



The Civil Justice Council is currently conducting a review of the Pre-action protocols. As part of this review we are seeking preliminary views from interested parties on the purpose and operation of PAPs and what, if any, reforms are needed.

We would be grateful if you took the time to complete this questionnaire. Please note there will be an opportunity to make detailed submissions to the CJC including on any interim report issued by the Council. This survey is designed as a preliminary fact-finding exercise, to gauge the views of litigants, lawyers and the judiciary about the utility and fairness of PAPs.

Please try to answer the questions as directly as possible. The final question provides the opportunity to enter any additional observations not already covered by previous answers.

Please also note this questionnaire is intended for lawyers and non-lawyers alike. If you feel any of the questions are unclear please indicate that in the free text boxes.

Your Details and Experience

1. Your name

2. Your affiliation

3. Are you responding on behalf of your organisation?

Yes

No

4. Which Pre-action Protocol do you have the most experience with? We will assume your subsequent answers relates to this PAP unless you indicate otherwise (There are free text boxes where you can do this).

5. If you have experience with other PAPs could you please list them here

Purpose of PAPs

6. What do you think the primary purpose of PAPs are?

7. What do you think the subsidiary purposes of PAPs are?

- Allow the parties to confirm there is a legal dispute between them
- Narrow any issues in dispute between the parties
- Promote an atmosphere of cooperation between the parties
- Reduce the overall costs of resolving the dispute
- Ensure the parties engage in appropriate alternative dispute resolution (ADR) to try to resolve their dispute before going to court
- To stop potential unmeritorious claims from going to court
- To ensure strong claims are paid/settled without the need to go to court
- Other (please specify)

8. To what extent do you think PAPs have achieved these objectives?

- Fully Successful
- Partially Successful
- They're sometimes counterproductive
- Not at all

If you would like to elaborate on your answers please do so here.

9. What do you think the purpose of PAPs should be?

Fairness of PAPs

10. How burdensome are the requirements of PAPs?

- Overly burdensome
- About Right
- Too Light

If you wish to elaborate on your answers please do so here

11. Are PAPs fair to both prospective parties in the obligations they impose?

12. Is there enough time to comply with PAP requirements, taking into account limitation periods?

- Yes
- No

If you wish to elaborate on your answer please do so here

Costs and Funding

13. Do you believe PAPs help resolve disputes at proportionate cost?

- Yes
- Most of the Time
- Some of the Time
- No

If you wish to elaborate on your answers please do so here

14. Do PAPs have the effect of frontloading of costs in cases that are not resolved without reaching court? By "court" we mean the formal commencement of a claim in the civil courts. By "frontloading" we mean the incurring of additional costs that would have been avoided had the claim been directly issued in court.

- Yes
- No

If yes, are there ways frontloading might be avoided or minimised?

15. Where costs are recoverable for complying with PAPs, do the costs fairly reflect the amount of work involved?

- Yes
- No
- Not Applicable (Costs not Recoverable)

If you wish to elaborate on your answer please do so here

16. If you are reliant on legal aid to cover compliance with PAPs does this cover the cost of the work ?

Yes

No

If you wish to elaborate on your answers please do so here

Suitability

17. To what extent do you believe that PAPs are well adapted to the key issues in the litigation to which they relate?

- Very well adapted
- Could be improved
- Not well adapted

If you wish to elaborate on your answer please do so here

18. Are PAPs sufficiently flexible to meet the needs of the prospective parties?

- Yes
- No, more flexibility is needed

If you wish to elaborate on your answer please do so here

Clarity

19. Are PAPs clear in the obligations they impose (and do not impose)?

- Yes
- No

If you wish to elaborate on your answer please do so here

20. Are PAPs clear as to the sanctions that can be imposed for breaching them?

- Yes
- No

If you wish to elaborate on your answer please do so here

Litigants in Person

21. To what extent do you consider PAPs to be comprehensible to litigants in person?

- Very clear and easy to read
- Some aspects are difficult to understand
- They are inaccessible

If you wish to elaborate on your answer please do so here

22. Do you believe PAPs are easy to locate for litigants in person?

- Yes
- No

If you wish to elaborate on your answer please do so here

Compliance and Enforcement

23. Do you believe prospective parties comply appropriately with PAPs?

- Compliance is routine
- Compliance is variable depending on the identity of the parties & whether they are represented
- There is often disagreement between the parties about whether they have complied

If you wish to expand on your answer please do so here

24. Do you believe courts deal consistently with non-compliance with PAPs when making case management directions or imposing costs orders?

- Yes
- No

If you wish to elaborate on your answer please do so here

25. What do you believe should be the appropriate sanction for non-compliance with PAPs?

Judicial Case Management

26. To what extent does compliance with PAPS lead to more efficient case management if litigation is necessary (eg through the narrowing of issues in dispute)?

- A lot
- A moderate amount
- A little
- None at all

If you wish to elaborate on your answer please do so here

27. What more could be done to transfer the benefits of compliance with PAPS to judicial case management if litigation is necessary ?

Technology

28. What role should PAs play in online dispute resolution?

29. Would it be desirable to incorporate PAs into the steps built into online dispute resolution portals?

If you wish to elaborate on your answer please do so here

Priorities for Reform

30. Do you believe PAs require reform?

- No reform required
- Minor reforms would be desirable
- Significant reforms required
- Major reforms required

31. What do you believe should be the priorities for reform?

Final Observations

Thank you again for the filling out this questionnaire. Please do send the survey link to any other persons you know who have had experience of PAPs in whatever capacity. A hard copy version of the survey can be made available if required: please email Leigh.Shelmerdine@judiciary.uk

32. Are there any issues not raised above that you believe should be part of the CJC's review of PAPs?