**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?**

• 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?**

There needs to be flexibility within the rules, so a requirement that compliance is mandatory except in “urgent” cases may not allow for the necessary level of flexibility.

If there is to be a requirement for mandatory compliance, there should be an exception for parties who are vulnerable, with vulnerability left undefined so that it can properly capture all types of vulnerability. There will be situations where a person’s vulnerability may mean that timescales, for example, cannot be complied with because more time is required to gather evidence. There must be flexibility to ensure that these groups of people are not penalised because of their characteristics or circumstances.

There would also need to be flexibility in relation to what “urgency” means. Urgency means different things in different cases and to different parties, and it must be recognised that this may relate to issues other than limitation. For example, urgency could relate to the need to obtain or approve an interim payment due to lack of capacity, and this needs to be reflected.

It is already recognised in the current Disease & Illness PAP that the timescale of the protocol is likely to be too long in some asbestos disease cases. This is an important recognition given the court system provides a specialist ‘Asbestos List’ to deal with such claims on an urgent basis, and it should not be over-ridden by well-meaning reforms.

Whilst compliance with the PAP is desirable in most cases, there may be other reasons, such as limitation, where compliance with the PAP is inappropriate and this reinforces the need for flexibility.

**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

We are supportive of anything that helps the parties to communicate in a clear and controlled fashion, with communication being able to be referred to at a later date (subject to those communications that are without prejudice). However, while there may be some benefit to key documents (letter of claim / letter of response / medical report / schedule) being available to the court, any online system should only serve to complement existing systems and there is already provision for lodging documents via CE-filing. We therefore question the relative benefit of an online platform when set against the likely complexity and cost. There must be flexibility in, for example, more complex cases, where the claimant may want to include more information in the letter of claim. Any online system should not constrain the claimant or prevent them from providing any information that they deem appropriate in the letter of claim. An online system would also need to be adapted for use by litigants in person and provision must also be made for those who are unable to access the internet, either through lack of knowledge or simply because they do not have access to a device connected to the internet.

Security of personal data must be paramount in any online system.

**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.**

There would be benefit in including a provision, in the pre-action protocol, which encourages the parties to prepare a breakdown of costs post settlement, as would be the case for a summary assessment of costs, and parties should be encouraged to reach agreement on this breakdown within a certain time-frame. This reflects current practice, and we would welcome it being put on a more formal footing.

We are concerned, however, about the link that is made between the summary costs procedure and the point at which a case settles. Simply because a case settles at pre-action stage does not necessarily mean that it was not a complex case that would benefit from a properly scrutinised bill. There may be unintended consequences to linking the summary costs procedure with settlement at pre-action stage, with parties discouraged from settling at pre-action stage, if they consider a detailed assessment of costs would be more appropriate. We suggest that more thought may be required here.

We have not seen evidence justifying the need for a further level of costs procedure beyond that already available via the SCCO (detailed assessment and summary assessment).

**15. Do you agree that PAPs should include mandatory good faith obligation to try to**

**resolve or narrow the dispute? In answering this question, please include any views**

**you have about the proper scope of any such obligation and whether are there are**

**any cases and protocols in which it should not apply.**

While we agree that one of the aims in the pre-action stages should be to try to resolve or narrow the issues in dispute, we do not think a mandatory good faith obligation to do so would be workable. Further, there is an implied duty of good faith, already, within the protocols, if the parties are assisting the courts with furthering the overriding objective. An additional obligation is unnecessary. As we have mentioned in previous responses to both the Civil Justice Council and Ministry of Justice, regarding dispute resolution, personal injury practitioners already work well to resolve and narrow the issues in dispute – evidenced by the high rate of settlement in these cases (on average, between 2016 and 2020, 16 per cent of personal injury cases went to trial in England, Wales and Scotland), and the success of initiatives such as the Serious Injury Guide (evidenced by a recent survey of participants which found that 74 per cent felt that the guide leads to easier access to rehabilitation, and 81 per cent said that the guide leads to greater collaboration between the claimant and defendant). However, there are some cases in which it is simply not possible to resolve the dispute outside of court. A mandatory obligation to attempt to do so could be problematic, particularly if this obligation arose before there was full disclosure of evidence.

