The Professional Negligence Lawyers' Association
61 Macrae Road Pill Bristol, BS20 ODD

Telephone: 0117 905 5316
Fax: 0117 905 5001
Website: www.pnla.org.uk
E-mail: katy.manley@pnla.org.uk

Response to the Civil Justice Council Consultation on Civil Costs

The PNLA did not provide a consultations response before the initial deadline of October 2022 for which apologies are provided and a request that a few comments on the non Belsner points are considered by the working group. Many have felt concerns about the costs regime on behalf of claimants in disputes concerning non medical professional negligence and liability arising from the changes in the last 10 years.

The evidence of such concerns is summarised below including the reaction of Lord Dyson as Master of the Rolls, Lords Briggs in the Civil Courts Structure Review and Lady Justice Carr and Mr Justice Fraser as joint chairs of the working party for the Professional Negligence Adjudication Pilot Scheme now implemented in the Professional Negligence Pre-Action Protocol and administered by the Professional Negligence Bar Association ('PNBA') https://pnba.co.uk/pnba-adjudication-scheme/

The PNLA has been actively involved in submissions relating to the civil costs regime since the review of Lord Justice Jackson both within the consultations and in submissions to Parliament before the legislation Legal Aid Sentencing and Punishment of Offenders Act 2012 ('LASPO') came into force. This can as necessary be confirmed by members of the Working Group including Robert Wright of the Ministry of Justice and Nicholas Bacon KC (both members of the Adjudication working group set up by Lord Dyson).

The PNLA has been concerned about access to justice for claimants in non-medical professional negligence claims which are the same as those relating to medical negligence claims albeit the decision of the Government was to treat them differently. The Government at no time explained why there should be a policy difference between the approach to access to justice between such groups but nevertheless costs concessions were provided within the legislation to assist medical negligence claimants including QOCS and limited recoverable ATE insurance premiums but which concessions for those making claims against other well resourced and insured professionals have been deprived.

The PNLA asks the Working Group to view professional negligence claims in a consistent way and within the group identified by Lord Justice Jackson as 'David v Goliath' and taking account of all the work done by the Judiciary and the Ministry of

Justice as well as those groups involved in the previous working parties including the ABI, PNLA and PNBA.

This is a prism which will in each of the four questions addressed by the working group, and the *Belsner* decision issue be fundamental in assessing proper and just changes reflecting the commercial reality in this group.

Well resourced insurers with large volumes of defended professional indemnity claims are able to negotiate much reduced panel hourly rates and overall reduced costs from their legal teams and experts. These reduced costs should be taken into account as the commercial reality in 'David v Goliath' cases. The impact of these rates are fundamental to and have a considerable impact in the way in which this type of dispute is progressed.

A claimant without this benefit is obliged to seek assistance from legal teams and experts charging full rates which by commercial necessity also take account of the daunting task required to attempt to challenge and defeat defendants with such superior resources.

Very few claimants, whether individuals or commercial businesses, have resources which can even approach the vast wealth of insurers. The advent in the Woolff reforms in the late 1990s of the Conditional Fee Agreement and the development of the litigation funding and After the Event Insurance market created the potential for access to justice for claimants. However it is well known and recognised that even these benefits, eroded by LASPO, fell far short of a level playing field financially.

A claimant fighting an insurer will typically risk insolvency and at best recovering only a fraction of their damages when significant parts of their own legal costs and litigation funding are paid from their damages recovered in the event of success.

Since LASPO the basic calculation of costs –risk –benefit in such claims has prohibited most cases under a value of something like £150,000. Before LASPO when success fees and ATE premiums could be recovered even in lower value claims access to justice could be obtained with a reasonable equality of financial resources. Settlements by way of mediation and ADR were common and frequently cordial with both sides taking a reasonable and just approach to the merits of the individual case.

