

 **FOIL’s Focus for 2019**

It now seems likely, subject to the all-pervading Brexit timetable that the Civil Liability Bill will become law by the end of 2018 or shortly thereafter. The new Act will form an important part of the reforms which started with Lord Justice Jackson’s report, proceeding through both LASPO and developments in the low value claims portal. There is still significant change to come. 2019 will see the laying before parliament of the regulations under which the new whiplash regime will operate, and the development and testing of the electronic portal: there is much heavy lifting to do on the detail. Government proposals on reform of rehabilitation and credit hire are still awaited.

Away from low value claims, Brexit casts a long shadow over issues as widespread as Green Cards, the payment of first party claims outside the UK, cross-border litigation, and local authority procurement. We await the detail of a deal. Technology continues to change the nature of risks and the way claims are handled. We await the recommendations from the Grenfell inquiry and the Independent Inquiry into Child Sexual Abuse. Long running issues such as civil justice reform in Scotland; the extension of fixed costs; fixed costs and process change in lower value clinical negligence claims; the introduction of Lord Justice Briggs’ changes to the court structure and the development of the On-line court, will continue to be important parts of FOIL’s agenda.

The establishment of London FOIL in 2018 gives FOIL a fresh focus on issues arising in the London Market, increasing FOIL’s remit in construction, professional indemnity, regulatory law and property, and introducing specialist teams for Cyber & Digital Liabilities, Reinsurance, Energy and Marine & Aviation. FOIL will continue to extend its reach into jurisdictions which work closely with, and influence developments in, the UK.

As always FOIL’s approach is on detailed examination of the issues, and full engagement in the reform programme and with insurers, both reacting to the proposals put forward and setting a pro-active agenda for change.

**FOIL’s Technical and Industry Focus**

1. **The Challenges arising from Brexit**

*With the detail of Brexit still uncertain, the nature of the UK’s future relationship with the EU, and the effect of the change upon the UK’s law and regulation and its business environment remains unclear. Leaving the EU represents the biggest change in the UK’s constitutional and legal framework for a generation.*

* Consideration of the impact of the proposals arising from Brexit on UK law and regulation affecting insurers, the public sector and the claims industry.
* The impact of Brexit on the motor insurance sector.
* The identification of opportunities arising from Brexit to improve and reform the current legal and regulatory landscape.
1. **The reform of the claims process**
* *The Civil Liability Bill sets out the framework for a new low value civil justice landscape but the detail and the development of the system remains to be delivered. The current review of LASPO Part 2 provides an opportunity to press for nuanced reform on the detail which can have a substantial effect on efficiency and cost. Work is needed to ensure that all parts of the reform programme work together effectively, deterring fraud and encouraging early settlement wherever possible.*
* The introduction and development of regulations and the new electronic platform for lower value claims.
* The introduction of new Small Claims Track limits for RTA and EL/PL claims.
* Engagement with the MOJ on reforms arising from the LASPO Part 2 review.
* The MOJ response on Part 2 of the whiplash consultation.
* Engagement with the reforms arising from Lord Justice Briggs’ Review of the Civil Court structure including the introduction of the On-line court and changes to the court structure and litigation process.
* A new regime for NIHL claims.
* Support for the Serious Injury Guide and the Rehabilitation Code.
* The effective introduction of the new FCA regulation of CMCs to put in place a tougher regulatory regime and fairer pricing.
* The use of existing and new methods of ADR to improve claims handling and cut costs in both low value and high value claims.
1. **Working closer with clients**

*FOIL members are trusted advisors to their insurer clients, understanding the specialist sectors in which they work, and advising on issues affecting business operations and practices. Changes in legislation and case law are creating new challenges for insurers and insureds.*

* The compulsory motor insurance regime (including the Green Card System) – the effect on UK law of the decision in *Vnuk; the changes arising from Roadpeace v Secretary of State for Transport; and the outcome of UK Insurance Limited v R&S Pilling in the Supreme Court.*
* The impact of the Grenfell Tower fire and the work of Dame Judith Hackitt and Sir Martin Moore-Bick on the construction and insurance industries.
* The legal and practical challenges presented by automated and driverless cars.
* Outcomes from the Independent Inquiry into Child Sexual Abuse – and the challenges arising from claims for historical abuse.
* The legal and practical issues arising from GDPR.
1. **The development of fixed costs and costs management**

*Reforms to the civil litigation costs regime have resulted in legal costs becoming more proportionate and more controllable but more needs to be done through the implementation of the Jackson report on fixed costs and, in cases where costs are not fixed, effective costs management. The rules already in place must work as intended.*

* Removal of the anomalies in the current fixed costs regime which undermine its objectives.
* Support for and engagement with the implementation of Lord Justice Jackson’s report on the extension of fixed costs.
* Effective use of costs and case management to control costs pre and post proceedings
* The introduction of fixed costs in clinical negligence, and NIHL claims.
* The honing of the Part 36 regime to drive appropriate behaviour and support proportionality.
1. **The excessive costs of compensation for financial loss**

*The costs associated with claims for financial loss are in many instances too high, in some cases allowing third party organisations to profit without benefiting the claimant.*

* The implementation of the new regimes in England and Wales and Scotland for setting the discount rate.
* The excessive cost of replacement vehicles obtained on credit.
* Continued leadership of the cross-industry working group on rehabilitation in lower value claims
* The excessive cost of care, including the implications of Section 2(4) Law Reform (Personal Injuries) Act 1948.
1. **The challenge of technological change and innovation**

