

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 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 your response is anonymous 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.

More options for Responses

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
- ☒ CASEWORKER

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?

YES IT SHOULD BE MANDATORY, MORTGAGE LENDERS IN PARTICULAR SHOULD HAVE EXHAUSTED EVERY AVENUE BEFORE REPOSSESSION, THEY SHOULD IDENTIFY VULNERABLE CUSTOMERS, DOMESTIC/ECONOMIC ABUSE VICTIMS, ANYONE WITH A PHYSICAL OR MENTAL HEALTH ISSUE, AND ASSIST WHERE POSSIBLE. DRAGGING VULNERABLE PEOPLE THROUGH THE COURTS SYSTEM WITHOUT FULL FACTS/ CIRCUMSTANCES, DOES NOTHING BUT CAUSE FURTHER DETRIMENT, AND CAN ADD MANY THOUSANDS OF POUNDS TO SOMEONE ALREADY STRUGGLING.

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

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, ESPECIALLY WITH REGARDS TO REPOSSESSIONS. IN THE CASE OF A JOINT MORTGAGE, THERE MAY BE A CASE OF DOMESTIC/ECONOMIC ABUSE, DIVORCE/SETTLEMENT COURT PROCEEDINGS PENDING, CHILD MAINTENANCE PAYMENTS OUTSTANDING, EX PARTNER WILL NOT REMOVE THEIR NAME OFF MORTGAGE/ DEEDS, ABUSER NOT PAYING THEIR SHARE OF PAYMENTS, THUS CAUSING ARREARS. AWAITING A BENEFIT DECISION/SUPPORT FOR MORTGAGE INTEREST CLAIMS, APPLIED FOR BREATHING SPACE SCHEME/SEEKING MENTAL HEALTH SUPPORT. OBTAINING DOCUMENTS AND EVIDENCE TO SUPPORT CLAIMS, DEBT ADVICE, FINANCIAL OMNUDSMAN DISPUTE, OR APPEAL, AS THIS IS NOT A QUICK PROCESS, ESPECIALLY WITH REFERENCE TO THE ABOVE CIRCUMSTANCES.

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.

YES, AS DUE TO THE ABOVE CIRCUMSTANCES.

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?

YES, COURTS SHOULD HAVE THE POWER TO STRIKE OUT A CLAIM FOR NON-COMPLIANCE. THAT IS THE PURPOSE OF PAP, ALL AVENUES SHOULD HAVE BEEN EXHAUSTED BEFORE ANY COURT ACTION. CLAIMANTS SHOULD DO EVERYTHING IN THEIR POWER TO IDENTIFY VULNERABILITY, AND THE REASONS WHY ARREARS HAVE OCCURED IN THE FIRST PLACE, IF THIS HAS NOT BEEN UNDERTAKEN, IT SHOULD BE QUESTIONED WHY NOT? AN INSTANT HEFTY FINE FOR NON-COMPLIANCE SHOULD BE MADE, REPORTED TO THE FCA (CONSUMER CREDIT) FOR INVESTIGATION, AND COMPENSATION FOR DISTRESS TO DEFENDANT. THEY SHOULD ALSO BE ORDERED TO RETRAIN THEIR VULNERABILITY/LITIGATION DEPARTMENTS. A FINE COULD REDUCE/DETER ANY FURTHER BAD PRACTICES.

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, PAP SHOULD BE INCLUDED IN ALL COMMUNICATION, IN AN EASY TO READ FORMAT, GIVING THE DEFENDANT A CHECKLIST FOR THEM TO SEE IF CLAIMANT HAS FULLY COMPLIED TO ALL PROTOCOLS. THIS COULD GIVE THE DEFENDANT TIME TO QUESTION ANYTHING THAT HAS NOT BEEN OFFERED OR DONE.

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?

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?

BEFORE ANY COURT PROCEEDINGS DATES ARE SET, THE PRE ACTION PROTOCOL FORM SHOULD BE SENT TO NOT ONLY THE DEFENDANT, BUT ALSO ANY ORGANISATION THAT ARE ASSISTING, SO THAT THEY HAVE TIME TO READ AND SEEK BREATHING SPACE SCHEME IF ELIGIBLE.