LASPO changed this and the anecdotal view is that every professional negligence claim now needs to have proceedings issued and hostility between the parties' legal teams is common. Fewer cases since LASPO are possible to issue taking account of the financial risks to the claimants. This is unsurprising and a predicted consequence considered presumably to be of considerable benefit to insurers able to avoid paying strong claims.

Those claims which are pursued face obstacles again due largely to the structured approach available to the volumes of claims conducted by the insurers' legal teams and experts. Strategically in defence the obvious optimum way forward is to provide

the maximum defence for the minimum cost. This results in protocol response letters, statements of case and experts reports based on a cursory view of the evidence. It is only at a late stage in the litigation, often around the case management stage, that a more extensive review takes place and settlements are reached at a sensible commercial level – albeit at a time when the claimant faces losing a very high proportion of their damages to their lawyers and litigation funders.

Evidence background

Examples of submissions pre LASPO:

1. **Lord Justice Jackson's preliminary and final reports** are assumed to be familiar to the Working Group and therefore are not repeated. However the types of evidence which Lord Justice Jackson accessed to form the basis of his reforms should be considered on an updated basis. One resource for example of the Judicial Civil Justice Statistics annually as to the trends in issued proceedings by claim value and type in each of the High Court Divisions is highly relevant as an evidential basis for reforms moving forward and a proper analysis should be undertaken to assess the impact of LASPO https://www.gov.uk/government/statistics/civil-justice-statistics-quarterly-january-to-march-2022 Royal Courts of Justice Annual Tables - 2021

2. **Reforming Civil Litigation Funding and Costs in England and Wales – Implementation of Lord Justice Jackson's Recommendations: The Government Response** March 2011 Q 31 – 'What are the underlying principles which should determine whether QOCS should apply to a particular type of case? 178.

   'This question was answered by 284 respondents, who generally considered that QOCS should apply in types of cases where there was an inequality in the financial situation of the parties ('David and Goliath') such as where the claimant was an individual and the defendant a public authority or insured.'

   https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/228974/8041.pdf

3. **This is the Response of three Costs Judges of the Senior Courts Costs Office (Master Campbell, Master Haworth and Master Leonard) to the proposals of the Ministry of Justice for reform of Civil Litigation and Costs in England and Wales, set out in Consultation Paper CP13/10 dated November 2010**.

'In response to Lord Justice Jackson's report Under paragraph 60.3 :– 'In numerous cases, it is the Defendant who enables the claimant to "secure" the 100% success fee by failing to make an effective Part 36 offer, or by settling the case late, after the work necessary to bring the matter to trial has been done. Many defendants, having run the litigation adversarily to the door of the court, then complain when they are faced with a bill which seeks a success fee of 100%. There is no justification for such complaints where the running of the case to trial has been deliberate or where it has happened through incompetence."

4. **During the Commons Scrutiny Committee debate on 13 September 2011 Andy Slaughter Shadow Minister for Justice said:**

'Clinical negligence has been granted concessions in the Bill and qualified one way costs shifting. This is a type of professional negligence. What policy reason can there be for distinguishing negligent medical professionals from other professionals as to litigation funding?'

5. **On 21 November 2011 at the House of Lords second reading Lord Davidson of Glen Clova QC said this in reply to Lord McNally:**

'People who have lost out to incompetent or fraudulent financial advisers, lawyers or accountants, will find that they will end up recovering less than they lost, despite having done nothing wrong. To lose 25 per cent of damages today connotes significant contributory negligence by the claimant. Under this Bill, the damaged-the blame-free-will lose out; and for what overriding public good? It would no doubt be crude sloganeering to suggest that this is for the protection of insurance company profits, but one is left puzzled seeking to identify the clear policy objective justifying such consequences. The Minister will no doubt assist the House with an explanation beyond what we have heard thus far.'

