

## **Online Procedure Rule Committee**

### **Inclusion Framework and Pre-action Model for the Digital Justice System**

#### **APIL response**

**September 2025**



## **Introduction**

APIL welcomes the opportunity to comment on the Online Procedure Rule Committee (OPRC) consultation on its inclusion framework and pre-action model for the digital justice system. The framework and model are a welcome step towards creating guidance and rules for online dispute resolution. However, we believe that greater clarity needs to be provided, and the guidance around artificial intelligence and data collection in particular should be strengthened.

## **General comments**

### *Definition of provider*

There is the use of the term 'provider' throughout both the inclusion framework and pre-action model. The terms 'service providers', 'providers of legal services', 'providers of legal information' and 'providers of legal advice' are all used, as well as the term 'provider', and it is unclear which sections apply to which providers, or the definition of each. 'Service provider' for example, could be construed to mean law firms, the court service, online dispute resolution providers or any number of organisations involved in the justice system or digital provision. The term 'provider' needs to be clearly defined, and there are also further considerations to be taken into account depending on what the definition of provider is. There are a number of requirements within both the inclusion framework and pre-action model, for example, that would be particularly onerous for smaller law firms, should they fall within the definition of a 'provider' for these purposes. For example, smaller firms are likely to be disadvantaged as there is likely to be a large financial cost in order for them to fully comply with the inclusion standards. Paragraph 61 of the inclusion model, for example, requires that providers should develop an anonymised service wide data set that supports identifying barriers faced by different groups; benchmarking services across platforms and generating insights to inform inclusive rulemaking and service redesign. If 'provider' includes law firms, some of the smaller organisations will simply not have the facility to comply with this.

Paragraphs 105 – 157 of the pre-action model are also requirements that will not be possible to comply with in practice if 'provider' includes law firms. Lawyers will not, by the nature of their work, be able to operate on a strictly impartial and neutral basis. We also question the requirement to impose a reasonable timetable – the court imposes such timetables. It is not made clear if this section refers only to providers of ADR services.

## **Inclusion framework**

### **General comments on inclusion framework**

We have set out below our comments on specific sections of the framework itself.

At section 3 on inclusive rule writing, practice and procedure, there is a requirement that the rules, practice and procedure should be available in different languages. While this is welcome, we question how the translations will be identified and prioritised.

Section 3 also references that the framework will be supported by procedural safeguards (e.g. human fallback and override, assisted options). It is vital that there is a mechanism in place that allows human oversight and override. We also suggest that there should be a requirement within the framework for a mechanism to allow users to raise issues with inclusion with the OPRC. Users should be able to flag where something is not inclusive.

**Question 1: Are these the right purposes for the OPRC's Inclusion Framework? If not, why not and what other purposes should the Framework have?**

The purposes of the framework are fairly uncontentious and we do not have comments on those.

**Question 2: Are these the right aims for the OPRC's Inclusion Framework? If not, why not and what other aims should the Framework have?**

The scope and aims of the inclusion framework include a requirement that service providers should collect and use disaggregated data to understand who is being left behind, and why, and the OPRC should use these insights to inform both rulemaking and service design. Again, as above, it is unclear who the 'provider' is, and this requirement would be onerous for smaller firms and organisations. Care will also need to be taken as to how the data is collected, ensuring that it is properly anonymised. We would be grateful for clarification as to who is going to have access to the data, where it is going to be published. It is also important that there are non-digital routes for people that do not wish to share their data.

**Pre-action model**

The document sets out that the principles and standards comprising the 'pre-action model' for the provision of digital pre-action services are intended to assist parties to understand their legal problems and resolve disputes without recourse to litigation. There must be an awareness that 'without recourse to litigation' does not mean that the party does not require independent and specialist legal advice. From a personal injury perspective, specialist legal input is required even at pre-action stage.

**Pre-action model generally**

Paragraph 103 requires that the parties to a dispute, which has been referred to a digital online dispute-resolution service, should so far as possible, co-operate with each other to ensure a fair, consensual and expeditious resolution. Co-operation includes at paragraph 110 that the parties should minimise costs. We suggest that this should be amended to parties only incurring proportionate costs.

Paragraph 123 requires that services should be accessible from all devices connected online, including mobile phones, and for users with low bandwidth. We query if this means that people should be able to access services via their smart watch, for example.

Paragraphs 125 – 128 set out requirements related to confidentiality and privacy. Again, it is unclear what the definition of 'provider' extends to cover. If someone is accessing online

dispute resolution services without a legal representative, there needs to be careful thought as to how confidentiality works alongside the verification of ID – who is doing the verification?