We also query how the good faith obligation would operate in cases in which the defendant will simply maintain that they can legitimately defend the case, and do not wish to make any offers. In *Cameron v Hussain* [2017] EWCA Civ 366 for example, the defendant made no comment at all and simply denied being the driver. A good faith obligation would surely involve the defendant parting with any information they believe would be useful to help the resolution of the case – if they knew who was driving the car, they should be obligated to share this information, but it is unlikely that the obligation would be interpreted in this way.

We are also concerned that a mandatory good faith obligation would simply result in a fishing exercise for the defendants to gather information in order to make an early and inappropriate Part 36 offer.

**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

No. If there is to be a requirement for good faith, it should permeate throughout the whole pre-action process – every communication between the parties being without prejudice seems to go against the requirement to act in “good faith”. Open communication can often be beneficial. The current system works well, whereby everything is disclosable, unless parties do not want something to become, automatically, part of the court process, in which case they will mark it as without prejudice.

**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 6.**

We agree in principle that a stocktake should take place, however it is important that this does not become a procedural burden or hurdle which results in satellite litigation or fetters the Claimant in progressing proceedings. The stocktake process should be focused purely on identifying the issues still in dispute. The idea of the stocktake report also needs to be fleshed out further. We query the status of the document, and what happens if parties do not comply with the timescales and instead complete the report within say 15, rather than 14, days. Further, following our comments above about the need for flexibility in compliance with the PAP, there must be exceptions to the requirement to complete a stocktake report where there are issues of limitation and in other urgent circumstances such as limited life expectancy / asbestos cases or where an interim payment is required.

We are also concerned about defendant behaviour around the degree of engagement. A stocktake procedure is a pre-litigation red flag before which they may refuse to engage. Similarly, such a procedure is in conflict with the cases which currently run under fixed costs regimes (or indeed may do so in the future). Additional work pre-issue must be factored into fixed costs to maintain the access injured people have to full and appropriate recompense.

**18. Do you agree with the suggested approach to sanctions for non-compliance set out**

**in general principles from para 3.26? 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?**

We agree that the courts should have the power to strike out a claim or defence to deal with grave cases of non-compliance. Following *Cable v Liverpool Victoria* [2020] EWCA Civ 1015*,* it is clear that not following the protocol can be an abuse of process. We would, however, suggest that there is a staged approach to sanctions, depending on the severity of non-compliance. There should be the opportunity to impose a proportionate sanction. For example, one level of sanction could be that a party should not be permitted to rely on a particular aspect of their evidence, if they have not complied with the protocol. Other sanctions could be an award of indemnity costs, or recording non-compliance for the purposes of budgeting.

**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?**

Parties should be required in the Directions Questionnaire to state whether the other side has complied with the protocol. There should also be provision within the Directions Questionnaire for a party to request the court to impose a sanction for non-compliance.

**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?**

We agree.PAP compliance disputes should be dealt with at the first case management conference, and this should be expressly stated in the pre-action protocol.

**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?**

As above, costs sanctions should be fully utilised where there is non-compliance.

**e) Whether you believe a different approach to sanctions should be adopted for**

**any litigation specific PAPs and, if so, why?**

It is important that the approach to sanctions is dealt with differently in a small claims track protocol. Costs based sanctions would obviously be unworkable in a small claims track case, therefore other sanctions must be considered.

**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

We agree. However, paragraph 3.9 suggests that internal complaints procedures should be used before recourse to litigation. Consideration must be given to how this would work in practice given that some complaints procedures i.e. the NHS complaints procedure, do not have timeframes in which to process complaints. There must be clarity on how long the claimant must wait for the complaints procedure to provide a resolution, before it is acceptable for them to begin a claim under the pre-action protocol. Further, complaints processes will not always deliver what the claimant needs in terms of resolution i.e. monetary compensation. We suggest that the requirement should be that a complaints process should be used before engagement with the litigation process, “where it is reasonably likely that the complaints process will deliver the resolution to the dispute that the party is seeking”.