6. **The Rt Hon Kenneth Clarke QC MP gave evidence to the Joint Select Committee on Privacy and Injunctions on 16 January 2012 (uncorrected evidence published on 23 January 2012). In answer to a question by Lord Boateng, the Lord Chancellor said**:

'When it comes to the question of the small man taking on the big defendant, we are making provision for some qualified transfer of costs in order to give equality of arms, as the jargon phrase is often used, to those who wish to take on a bigger institution. We are making provision whereby in certain circumstances you can enable a poor litigant, or one who is taking on a giant, to be relieved of the risk of paying the costs of the defendant. All of that is currently before the House of Lords; it is in the legislation we have at the moment.'

7. **Lord Bach who said:** https://hansard.parliament.uk/lords/2012-01-30/debates/1201309000278/LegalAidSentencingAndPunishmentOfOffendersBill

‘the perpetrators of the Payment Protection Insurance mis-selling scandal - the mortgage mis-selling scandal of the 1980s and 1990s which noble Lords will remember - and thousands of other instances when rogue professionals have abused their position of trust, will go unpunished and unheard. Their victims will multiply in a system where those who have been wronged are dissuaded from taking action against rogues, knowing that parliament will have legislated to substantially limit their rights to redress. It would be something of a rogues' charter’

Evidence post LASPO:

1. Lord Dyson responded to the concerns of the PNLA by setting up a Working Group for Adjudication in professional negligence disputes following the example of the statutory scheme for construction disputes (Housing Grant Construction and Regeneration Act 1996). Two letters from Lord Dyson to the PNLA are attached. In the second letter his recommendation was for a CJC Working Group to be set up including a representative from the PNLA has not been done.

2. The Adjudication Working Group ran from 2013 until the scheme was implemented as explained by Mrs Justice Carr (as she then was) and Mr Justice Fraser in the scheme itself https://pnba.co.uk/pnba-adjudication-scheme/

   ‘These changes have been accomplished by a working party set up at the direction of Master of the Rolls and have included representatives from the Ministry of Justice, the Professional Negligence Bar Association, the Association of British Insurers and the Professional Negligence Law Association. Particular credit must go to Ben Patten QC who has borne the brunt of the re-drafting. Alternative Dispute Resolution in all its forms presents real advantages to parties involved in disputes. This scheme remains fully voluntary and both parties to a dispute must agree to adopt it. We commend it. Mrs Justice Carr and Mr Justice Fraser’

3. Mr Justice Fraser has since referred to the scheme in this case *Beattie Passive Norse Ltd v Canham Consulting Ltd*:

"Finally, there is an adjudication scheme for claims in professional negligence, operated by the Professional Negligence Bar Association. It was re-launched in 2017, and if it had been used in this case, would have led to an experienced Queen's Counsel in the field considering the claims and (given it is not a statutory adjudication) issuing a non-binding decision. It is supported by the insurance industry, amongst others. It is a great pity that the parties did not adopt that method of resolving their dispute in this case. It would have been far quicker, and much more economical, than conducting a High Court trial which lasted over three TCC weeks, with all the costs to the parties that such a trial entails. In essence, this case really concerned issues of factual causation. Although they were not all called, there was a total of six different experts instructed in this case, with a claim against Canham for £3.7 million. The negligence was admitted in certain limited respects (or at least was agreed by the experts in the structural engineering joint statement). There were unusual facts, but in the event BPN have succeeded to the tune of only £2,000. Even though there were contested issues of fact, adjudications can in suitable cases proceed with oral evidence and cross-examination of witnesses. Using the scheme to which I have referred, to resolve a dispute such as this one, would have been a far better way for the parties to have proceeded."

4. Lord Justice Briggs (as he then was) whose final report was published in July 2016 page 57:

   6.98. I was pressed by stakeholders on both sides of the non-clinical professional negligence arena to exclude all those claims from the Online Court, mainly on the grounds of their typical complexity, and their asymmetry where the claimant is an individual or small business facing an experienced professional backed by determined insurers. This is not a type of claim where there is currently a satisfactory level of access to justice.