*Technological and medical developments transforming day to day life and business in the UK are already here and will develop apace over the next five years, requiring significant legal changes and a fresh professional and business response.*

* The development and application of AI and digital working.
* The legal and regulatory challenges presented by the development of autonomous and driverless vehicles.
* The development and growth of cyber cover.
* The use of technology to address insurance fraud.
* Meeting the needs of the millennial generation.
* The use of technology to improve the outcome for seriously injured claimants.
* The challenges of claims for immunotherapy.
* The evolving nature of product risks.
1. **Tackling fraud**

*Fraudulent and exaggerated claims corrupt the civil justice system and impact adversely on insurance premiums and public expenditure. Fraud must be identified and dealt with wherever it occurs.*

* Supporting the continued development and extension of MedCo.
* Effective use of “fundamental dishonesty” provisions, to include exaggeration.
* The use of publicity and social media to deter and tackle fraud
* Data protection issues, in the light of the GDPR.
* Implementation of the IFT proposals.
1. **London market issues**

*Whilst many of the subjects set out in 1-7 above impact the London market (and the addition of London FOIL seats on the established UK SFTs for Property, Construction, Professional Indemnity and Regulatory Law will bring the domestic and the London markets together in those spaces), there are numerous discrete subjects that affect the London market particularly.*

* Reinsurance – much of the cover bought by UK insurers is placed in the London market ranging from excess of loss catastrophe cover to facultative and treaty quota share programmes. Where reinsurers are carrying proportionality more of a loss than the fronting insurer, lawyers instructed by the reinsurer will be very closely engaged with major claims and London FOIL will be looking at how the processes can be improved and conflicts reduced.
* The London market Target Operating Model (TOM) is a major process restructuring project. FOIL members will be closely involved in issues such as data ownership.
* London FOIL specific SFTs are under construction to cover Marine and Aviation, Energy and Reinsurance.

**FOIL’s Market Focus.**

2019 will be another year of expansion for FOIL.

Building on our long-established profile and reputation in the personal injury and liability sectors, we will not only continue to increase the areas of insurance claims law that we cover in the UK market, we will also continue to expand into other markets and jurisdictions, most notably Ireland with “FOIL Ireland” already drawing interest in that market.

At the same time, we will enrich the range of services offered and deepen our understanding of members’ needs.

The 2018 members’ satisfaction survey revealed a less than optimal awareness of all that FOIL offers to members and their clients and of the relationships that support FOIL financially. We will work on improving that in 2019.

1. **Extending FOIL’s practice areas.**

*FOIL’s corporate members practice in many areas of insurance claims law and as at the start of 2019, FOIL already supports lawyers specialising in 33 different types of insurance claims law through the SFT structure including 6 Scotland, 2 Northern Ireland and 3 London FOIL specific teams. Over the coming months we will continue to add to this range.*

* The creation of a new SFT on Cyber and Digital Liabilities.
* The establishment of other SFTs or working parties in response to market developments and members’ requirements.
1. **Extending FOIL’s markets.**

*FOIL operates very effectively in the UK domestic insurance market. Many of our corporate members are also instructed by insurers underwriting in the Lloyd’s and London markets. We have improved the value added to existing members with a London market practice and expect to attract new members in due course through the work of London FOIL.*

*We will also build on the bases established in 2017 and ‘18 in the Channel Islands and the Isle of Man as well as moving forward with FOIL Ireland for law firms in that market.*

* The development of services to meet the needs of law firms in the London market.
* A much deeper engagement with the insurers that underwrite in those markets.
* Better promotion of lawyers practising in Ireland, Isle of Man and Channel Islands

to FOIL members handling cases in those jurisdictions.

1. **Education and Training.**

*With a business environment involving so much change, being well trained and well-informed has never been more important. FOIL will continue to support its members’ professional development and lifelong learning.*

* Effective continuing education and training for insurance lawyers.
* Embedding the principle of “working to the FOIL Standard” using the FOIL Statement of Competence and the Statements of Legal Knowledge.
* Adding to the number of Statements of Legal Knowledge to mirror the increased range of insurance claims law covered by our SFTs.
* Concluding work started by Scotland and Northern Ireland members to adapt the FOIL Standard for use in those jurisdictions.
* Encouraging all insurers to see the FOIL Standard as a key differentiator for panel review and selection purposes.
1. **Better promotion of FOIL’s services to members and their clients.**

*FOIL offers a wide range of services and opportunities to engage that are not as widely understood as they should be.*

* Further analysis of the 2018 online members’ survey.
* Detailed understanding of website traffic patterns and MailChimp campaign data leading to better understanding of what members actually look for.
* Creation of a “FOIL Champion” at every member firm who will receive a monthly one page bulletin, summarising all FOIL activity and will promote this within their own firm.
1. **Supporting our members’ business needs and helping them to meet the same challenges that face other business sectors.**

*FOIL is able to provide forums for engagement between member businesses dealing with similar economic and regulatory challenges to help ensure that they are fully informed. This can be achieved through*

* Using our convening power to create working parties.
* Greater engagement with the SRA.
* Providing insight into the ways in which disruptive technology and AI are changing business.
1. **Optimising alternative revenue sources.**

*FOIL’s finances are finely balanced and the relationships that we have with sponsors and trade and industry partners make the difference between a surplus and a deficit each year.*

* Identify FOIL Champions at each sponsor and TIP to receive the monthly one page bulletin, summarising all FOIL activity.
* Explore the value to these firms of the additional markets and areas of law in which FOIL now operates.