things out to the judge so the judge paid attention, but I was unable to do so (as a LiP)

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

☐ Other

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

- ☒ Yes
- ☐ No
- ☐ Other

### 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

Any other comments

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

Litigants in person are LIPs because they cannot afford legal representation or perhaps because they think they can handle the matter themselves. Perhaps they are LIPs because they cannot find representation (because they do not have a valid claim). If they are defendants, they do need additional guidance (and direction) because the CPRs are disjointed and difficult to follow. Perhaps there should be links to relevant rules (i.e. click here to go to there). There should be a means for getting rid of abusive claims early doors and in our case, where we are being persecuted by a dishonest solicitor the regulator should be able to take action, not just watch her waste more and more court time and resources. You should work with LIPs who have experienced the system - those who have lost and those who have won. In the end, we only won on appeal because we had a direct access barrister. It would have been impossible to win otherwise. There was too much injustice and I was too emotional. I studied the law for a year. I was able to help the barrister with the relevant issues, but when it came to court I was just overwhelmed and my opponent was dishonest, a narcissist and audacious. The SRA has been investigating her for ten years, is prosecuting her before the SDT and still she was doing what she did - she just doesn't care. The fact the SRA has not suspended her practicing certificate or placed conditions on it means that she can continue to behave as she has always done - and there are many court records illustrating the way she has behaved. Her conduct is habitual. If solicitors' firms were not allowed to act for themselves, then there would be a gate-keeper to this kind of conduct. If a solicitor firm represents itself, then it takes charge of the proceedings including the bundle, the chronology etc and the firm can have the advantage (whether dishonest or not). I would be happy to speak to someone about my experiences. It has been a very difficult period of my life and I have lost all faith in justice and the legal profession. The SRA / LeO are not fit for purpose, but no one cares. If you are going to recommend ADR as part of the PAP, then ADR has to be quick - not take place over 39 months. LeO was supposed to be free, but it has ended up costing us tens of thousands of pounds. We wish we had never used it. If you are going to make ADR mandatory, then it needs to be properly resourced and properly run.