   Claimants receive none of the benefits of QOCS and the damages uplift, but they are nonetheless barred by the Jackson reforms from the advantages of ATE premium and large success fee recovery which used to provide an (also overheated) economic model for their pursuit by lawyers. They were treated in that way because non-clinical professional negligence is not inherently asymmetric, many of the claimants being banks, property developers and investment institutions.

   And also 6.99. 'The Professional Negligence Lawyers Association has for over a year been seeking to remedy the deterrent disproportionality of claims of this kind by the promotion of a voluntary adjudication scheme, loosely modelled on the successful scheme now much used in the construction industry. In its first year it attracted very little business, but it has recently

> been re-launched, with the apparent support of the previously reluctant insurers, at an event which I attended to wish it well.
>
> But if it continues not to thrive (and there are many who believe that it will only do so if made compulsory) then the difficulty of making compulsory a scheme for non-binding adjudication might perhaps be overcome by attaching as a specialist stage 3 in the Online Court a panel of professional negligence experts sitting as Recorders or deputy DJs. But this is for the future, after the Online Court has attained its majority while engaged with simpler fare. In the meantime the request for exclusion seems to me to be well founded on the grounds of complexity, and I so recommend.'
>
> https://www.judiciary.uk/wp-content/uploads/2016/07/civil-courts-structure-review-final-report-jul-16-final-1.pdf

To conclude therefore there has been considerable concern from many influential people in politics and within the judiciary that there is unsatisfactory access to justice for claimants in non-medical professional negligence claims since LASPO. The underlying reasons for this are that these cases are 'David v Goliath'. Further the same complexities and need for expert evidence are engaged in medical negligence claims which have been given costs assistance by the legislation.

Medical and non medical professional negligence claims have recently been aligned by the application of the same legal test by the Supreme Court in the linked judgments:

An auditor's negligence claim: Manchester Building Society v Grant Thornton UK LLP [2021] UKSC 20 (18 June 2021)
URL: *http://www.bailii.org/uk/cases/UKSC/2021/20.html* and

A medical negligence claim: Khan v Meadows (Rev1) [2021] UKSC 21 (18 June 2021) URL: *http://www.bailii.org/uk/cases/UKSC/2021/21.html*

If there was therefore ever a time to align the civil costs regime for professional negligence litigation, then the logical time is now.

In this background the PNLA will comment on the specific questions including the Belsner response:

1) Costs Budgeting;
2) Guideline Hourly Rates;
3) Costs under pre-action protocols/portals and the digital justice system;
4) Consequences of the extension of FRC.

1) Costs Budgeting

The PNLA urge the CJC Working group to add a requirement in every case for the parties to specifically declare in all their budgets whether any of the legal team and experts are operating on reduced or panel rates acting for insurers (or otherwise).

The Judiciary should in every case satisfy themselves that any comparison between budgets by way of value or hourly rates takes account of any such reductions.

The PNLA refer to the judgment of The Hon Mr Justice Coulson (as he then was) as to costs budgeting by insurers ***Findcharm Ltd v Churchill Group Ltd [2017] EWHC 1108 (TCC) (12 May 2017)***
URL: *http://www.bailii.org/ew/cases/EWHC/TCC/2017/1108.html*

He reinforces the anecdotal view of the pattern of insurer defendant conduct and that of the three costs judges referred to above saying at paragraph 5. 'In contrast to Findcharm's detailed pleaded claim, Churchill's defence could not be more basic. It is a combination of bare denials and non-admissions of the kind that the Civil Procedure Rules was designed to sweep away. It is, bluntly, an insurer's defence straight out of the 1970's.'

