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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.

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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 are 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 *

3. Last Name *

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

5. Your role *

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

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
- ☒ AvMA agrees that the stated overriding objective

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?

AvMA is opposed to Pre Action Protocol Resolution Clinical Disputes (PAP RCD) ceasing to be a stand alone protocol specifically for the purpose of clinical negligence litigation. For reasons set out below, it would be detrimental for clinical negligence claims to be included under a generic PI pre action protocol.

AvMA agrees that much greater emphasis should be put on compliance with PAP RCD. AvMA considers that the most effective way of ensuring compliance is by scrutinising behaviours operating at the PAP RCD stage.

AvMA is concerned that if compliance with PAP RCD becomes mandatory it risks encouraging poor behaviour. This will occur through the tactical use of delaying disclosure and compliance with the protocol.

PAP RCD is potentially an effective and well drafted document which if adhered to could improve the opportunity for cases to resolve early. AvMA believes that it is in all parties interests that clinical negligence cases should be settled early, but not before proper and thorough investigation has been undertaken.

Currently, adherence to PAP RCD is not mandatory, neither is compliance to the protocol stage tested or examined by the court. This is a missed opportunity as undoubtedly compliance with PAP RCD would be beneficial.

The biggest weakness with the PAP RCD is that when a case concludes, insufficient attention is paid to the parties conduct and whether the case should and could have been resolved at an early stage without the need to issue proceedings.

The failure to hold parties to account for their noncompliance with PAP RCD means that parties who do not comply with the sensible and practical steps recommended are not held accountable for unnecessary and wasteful litigation and the associated costs that inevitably follow.

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
- ☒ We are unable to comment on how an online po

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.

AvMA would be supportive of such a step in clinical negligence claims. Not only does it provide an early opportunity for judges to assess whether the case should have been resolved sooner and possibly avoided litigation altogether, but it provides an opportunity to review the parties conduct and to identify if the PAP CD was properly executed and adhered to.

It is outside of AvMA's expertise to comment on how the procedure should operate. Please note our comments on the use of specialist clinical negligence judges.

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.

According to paragraph 2.13 "Review of pre action protocol: Interim Report" a good faith obligation is intended to require that each party: "meaningfully engage with each other, with the benefit of having exchanged the key information and documents about their dispute as required by the protocols, with the aim of exploring whether a resolution is possible or alternatively, whether the issues in dispute can be narrowed"

The extent to which parties have complied with this is a matter of fact which can only be determined by a judge reviewing the parties' conduct. It would be for a judge to identify whether parties have behaved in an open and honest manner. They would also need to assess whether sufficient information was provided by parties about their case at the earliest opportunity, that proper early investigation was carried out in a timely way to substantiate the parties' respective positions.

These objectives are already stated in the PAP RCD to facilitate early resolution. Imposing a mandatory "good faith" obligation will not on its own improve and/or ensure adherence to PAP RCD. The duty to be open, honest, investigate concerns properly already exists for example, the statutory duty of candour, under the NHS constitution and complaints process. Currently, the failure to check for compliance and imposition of sanctions for noncompliance is what is missing.

AvMA is supportive of the use of ADR as a means by which parties can resolve potential or actual litigious issues. However, ADR is only a fair process if there is equality of arms between parties. In part, this means that there has been full disclosure by both parties but is also means that there is fairness, including greater equality of bargaining power between the parties.

For example, a claimant who has only just instructed a lawyer or who is acting as a litigant in person is unlikely to have access to independent or any medical advice and/or opinion. By contrast, a defendant hospital or trust is likely to have comparably ready and easy access to medical opinion and views by virtue of its budget and the nature of the staff it employs.

An invitation by a proposed defendant hospital to come to ADR at this stage may in fact be more tactical than done in good faith and with the aim of openly and fairly resolving the issues.