Paragraph 168 provides that decisions with legal consequences should always involve human oversight and the option for human review. We welcome this, though question how people would be able to request a human review in practice – we would welcome further detail on this. We would also suggest that there should be a requirement for wider provision of human oversight – if the technology leads to a missed deadline for example, will people have appropriate recourse for this? There should also be a requirement for a human-led back-up system if the system goes down.

Paragraph 168 should also include a requirement that providers explain how AI has been used in the ODR process, and with a signpost to the ICO's guidance for organisations on how to explain processes, services and decisions delivered or assisted by AI, to the individuals affected by them. There should also be a requirement that providers ensure that there is fairness and no bias generated from any artificial intelligence used. At the very least there should be a flag in both the inclusion framework and the pre-action model about the risks of using AI and how to manage these.

***Question 4: Are these the right purposes, scope and aims for the OPRC's Pre-Action Model? If not, why not and what other purposes, scope and aims should the Pre-Action Model have?***

Paragraph 84 point 1 sets out that one of the objectives and purposes of the model is to encourage wider public use of efficient and effective digital methods of identifying legal problems, accessing legal advice and resolving disputes, including through the use of artificial intelligence. While we agree that AI has the potential to bridge the gap in accessibility to legal information and services, there are risks including concerns around inaccuracy and hallucinations, data protection and privacy, client care considerations, ethical and bias concerns, and reputational risks. While we believe that AI can enhance, support, and strengthen the delivery of legal services, it must not replace professional legal advice, and human oversight should remain where there is AI-assisted output.

In relation to the accuracy of information provided by AI, there should be a duty on providers to ensure that the information provided is accurate. The risk of inaccuracies and AI hallucinations were highlighted for example in the case of *Ayinde v Haringey and Al-Haroun v Qatar National Bank* [2025] EWHC1383 (Admin). Paragraph 143 of the pre-action model requires legal information to be accurate, but we recommend a separate clear requirement that where AI is used, the accuracy of the information should be vetted by the legal provider. Left alone to use AI to identify their legal problems, access legal advice and resolve their dispute, and without a specific requirement for providers to ensure that the information generated via AI is accurate, lay people may access information that is simply incorrect or unsuitable for their purposes but they will not be able to identify this.

At Para 84 point 2, the pre-action model states that one of the objectives and purposes of the model is to improve public access to the wide range of legal services available online. Thought must be given to how the public can be provided with access to a wide range of

legal services in a way that is fair and does not mean that a handful of providers are promoted to the public over and over again. For example, if the public are simply provided with an alphabetical list of legal services providers, they are unlikely to read through the entire list and will most often select one at the top, meaning those that are placed first alphabetically will gain an advantage.

We suggest the wording of point 3 of paragraph 84 should be changed from the objective of ‘maximising positive outcomes for litigants’ to maximising the opportunity for justice to be achieved. Maximising positive outcomes for litigants does not make sense in an environment where there is a dispute, as usually, a positive outcome for one litigant is a negative outcome for the other litigant.

**Question 6: How can monitoring and compliance with the standards in the OPRC’s draft Pre-Action Model best be achieved and what data would be required to achieve this effectively? Does it require accreditation or evaluation by a body and if so, what framework would work best?**

Para 111 provides that all providers of online and digital services providing legal information, legal advice and dispute-resolution should comply with the following principles concerning the transparency of their services. As noted by the Law Society in their report on 21<sup>st</sup> Century Justice, the pre-litigation online landscape is largely unregulated, with consumers having very little recourse if things go wrong. We question how providers will be held to account under the principles due to the lack of regulation in the sector currently.

***Question 9: Does the OPRC’s draft Pre-Action Model correctly reflect the principles and standards necessary to facilitate the smooth transfer of data between pre-action public and private providers, and, where necessary, from those providers into the online court and tribunal dispute resolution systems? If not, why not and what principles and standards should the Pre-Action Model include to achieve this?***

Again, we would welcome clarity as to what a ‘provider’ is. We would also welcome further information on what information is required to be shared between pre-action providers and court providers – who has oversight on what should be shared and what should not.

**Question 10: Does the OPRC’s draft Pre-Action Model correctly reflect the means to develop, assess, monitor and/or enforce appropriate technical and data standards for the Digital Justice System? If not, why not and what means should the Pre-Action Model include to achieve this?**

There needs to be a clearer definition of the digital justice system.

Any queries relating to this response should be sent to:

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