And this is then followed through in the insurer's low figures in their costs budget to which he says: 9. 'In my view, Churchill's Precedent R is of no utility. It is completely unrealistic. It is designed to put as low a figure as possible on every stage of the process, without justification, in the hope that the court's subsequent assessment will also be low. In my view, therefore, it is an abuse of the cost budgeting process. I make clear that none of this is intended to be a criticism of [redacted] , the solicitor at Kennedys who appears this morning, because she told me that both Churchill's cost budget, and its Precedent R, were prepared by Kennedys' costs department. It is, unfortunately, a criticism of them.'

This is a rare glimpse in the law reports of insurer conduct but reinforces the need for reform in the way that such Goliath parties can influence the costs budgeting process and the need for the Working Group to address this aspect.

2) Guideline Hourly Rates;

When insurers routinely appoint lawyers and experts at reduced panel rates this should be addressed and the parties should be obliged to declare if this is the case and Judiciary should be required to satisfy themselves when they are being applied.

The PNLA repeats their response to the guideline hourly rates working group report for consultation – January 2021:

The stated methodology itself is contradictory and the logic flawed to the extent that the rates proposed in paragraph 4.18 appear to arise from a quantum leap bearing little nor no relationship to the narrative and data set out in the rest of the report.

The commercial reality is that consumers of services of litigation lawyers in the current market seek lawyers with expertise that relates to the particular litigation concerned. This report expressly excludes any such assessment. To attempt to compare the way that a personal injury claimant client seeking a 'no win no fee' deal with an insurer looking for a panel firm in terms of hourly rates is an impossible task which should either never have been attempted or at best should have been properly addressed.

The number of responses received from the exercise set out in the Appendices. has been omitted from the report. No proper evaluation can therefore be made of the figures as assessed by the academics referred to. If this data was insufficient then the working group should be open and honest about it within the report. By illustration it is noted that the Judicial data has been preferred by the working group albeit, in complete contradiction, the reasons why this data is 'contaminated' and should not be relied are also set out in the report.

Geographical location as a basis for differentiating hourly rates is a wholly outdated and misguided approach. Lawyers work from home – this has been happening on a virtually universal basis since the Coronovirus pandemic in March 2020. Where the solicitors practice is registered or the head office is located is virtually irrelevant to the appropriate basis for hourly rates. To recommend in every costs assessment that evidence of where work has been carried out is an expensive minefield.

Any proper approach must take account of the diversity between specialist areas of litigation where wholly different commercial factors will dictate the hourly rate for the litigation market. Differences between claimants and defendants also arise especially where large commercial business buy legal services 'in bulk' with discounts in hourly rates (eg DWF whose data has formed part of this report). The market for base hourly rates for 'no win no fee' work is affected because of the delay in payment and uncertainty of recovery. The working group totally ignores this factor. The commercial effect on base cost hourly rates of LASPO Part 2 should have been addressed by the working group because success fees and ATE premiums are no longer recoverable resulting in an inevitable impact on the market for base hourly rates.

To provide a Guideline Hourly Rate will in practice open the floodgates because in every litigation the Judge concerned will ask every lawyer to provide arguments to deviate from that rate. Whilst clearly an attractive prospect for costs lawyers the scope for Court time and costs to escalate in order to obtain a fair summary, provisional or detailed assessment for parties in a mutltiplicity of areas of practice and geographically wholly defeats the overriding objective.

Lawyers will be obliged acting in the best interests of their clients to consider challenging the Guideline Hourly Rate in every case where their rate deviates from those implemented. Failure to do so will fan the flames of the thriving market in professional negligence claims relating to costs advice.

In effect therefore the Guideline Hourly Rates, if implemented, could potentially amount to a form of price fixing. Whether or not these recommendations are lawful involves addressing the applicable law which this report manifestly fails to do.

We were provided with a separate sample of cases by a national costs management firm (DWF). These cases were predominantly PI/CN claims where the defendant was a liability insurer, and in virtually all cases the hourly rates in the final settlement were determined by agreement between the parties (in contrast to the data on hourly rates compiled by the CJC from professional and judicial sources, which were predominantly determined by judicial assessment).