On one interpretation of the good faith obligation, a refusal by a claimant to attend ADR may be construed as them not acting in good faith. However, it is important that parties have the freedom to weigh up the situation according to the facts of each case. Parties should set out why they are not attending ADR at this stage. This may include the fact that some early ADR processes would not be cost effective at this stage and/or because there is a need for further disclosure and/or investigation into the claim so there is actual or at least increased equality of arms between parties.

Without there being a level playing field between parties, it is likely and indeed possible that ADR at this juncture is unlikely to be effective, fair, or appropriate.

PAP RCD is a well drafted document. It will become the effective and powerful tool to ensuring litigation is a last resort, if parties conduct during PAP phase is scrutinised. Checks need to be made that parties have done everything reasonable at the PAP stage to ensure PAP RCD has been implemented. Sanctions should be imposed for noncompliance with PAP RCD.

Currently, PAP RCD advises (para 1.7) that where a party fails to comply with the protocol, the court "may" impose sanctions. In practice, sanctions are not imposed, and this is a missed opportunity.

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

☒ Please see our above response on matters relating

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. AvMA agrees that a stocktake would be a valuable and important addition to the PAP RCD. A stocktake should be a requirement. This is an important step, demonstrating how parties understand each other's case and an opportunity to identify and be clear about the issues in dispute. This will be influenced by the level of disclosure each side has made available to the other.

AvMA thinks it important that following disclosure, parties have an opportunity to investigate further, should the disclosed information give them cause to reconsider or alter how they view their case. Given the specialist nature of clinical negligence claims, it is possible that a claimant lawyer will need to verify their position by seeking advice and/or clarification from an appropriate medico-legal expert.

The stocktake should list the documents disclosed by the parties. However, there should be no undue pressure on parties to disclose privileged information such as medical reports which have been obtained as part of this process. By listing the documents disclosed, it will be apparent what information was made available to respective parties and the extent to which, this influenced their understanding of the facts in issue in the case.

Claimant clinical negligence practitioners frequently report being frustrated that their efforts to resolve cases early are thwarted. These efforts will often include claimant lawyers exercising their discretion to unilaterally disclose their medical evidence early in an attempt to encourage and facilitate early resolution. When these steps fail to result in even narrowing the issues such as admissions of liability and/or causation in appropriate circumstances, claimants are left with no alternative but to issue proceedings. It would be beneficial for a judge to be able to consider these behaviours by reading the stocktake report at the first CMC & if necessary impose penalties.

It may be that in complex matters such as a clinical negligence case, it would not be possible for a judge to assess compliance with PAP RCD at the first CMC, but this should not prevent it from being considered at this stage. However, it should be acknowledged that ultimately, this issue may need to be revisited at the conclusion of the case.

The stocktake report can also help to manage a claimant's expectations and be clear about the risks in the case.

AvMA comments on the draft Stocktake report: Section 2 ought to be amended to give parties the opportunity to comment on why a key step may not have been complied with. There may be good reason why a party has not complied with "all" PAP RCD steps. In particular, the early exchange of information may not be forthcoming & in turn, this may have prevented parties turning to ADR which is of little effect until parties are in possession of all the relevant information. The form should include a section which allows parties to refer to relevant parts of disclosed information eg a medical note/report or SIR which supports liability which is being denied.

Section 4B – documents requested but not yet disclosed. This section would be improved by including a section where the parties can set out the date the document was first requested and any subsequent requests for it. The parties should be able to say why the document is relevant and required. Alternatively, the reasons for non-disclosure.

Section 4C – There should be an additional section on patient safety and in particular, lessons learned to date from the claimant's situation and identify any patient safety and learning issues under investigation. Many claimants' wish to achieve improvements to patient safety, prevent the same thing happening to another family/person. AvMA has previously suggested that more could be done by healthcare providers to set out what has been learned from litigation - see our patient safety letter suggestions - [website.pdf](#)

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?