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?

I DO NOT AGREE. VULNERABILITY HAS TO BE CONSIDERED, ANYONE WITH A PHYSICAL OR MENTAL HEALTH ISSUE/THE ELDERLY MAY NOT BE ABLE TO SEEK ADVICE IN SUCH A SHORT TIME SCALE, OR HAVE THE MENTAL CAPACITY TO DO SO, THE SAME CAN BE SAID FOR DOMESTIC/ECONOMIC ABUSE VICTIMS. AT LEAST 28 DAYS TO RESPOND, THEN AN EXTENSION FOR THE ABOVE.

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

Personal Injury Protocols

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

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

☐ Yes

☒ No

Housing Protocols

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

- ☐ Yes
- ☒ No

Judicial Review Protocol

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

- ☒ Yes
- ☐ No

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

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

VULNERABILITY, MENTAL AND PHYSICAL HEALTH CONDITIONS.

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

- ☒ Agree
- ☐ Disagree
- ☐ Other

34. 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?

Debt Protocol

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

- ☒ Yes
- ☐ No

36. 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

37. 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?

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

IN REPOSSESSION CASES, THE DEBTOR SHOULD BE MADE AWARE OF THEIR LOCAL AUTHORITIES HOMELESSNESS PREVENTION TEAM. BREATHING SPACE SCHEME DETAILS SHOULD BE INCLUDED. DOMESTICE/ECONOMIC ABUSE HELPLINE, ALONG WITH LEGAL ADVICE. PRE ACTION PROTOCOL DETAILS SHOULD BE MADE AVAILABLE ALSO, IE ASK YOUR MORTGAGE LENDER IF YOU CAN CAPITALISE YOUR ARREARS, CHANGE MORTGAGE PRODUCT.

39. 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

40. 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

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

- ☐ Yes
- ☒ No

Professional Negligence Protocol

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

☐ Yes

☒ No

Proposed low value small claims track

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

☐ Yes

☒ No

Any other comments

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

AS A VULNERABILITY CASEWORKER, MYSELF AND OTHERS HAVE ONE AREA IN PARTICULAR THAT WE COME ACROSS QUITE FREQUENTLY, AND THAT IS THE ISSUES SURROUNDING ECONOMIC ABUSE AND EX PARTNERS. MORE NEEDS TO BE DONE, AND COURTS SHOULD HAVE THE POWER TO INTERVENE. MANY FIND THEMSELVES PAYING ALL THE MORTGAGE PAYMENTS, BEING FORCED INTO DESTITUTION, WHILST THE EX PARTNER PAYS NOTHING. THEN YOU HAVE THE CASE WHERE THEY CANNOT REMORTGAGE TO A LOWER RATE, AS EX PARTNER WILL NOT REMOVE THEIR NAME, OR BANKS REFUSING TO ASSIST. THIS IS VERY RELEVANT WHEN IT COMES DOWN TO ARREARS AND THE THREAT OF REPOSSESSION. MYSELF PERSONALLY SOME YEARS BACK, HAVE LIVED EXPERIENCE OF REPOSSESSION /EVICTION AND WITNESSED HOW PAP IN IT'S CURRENT FORM IS FAILING, AND NOT BEING CARRIED OUT TO IT'S FULL ENTIRETY BY CLAIMANTS, THAT IS WHY I NOW HELP OTHERS. IF POSSIBLE WE WOULD BE VERY KEEN TO HAVE FURTHER INPUT ON THIS CONSULTATION, WE ARE TRUE BELIEVERS THAT PEOPLE WITH LIVED EXPERIENCE SHOULD HELP BRING ABOUT CHANGE, THE VERY PEOPLE WHO THIS AFFECTS. PLEASE GET IN TOUCH VIA MY DETAILS IN THIS FORM, IF THIS IS AT ALL POSSIBLE. MANY THANKS