**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.**

We agree. The work that the Civil Justice Council has already undertaken on vulnerable witnesses and parties did not define vulnerability, deliberately keeping the approach broad so as to cater for the range of vulnerabilities there are. The same approach should be used here – there must be flexibility for parties to do what is necessary to share the information they have, regardless of their (or their client’s) vulnerability. It would be counter-productive to amend the protocol in a narrow manner so as to cater for only a set number of vulnerabilities.

There must be consideration given to how litigants in person who are unable to access the internet for whatever reason – perhaps either because they do not have access to a device that connects to the internet, or they lack the confidence or knowledge to engage with an online process, can take part in the process, particularly if there is a move towards all protocols being online.

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

**statements of truth?**

• Yes

• No

• Other

No. Currently, letters of claim do not have the status of pleadings. There is a danger in elevating the status of these documents to a pleading at a very early stage in proceedings. The pre-action letter should contain enough information to enable a prompt investigation. However, when initially providing information, the claimant may not have access to all the evidence required to confirm the facts of their case, such as medical records, employment records, accident record book etc. If a statement of truth is required, the claimant is likely to be reluctant to provide any information unless they can be absolutely certain of what they have said, resulting in less information being provided by the claimant at the outset. Ultimately, this will lead to delay and undermine early efforts towards dispute resolution. It would also be unnecessary to require a statement of truth - nothing at present prevents the defendant from challenging inconsistencies between the letter of claim and subsequent evidence.

**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?**

We do not believe that there should be a sanction here.

**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?**

It would be helpful for some PAP steps to be used to replace or truncate the procedural steps that may be necessary later. The key to efficient resolution of disputes is early and full disclosure and early and full exchange of witness evidence where it is appropriate to do so – if as much disclosure and witness evidence (where appropriate) as possible can be provided before litigation, this will be of benefit to both parties, helping them to narrow the issues and identifying what expert evidence might be needed to address the issues, before costs are incurred on both sides in making enquiries with and/or instructing experts in contemplation of the litigation and issues which might still be live. We would suggest that defendants should be required to identify early on whether they would need any expert evidence, for example. There should be clarity though, on what status documents being completed at pre-action stage would have in subsequent litigation.

**Questions specifically related to 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.**

The General Pre-action Protocol as drafted is not well-suited to PI claims. Personal Injury should have an overarching pre-action protocol specifically for personal injury claims, where some of the sanctions and compliance issues are dealt with in an easily accessible way. There should then be specific protocols for specific work areas that will sit under the general protocol.

**Questions specifically related to 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 protocols.**

• Yes

• No

**29. 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

• Other

We do not agree and suggest this is change for change’s sake. The majority of the responses to the initial CJC survey said that the pre-action protocols work well and should only be subject to minor improvement. To draft a generic PI pre-action protocol and specialist sub-rules is going to require significant drafting and risks inadvertently amending the PAPs unnecessarily, leading to unintended consequences.

**30. 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

See our response to question 15

**31. Do you agree that all PI protocols should include an obligation to a 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?**

**OTHER**

There will not always be a formal round of ADR in personal injury claims, and there are already processes in place that help to resolve cases efficiently. Tying the stocktake requirement to a round of ADR could then mean that parties have to engage in a round of ADR, even where it would be wholly unnecessary. Instead, there should be a requirement to consider a stocktake before issue of proceedings, with a formal requirement to lodge any stocktake forms completed with the Directions Questionnaire, which could include a pre-issue stocktake and an update at the time of the Directions Questionnaire. The Directions Questionnaire should be amended to require a more descriptive response than yes or no the party has/has not complied, by requiring parties to explain how they have complied with the protocol and any reason for non-compliance.

**32. Do you agree that any revisions to the Personal Injury Protocol 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?**

The Serious Injury Guide is successful in achieving its aims because it is a voluntary guide. If there is further integration with the pre-action protocol and the guide becomes mandatory with sanctions attached to non-compliance, there is a danger that it will lose its effectiveness. There are also risks with further integration of the Guide as it is not drafted by or in the charge of the Civil Procedure Rule Committee, and could potentially be developed in ways that have unintended consequences. We suggest that compliance with the Serious Injury Guide should be taken into account when determining whether the parties have complied with the good faith obligation, but that this is as far as integration should go.

