

LORD CHANCELLOR'S DEPARTMENT

JUDICIAL REVIEW: PROPOSED PRE-ACTION PROTOCOL

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

JUNE 2001

The executive committee would like to acknowledge the assistance of Patrick Allen, Vice-President of APIL, in preparing this response.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents around 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To promote health and safety;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.

2. APIL welcomes the opportunity to respond to this consultation regarding the introduction of a pre-action protocol for judicial review cases. As personal injury practitioners, our members are usually instructed to advise on, or pursue, judicial review proceedings in the following contexts:
 - Decisions made by coroners;
 - Decisions made by the Legal Services Commission in relation to funding.

3. We fully support the introduction of the draft protocol as it appears in Chapter II of the consultation paper, as we support the existence of pre-action protocols generally. The formalisation of best practice in such a way undoubtedly encourages parties to act fairly and assists the parties to achieve the most appropriate resolution of the relevant matter without undue delay.

Q1 Views are sought on the guidance / information contained within the protocol and, in particular, whether there should also be separate guidance notes.

4. It is noted on page 8 of the consultation paper that it will sometimes be difficult to follow the protocol, in, for example, urgent judicial review proceedings, and that parties would be expected to follow the protocol as far as possible “depending upon the circumstances of the particular case”. In view of this complexity, we believe that it may, indeed, be helpful to attach separate guidance notes to the protocol to explain key points and issues.

Q2 Views are sought on whether the protocol should specifically refer to the court’s discretion to allow a late claim, in appropriate cases.

5. We believe that the protocol should refer to the court’s discretion to allow a late claim in appropriate cases. If such a discretion exists, we believe that in the interests of fairness applicants should be made aware of it and provision made for it in the protocol. Negotiations may have reasonably, but unsuccessfully, been pursued. Provided it is explained that it is a discretion only and that there is no guarantee that it will be exercised in an applicant’s favour, we do not believe that it will lead to attempts to delay the implementation of disputed decisions.

Q3 Views are sought on whether there are any specific examples of judicial review cases that would be suited to ADR methods. Views are sought on whether the protocol should contain an ADR clause.

6. We feel that ADR may lead to cheaper and quicker resolution of disputes surrounding coroners decisions in some cases. For this reason, we believe that an ADR clause could usefully be contained within the protocol. If ADR is pursued, however, the legal framework for judicial review proceedings should

be suspended to ensure that the legal rights of the parties remain unaffected where ADR is unsuccessful.

Q4 Views are sought on whether 14 days is a reasonable time to allow for a reply, in most cases.

7. We agree that, in most circumstances, 14 days will be a reasonable time to allow for a reply to a letter before claim.

Q5 Views are sought on whether the protocol should specifically provide for the defendant to seek an extension of the time to reply, in appropriate circumstances.

8. In the interests of fairness, the defendant should be allowed, in appropriate circumstances, to seek an extension of the time to reply. If an extension is allowed, however, a correlating extension to the applicant's time limit for lodging the application for judicial review should also be granted.