AvMA does agree that the court should be able to impose sanctions for non compliance with PAP CD.

a) The courts should not have the power to strike out a claim or a defence for noncompliance with PAP CD which will mean the matter will not be litigated. This is likely to be detrimental to improvements required for patient safety and for the need for healthcare providers to learn lessons.

It is in the public interest that claims alleging clinical negligence are litigated, if necessary. The court already has the power to strike claims out where there are no reasonable grounds for bringing a claim. If a clinical negligence claim can be struck out for noncompliance with PAP CD, cases risk being struck out because of a technicality, the merits of the case will not then be explored. Claimant lawyers are unlikely to invite courts to use this strike out power, it is highly unlikely to be in their client's interest to take this approach. This will therefore not be an effective remedy from a claimant perspective.

Striking out a case because of noncompliance with PAP RCD will not enable these issues or matters relating to systemic problems at a healthcare organisation from being aired, it could in fact prove to be a benefit for defendant organisations as tactically it could be used to prevent scandals from coming to the public's attention.

b) AvMA supports the suggestion that the directions questionnaire include a question on PAP RCD compliance. The use of a stocktake report, especially if parties are able to comment as suggested above, will give the judge/Master a quick and immediate overview of how parties have conducted themselves. Designated clinical negligence Masters are experienced in clinical negligence litigation and can reasonably be expected to form a fair view at this early stage. By contrast, judges/masters who are not experienced in this field may find decisions around compliance more difficult to call. There is a need for clinical negligence claims to be managed by judges and masters who are experienced in this field. The designated clinical negligence Masters in the High Court demonstrate how necessary and effective judges with experience can be.

The court should be able to impose a sanction of its own motion. The court should have discretion to impose sanctions at this early stage and should be encouraged to do so. However, we can see that there may be circumstances when the court would have good reason to postpone their decision until proceedings have concluded. It is important that there is consistency of approach and recommend the use of docketing to facilitate this and avoid work being duplicated. As referred above specialist judges and docketing was an important part of Jackson LJ proposals on civil litigation reforms

AvMA is equally supportive of the proposal that parties be able to formally apply to the court for sanctions to be imposed for noncompliance with PAP RCD at CMC stage.

c) Please see response to above question. This is about consistency of approach so that if a decision is deferred, the judge making that decision reserves the case to themselves. We agree that the court should have discretion to defer the issue if deemed necessary, but the reasons for that deferment should be made clear, so the issues to be revisited are readily identifiable.

d) AvMA considers the court should have the power to impose cost sanctions. The cost sanctions imposed on failing to beat a Part 36 offer have proved to be a very effective way of helping parties focus their minds on the issues.

e) It is crucial for the courts to retain the PAP RCD and not to lump clinical negligence claims in with PI claims. They are two very different types of work - see our response to Qn. 29 below. It has developed in collaboration with C and D lawyers. It is well drafted. It will be an effective tool if it were scrutinised by the courts for compliance and penalties imposed for non compliance.

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
- ☒ We refer to response on generic PAP and reiterate

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.

The information current included in the PAP RCD should be retained and presented as a standalone document used in conjunction with clinical negligence litigation. Amalgamating this document into a generic personal injury PAP with a designated clinical negligence section will create confusion for all court users and add nothing to the process.

As previously stated, clinical negligence claims are inherently complex, the concepts are especially difficult for lay people especially those who are unrepresented. For many people, the notion that they are owed a duty of care, is foreign. Lay people do not tend to think in these terms.

By contrast, liability issues in personal injury claims can be easier for lay people to grasp. For example, social norms dictate that if someone drives through a red light and as a consequence hits a pedestrian, the driver will be responsible and liable for injury and damage.

The legal test for clinical negligence is complex, a two-stage test where it has to be shown that there was a breach of duty and that as a direct consequence of that breach injury and/or loss has arisen. Many people, automatically trust doctors, it can be difficult for them to come to terms with the fact that trust has been broken. There are difficulties with understanding causation - the notion that a healthcare provider has accepted that they have done something wrong, but that no injury or loss has occurred as a result is difficult to reconcile. The fact that there is no punishment/penalty/damages for that "wrong" having occurred is hard for most lay people to understand.