3) Costs under pre-action protocols/portals and the digital justice system;

The (non-digital) Professional Negligence Pre-Action Protocol has been popular by all parties and on the whole regarded as a successful procedure subject to the problem of defendants operating on what appears to be a maximum defence for minimal cost basis.

In order to reinforce the efficacy of this procedure one obvious consideration for the CJC Working Group is to consider the option of compulsory adjudication as envisaged by both Lord Dyson (as per his attached letters) and Lord Briggs as referred to above 'But if it continues not to thrive (and there are many who believe that it will only do so if made compulsory)'.

The PNLA has met and communicated with several of the listed PNBA Accredited Adjudicators over the last 2 years and all confirm that the uptake has been disappointing, indeed one referred to the scheme as 'a flop'. This reinforces the view

of Lord Briggs that only by making it compulsory could the scheme follow the successful example of the construction adjudications in successfully clearing the Courts.

With regard to the *Belsner* aspect there are two points to consider:

a. Existing law: The inevitable consequence of the *Belsner* decision will be to push parties to issue proceedings to recover the costs of the work done to comply with the pre-action protocol understood to be until this stage 'non contentious' costs. The Court of Appeal addressed the specific point of pre action protocol costs where the professional defendant unsuccessfully argued that by tendering the full claim value pre action this deprived the claimant of their costs *RSM Bentley Jennison (A Firm) & Ors v Ayton [2015] EWCA Civ 1120 (03 November 2015)*
URL: http://www.bailii.org/ew/cases/EWCA/Civ/2015/1120.html

b. Compulsory Adjudication as a solution: The status of construction adjudications has been the subject of many years of case law – notably including many decision of Lord Dyson – and it is a well trodden path. The Adjudication Working Group considered many aspects of the way forward to adapt adjudication to professional negligence disputes and it was a deliberate decision that TCC judges were appointed to chair the group to bring the benefit of their expertise. One difference agreed by the all the group members was to include a menu of options in the scheme for the parties to choose as to costs recovery. At one end of the scale if the parties agree then costs could be determined by the adjudicator and at the other costs could be left for later consideration. Adjudication awards are enforceable by summary judgement and any dispute as to the amount or recoverability of costs could be determined using this procedure which would involve issuing the claim and making the pre action costs 'contentious' as referred to in *Belsner*. This route would however avoid taking up Court time in determining the dispute itself if the adjudication award is otherwise unchallenged.

The success of the protocol is undermined by the failure of insured professional defendants to properly comply and as things stand there is little to deter such behaviour since LASPO. However facing an adjudicator before issue could well act as such a deterrent without increasing the costs substantially because the idea of the Adjudication Scheme is to use the protocol procedure with a determination on the papers, albeit the adjudicator has the option to provide further directions as required including hearing evidence.

One specific problem has been experts. If there is a difference in the evidence provided to experts for both parties this does inevitably lead to a difference of opinion. The protocol does not allow for a procedure for resolution pre action as things stand.

It was a problem identified in the recent judgment of Mrs Justice Joanna Smith in *Dana UK AXLE Ltd v Freudenberg FST GmbH [2021] EWHC 1413 (TCC) (26 May 2021)*
URL: *http://www.bailii.org/ew/cases/EWHC/TCC/2021/1413.html* see paragraph 93.

"The establishment of a level playing field in cases involving experts requires careful oversight and control on the part of the lawyers instructing those experts; all the more so in cases involving experts from other jurisdictions who may not be familiar with the rules that apply in this jurisdiction. For reasons which have not been explained, there has been no such oversight or control over the Experts in this case."

Adjudication would act as a deterrent for such conduct pre action as the parties would each need to ensure their expert evidence was in the form and based on the evidence to persuade the adjudicator in their favour. In contrast as things stand there is no deterrent for a defendant to provide expert evidence from a 'hired gun'. Many months/years later the defendant could fund a more extensive expert report but only if the claimant has managed to fund litigation to the stage of a direction for exchange of expert evidence – and many claimants cannot afford to do so.

