

## **The Practice Direction on Pre-Action Conduct**

With effect from the 6th April 2009 the Practice Direction on Pre-Action Conduct replaced the Practice Direction on Protocols. By virtue of CPR 3.1 (4) compliance (or lack of it) with the protocol will be taken into account when the court gives directions. By virtue of CPR 44.3(5) it will be taken into account when the court decides what costs order to make. Although CPR 44.5 makes no express reference to the protocol there certainly appears to be scope to refer to it on assessment by virtue of CPR 44.5(3) (subject to the usual limitations on raising conduct on assessment – **see Lahey v Pirelli Ltd** [2007] EWCA Civ 91 and **Northstar Systems Ltd v Fielding** [2006] EWCA Civ 1660).

Paragraphs 4.5 and 4.6 give the court clear power to impose (inter alia) costs sanctions for non compliance (though this is in less mandatory terms than under the old Practice Direction on Protocols).