**b) How can the current protocol be updated to reflect moderately severe cases**

**as well as catastrophic injury cases despite workflows for each being**

**significantly dissimilar?**

It would not be helpful to update the protocol in this way. In future, following any extension of fixed costs, there will be cases that fall within the fixed costs regime, and cases that do not, and this will not necessarily be related to the severity of the case. A different approach is needed depending on whether the case is handled within a fixed costs environment or outside. In fixed costs cases, there is a need to have tight and definitive protocols with sanctions, to prevent bad behaviours that ultimately lead to conduct which would have the effect of claimants being priced out of continuing with a case. There will be greater scope to cater for issues of vulnerability in cases outside of a fixed costs regime.

It is also likely to become increasingly difficult to ascertain from the outset whether a claim falls within the fixed costs regime – even the Government in its response on the extension of fixed costs shied away from giving further guidance on the cases that would fall within the intermediate bands of fixed costs. There must be an ability for claims to transfer smoothly between the fixed costs and multi-track regimes.

**33. Do you agree that there should be better integration of each protocol with the**

**Rehabilitation Code? If so, should the protocol 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.**

We agree that there should be better integration with the Rehabilitation Code. However, we are cautious about the need to provide estimated costs about any treatment. We would not want claimants to be restricted if an early indication on costs turned out to be inaccurate further down the line. We agree that defendants should be required to supply reasons if they refuse or fail to provide assistance with rehabilitation. Claimants should be asked whether the defendant has been asked to comply with the Rehabilitation Code, and whether they agreed to do so.

**34. 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

• Other

We agree. To improve clarity, the transitional integration clauses should be in one place within the protocol.

**35. 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

• Other

Claimant representatives need to be able to obtain the necessary evidence and establish a case. The burden of proof is on the claimant, and they must have the opportunity to prove their case. The law of privilege, which is the cornerstone of the English legal system, must apply. It would also be unnecessary to be more specific on these issues within the protocol if there is a stocktake requirement and a good faith obligation to narrow the issues.

**36. 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?**

Disclosure by the defendant, when liability is not admitted, is an important way of helping, where possible to resolve that issue of liability. Accordingly, where a defendant considers a document requested is not relevant or is not to be disclosed it would be helpful for that to be supported by reasons.

**37. 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

• Other

The claimant’s privacy must be respected. If liability is not admitted the records are unlikely to have become relevant and/or disclosure would be disproportionate at that stage. Furthermore, the issues will need to be defined in order to assess what is disclosable and, even if disclosable, proportionate so far as inspection is concerned. This is not, therefore, a matter for a pre-action protocol.

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

• Yes

• No

• Other

**39. Do you agree that a working group should be established to consider a specific**

**protocol for foreign accident cases?**

• Yes

• No

• Other

**40. 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

• Other

**41. Should the personal injury 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?**

The defendant is not entitled to privileged documents. It is already clearly set out in the protocol and there is no rationale to change this. There is no evidence that this is a problem that warrants a solution, and amending this will have unintended consequences.

**42. 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

• Other

There is no legal basis for the defendant to obtain a medical report on the claimant. To do so against the claimant’s wishes would be an assault (to allow the remedy of a stay, which would be the appropriate step in the event of unreasonable refusal to grant facilities to obtain evidence when required, before proceedings have been commenced would be inappropriate and irrelevant). It is also disproportionate to create a provision which would lead to two medical reports being obtained in lower value cases. We do not believe there is evidence that suggests such a significant, and potentially costly, amendment is necessary. Claimants need to disclose a medical report in order to succeed in a case, so it is unlikely that there will be no medical report disclosed.

**43. 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

• Other

It should first be considered whether the defendant has agreed to provide rehabilitation. If they have agreed to provide rehabilitation, it should be between the parties to agree on access for medical assessment. Mandating that access should be given will have unintended consequences, and create a friction point where there is not one currently. Whether access is appropriate will depend on the facts of the particular case at hand. In a clinical negligence case for example, the claimant may be reluctant to have the defendant involved in any medical assessment. Equally, in abuse cases, the claimant will very likely have concerns about being made to undertake a medical assessment led by the defendant insurer.