4) Consequences of the extension of FRC

The Government lists the exclusions at paragraph 7.3 of their response:

> 7.3 Exclusions: The Government can confirm that mesothelioma/asbestos, complex PI and professional negligence, actions against the police, child sexual abuse, and intellectual property will be excluded from intermediate cases, as Sir Rupert originally proposed.

This appears unambiguously to exclude complex professional negligence claims. Should there be any change in this approach affecting any group within this definition then a further consultation should take place.

Given the complexity of the legal and factual aspects in most professional negligence case, enhanced by the advent of the new legal test in *Manchester Building Society v Grant Thornton* in 2021, it seems unlikely that many such disputes could be regarded as not 'complex'.

It would be helpful to provide further guidance within the CPR about how to assess complexity to ensure uniform enforcement and certainty to the parties and County Court judges who may well not be familiar with this type of dispute.

Conclusion

It is hoped that this response is helpful to the working group. The PNLA would be happy to provide further assistance as required please contact Katy Manley – president – katy.manley@pnla.org.uk

MASTER OF
THE ROLLS
THE RT HON LORD DYSON

Katy Manley
President
The Professional Negligence Lawyers' Association
PO Box 1128
Winscombe
Somerset

20th June 2013

Dear Ms Manley,

Adjudication pilot for Professional Negligence claims

Thank you for your recent e-mails on the Association's proposal for a pilot adjudication scheme relating to professional negligence claims.

Thank you also for sight of a copy of the Lord Chancellor's response, and I have also sought Vivian Ramsey's views via my office. I can see the potential benefits for such a scheme, and a pilot will help to establish whether these can be realised in practice.

He confirms my own provisional view that it should be undertaken on a voluntary basis in the first instance, but I understand you are due to meet with him again in July to discuss arrangements further.

Yours sincerely,

Mr Dyson

PNLA
Professional Negligence
Lawyers Association

MASTER OF
THE ROLLS
THE RT HON LORD DYSON

Ms K Manley
President – Professional Negligence Lawyers Association
Manley Turnbull Solicitors
Turnbull House
1 Tally Ho Lane
Guiting Power
Cheltenham
GL54 5TY

2nd December 2015

Dear Ms Manley,

Professional Negligence Adjudication Pilot Scheme

Thank you for e-mail, dated 26 November 2015, and for drawing to my attention that, as yet, only one case has entered the Professional Negligence Adjudication Pilot Scheme.

It is disappointing that since its launch in February this year the Pilot has not been considered by litigants to be an attractive alternative to litigation and, as a consequence, has only been utilised in one claim. I do not, however, think that the Pilot should be abandoned after only nine months of operation. That seems to me to be too short a period of time to test the scheme. Since the Pilot was envisaged originally to require three cases before it would be reviewed, it seems to me to be appropriate to continue with it.

In order to improve the prospects that it will yield, at least, two more cases I intend to ask another TCC judge to take over Mr Justice Ramsey's role in respect of the Pilot. I also propose to extend the length of the Pilot until at least the end of July 2016.

I believe that the best approach to assessing the utility of the scheme and what further steps to take following the conclusion of the Pilot should be for me to establish a Civil Justice Council Working Party to carry out that exercise.

A post-Pilot CJC Working Party would, I anticipate, comprise Council members and individuals drawn from a broad range of interested parties. I would very much hope that a representative of the Professional Negligence Law Association would be able to join the Working Party. I would also anticipate that that Working Party would be in a position to consider the merits of the scheme in as broad a context as possible; for instance, by considering its merits as compared with that of court-ordered Early Neutral Evaluation.

My Private Secretary, Peter Farr, will be in touch with you in due course in respect of the arrangements to establish the new Working Party next July.

Yours sincerely