Invariably, claimants bringing clinical negligence claims need to be represented, or at the very least have the benefit of advice, information and assistance to help them navigate this difficult legal test. There are some aspects of this area of law which are very challenging to explain in an easily digestible way, especially if representation is not available.

Lay people really do need to grasp a basic understanding of what this means for them and their litigation if they are to improve their engagement with PAP RCD.

Taking the above into account, the current PAP RCD is generally quite clear and user friendly. It is helpful that template letters are included.

PAP RCD would benefit from a glossary of commonly used terms. Words such as disclosure may be second nature to legal representatives but will be difficult for lay people to use. Even terms like, pre action will not be familiar to lay people – this could be example be substituted for an expression like "before you start litigation by issuing proceedings".

The PAP RCD does not signpost to organisations that may be able to assist. For example, a litigant in person may benefit from being signposted to AvMA and our free helpline, or our self-help guides. This will help unrepresented litigants

PAP RCD could be clearer about what a litigant in person can do, if they do not receive their medical records within 40 days as stipulated by paragraph 3.4.1 PAP RCD. Paragraph 3.7 does say that where there is a delay an application for pre action disclosure can be made. That probably does not improve a litigant in persons understanding of what they need to do next.

It is AvMA's view that unrepresented litigants are rarely going to be able to effectively engage with PAP RCD unless they have access to legal advice, information, and support. That is an access to justice and funding issue.

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

☐ Yes

☐ No

☒ AvMA has no objection to pre action letters of cl

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?

AvMA is not familiar with the rules in the professional negligence protocol and responds to this question in terms of general principles only. Yes, the court should have the power to exercise their discretion to impose sanctions on a defendant who subsequently takes a substantially different view in their defence, to that set out in their letter or response.

However, the court should be fully satisfied that there is no good reason for the change in stance before it imposes sanctions. Should the court find no good reason, then the penalty imposed on defendant's who take this volte-face approach to the litigation without good reason should be severe. It could include awarding indemnity costs for work done up until the point of the change of approach.

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 PAP RCD should be used as a fact-finding opportunity so parties can resolve claims without the need for recourse to litigation. Should litigation be required, the well-established litigation procedures set out under CPR should be followed.

To suggest truncating the established steps of litigation is to risk the letter of claim and response being treated as a pleading. This would defeat the object of the PAP stage. In clinical negligence claims, no medical evidence is exchanged at this point. Typically, there are no conferences with counsel and expert at PAP RCD stage, using PAP RCD to replace the stages of litigation is to effectively morph the litigation phase into the PAP RCD phase.

The opportunity to resolve claims early currently afforded by PAP would be lost. Instead, PAP would effectively be used as a tool to restructure the litigation process altogether.

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

26. 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
- ☐ No
- ☒ AvMA does not support the implementation of a

27. 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
- ☐ No
- ☐ Other

28. 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?

As referred to above, parties may consider ADR but may not engage in it at this early stage. We support the introduction of a stocktake report, which should be completed at conclusion of the PAP phase. There may be some merit in including the stocktake report when issuing proceedings, so this is available to the court at the earliest opportunity.

Please see our more detailed comments on stocktake reports set out in response to question 17.

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

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

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

This question does not really apply to clinical negligence claims as the vast majority are issued in multitrack owing to complexity. This would have to be revisited if this position were to change.

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

While AvMA supports the principle of a rehabilitation code, it is not routinely relied upon in clinical negligence claims as liability is all too often in dispute, early rehabilitation opportunities are lost as a consequence.

Early interventions are key to improving outcomes in a lot of clinical negligence claims. Where early admissions are made, early rehabilitation interventions should be fully supported.