**44. 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?**

We have provided our thoughts in the preceding questions. We do not consider the expert evidence process needs to change. The protocols largely work well in the majority of cases, evidenced by the high settlement rate for personal injury claims - on average, between 2016 and 2021, only 16 per cent of PI claims per year were issued in the courts in England, Wales and Scotland. The Serious Injury Guide is working well to achieve its aims, because it is consensual – in a recent survey of participants to the guide, 74 per cent said that the guide leads to easier access to rehabilitation and 81 per cent said that it lead to greater collaboration between the parties. To introduce mandatory requirements in cases that depend upon the individual circumstances of the person is not going to work. The flexibility of the current arrangements works well.

**45. Would an ability to have pre litigation court case management help dispute resolution in multi-track personal injury cases?**

• Yes

• No

• Other

This is well intentioned, but not well thought out. We query what the status of the discussion with the judge would be, as the judge would be unable to give directions. Further, we have concerns that the process, which is effectively early neutral evaluation, could have the potential to be weaponised by the parties. For example, parties could suggest the pre-litigation involvement of a particular judge, to prevent them from being the one to hear the case should it go to trial. There is also an issue of judicial resource – locally, there would not be enough judges to do the early neutral evaluation but also to do the trials.

**Any other comments**

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

**A pre-action protocol for foreign accident claims**

A pre-action protocol is warranted in foreign accident claims given the likelihood of an overseas defendant – perhaps not represented by a solicitor in England and Wales - being unfamiliar with the existing pre-action protocols. Consideration should be given to how a specific protocol should deal with arguments from some defendants that the protocol should not apply because the case falls outside of the jurisdiction of the courts of England and Wales. This is a common occurrence and in order for a protocol in these cases to be effective in encouraging early dispute resolution, narrowing of issues and efficient settlement, there must be a provision within the protocol addressing the issue.

Thought must also be given to the length of time that is permitted for defendants to investigate claims. In the current pre-action protocol for personal injury claims, the time-frame for the defendant to investigate accidents outside of England and Wales is six months. This is unnecessary, with advances in technology meaning that the defendant will be able to carry out most investigations remotely, and that most information will have been received by email. It is also inappropriate to have this length of time for investigations, particularly in cases where the limitation period is shorter, for example Athens Convention cases and Montreal Convention cases and in cases where a foreign law applies, such as Spain where the limitation period for accidents is only one year.

 **A pre-action protocol for abuse claims**

A protocol for abuse claims is required for a number of reasons. Firstly, claims for child sexual abuse tend to be brought many years after the abuse took place, for a variety of well documented reasons. The three-year limitation period is therefore problematic, with the problem being exacerbated in cases where a claim under the Human Rights Act is brought against the local authority for failure to remove/protect the claimant – in Human Rights Act cases the limitation period is one year. A provision within a dedicated protocol providing for a limitation moratorium would be hugely beneficial, effectively allowing the clock to be stopped, evidence to be gathered and the case to be established. If proceedings need to be issued immediately due to limitation, this can cause problems with obtaining funding for the case and may lead to claimant lawyers being unable to take on the case. A protocol would also provide guidance as to the reasonable timescales for pre-action disclosure of documents e.g. social services and police records. Currently claimants face significant delays in this regard.A protocol would also assist those parties who may not be experienced in abuse cases to handle a claim. Because fixed costs are being extended to other areas but not abuse cases, there are likely to be entrants to the abuse claims arena who are not experienced. While we would always advocate that claimants seek advice from an experienced abuse claims specialist, a protocol would help those who are less experienced to navigate the process and alleviate some of the problems they may have otherwise experienced.

Attached to this response is a copy of a draft pre-action protocol for abuse claims, developed by a working group of claimant lawyers. There were discussions with defendant representatives about the protocol, and although nothing concrete was agreed, there was a broad measure of agreement about what was put forward in the attached draft. A great deal of work has gone into the development of a protocol, soundings have been taken from a variety of specialists in the area, and we believe it is a valuable starting point for any discussions. This is notwithstanding that the draft was based on the current protocols so would need to be amended to fit with the direction of travel on the content of the protocols going forward.