31. 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

☐ No

☒ AvMA is unable to comment as there are no fixed

32. 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

☐ No

☒ AvMA does not consider this to be of assistance

33. 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?

The PAP RCD does not require parties to identify which documents are relevant and why. We refer to comments made in relation to proposals to introduce a stocktake report (see our response to question 17) and in particular our suggestion that Section 4B of the stocktake report would be improved by including a section where the parties can set out a description of the document required on disclosure, the date it was first requested and any subsequent requests for it. This section could usefully include why parties say the document is relevant and required and offer an opportunity for defendants to give the reasons for non-disclosure.

34. 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
- ☐ No
- ☒ As can be seen from the templates attached to P,

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

- ☐ Yes
- ☐ No
- ☒ We do not have the expertise to comment,

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

- ☐ Yes
- ☐ No
- ☒ We do not have the expertise to comment,

37. 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
- ☐ No
- ☒ This would not be relevant in a clinical negligence

38. Should the PI 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?

AvMA does not support changes to the PAP RCD which effectively seek to compromise the claimant's right to have simultaneous exchange of expert evidence.

A responsible, experienced clinical negligence claimant lawyer will be expected to carry out reasonable investigations prior to taking on a claim, even before the PAP RCD stage. That will often include obtaining some form of independent medical expert opinion on liability and causation from relevant expert/s in the appropriate field. This is the only way for claimant solicitors to identify whether there are reasonable prospects of a case succeeding and whether it is commercially sensible to enter into a CFA with their client.

It is important to appreciate that reports obtained at this early stage may be outline reports, that give a provisional view of the claimant's condition. They are likely to be sufficient for the purposes of establishing the likelihood of a claim, but are not likely to be disclosable. It must be in the best interest of all parties that reasonable investigation as to the merits of claim are explored at an early stage.

Early investigation in clinical negligence claims should be encouraged. It acts as a safety net by helping to filter out unmeritorious claims, these are weeded out at an early stage so they are not actioned. This saves the defence organisations the cost of having to investigate claims that have no real prospects of success. This is in the interest of the claimant firm's business, indemnity insurers and the claimant themselves so their expectations can be managed early on.

If claimants are expected to disclose their medical evidence prior to issue, it will simply serve to ensure that the opportunity to investigate, explore and discuss resolution of a case at PAP stage will be lost. It simply means the PAP stage will be treated as though parties are issuing proceedings. It will inevitably lead to claims being front loaded – full medical reports will have to be obtained, conferences with counsel and experts will take place prior to the PAP stage. The window of opportunity to explore the case will be lost and a litigious process brought forward.

Sequential exchange of expert evidence in a clinical negligence claim would be highly detrimental to claimants. It would enable defendants to see the claimants in full, it will not encourage defendants to carry out their own investigations in a timely way. The defendant expert's focus will be on replying and responding to the claimant experts views, not on examining the facts and forming an independent view on whether treatment provided fell below an acceptable standard of care and if so, what harm was caused as a consequence.

This would be a retrograde step for claimants and for patient safety generally. Instead of the defendant expert approaching a case based on what, if anything went wrong with this treatment. They will be looking at how a claimant expert has phrased their views and opinions and seeking advantage by attacking that rather than taking an impartial and independent view of the issues.

39. 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
- ☐ No
- ☒ Generally speaking no. It is for the defendant to

40. 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
- ☐ No
- ☒ This does not tend to apply to clinical negligence

41. 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?

No comment

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

- ☐ Yes
- ☐ No
- ☒ Please see our response to question 15 above. P

Housing Protocols

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

- ☐ Yes
- ☒ No

Judicial Review Protocol

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

- ☐ Yes
- ☒ No

Debt Protocol

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

- ☐ Yes
- ☒ No

Construction and Engineering Protocol

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

- ☐ Yes
- ☒ No

Professional Negligence Protocol

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

- ☐ Yes
- ☒ No

Proposed low value small claims track

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

- ☐ Yes
- ☒ No

Any other comments

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