

FOIL
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The Big Question

With a new Government in place, *Claims Magazine* has asked some members of the claims sector as to what they hope will happen under the country's new Conservative administration

The country woke up on 8 May to the news that it had a new Conservative Government in place at Westminster. Contrary to the opinion pollsters' predictions throughout the General Election campaign, which pointed to another hung Parliament, David Cameron managed to secure

331 seats and a slim majority.

Claims Magazine recently asked some claims professionals what they would like to see happen under the new administration and how they thought it would approach the claims sector. Here's what they had to say. ●

Donna Scully, partner at Carpenters Solicitors



A change of Government would, in my view, have had a big impact on access to justice.

"The previous Government had not shown a huge regard for it and the hope was that if Labour got into power, they would have. I have lobbied under the previous Government,

and under Labour and I felt that Labour had more regard and understanding about why access to justice is so important and why financial means shouldn't be a bar to it.

"In terms of fraud, this Government has shown a willingness to tackle it as part of the so-called compensation whiplash culture, but my concern has been that they have a very gung-ho way of dealing with things, such as, for example, MedCo. They appear to be like a bull in a china shop in the way they decide quickly (and sometimes without understanding) what the problem is and how best to tackle it. They fail to consult properly and their impact assessments have been very poor to date. They then rush reforms in which means they don't work properly and just leave those on the ground to get on with it. I'd like to see that stop.

"This Government appears to have plenty of time to see and listen to the likes of the ABI, but not for those who represent victims of accidents.

"The Transport Select Committee (TSC) has been helpful in the fight for justice over the last five years because when they consult and publish their reports and recommendations, they do it properly and they do engage, listen and take on board what the experts in the field have to say. Some of their recommendations over the years have been very helpful in preserving access to justice and thankfully, the Government has listened to them.

"The ABI are very vocal about their wish to see lawyers out of the picture on what they call low value PI claims. They are always pushing for a rise in the small claims limit. That is a big threat to Justice for sure, but also a big threat to the professionalism of our industry too because if you do raise the limit, then claims management companies will move in and represent clients, taking a chunk of their damages.

"Clients will not receive the same service they do now from independent lawyers and they will just become a commodity at the hands of some unscrupulous CMCs who are out to push claims and make money." ●

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Ronan McCann, fraud partner at Horwich Farrelly



“With the Conservative party in government for a new term albeit with a slender majority, they are likely to seek further cost savings in the area of civil justice, particularly as the Ministry of Justice will not have a ring fenced budget.

“They will probably want to proceed along the path started with Jackson/LASPO, which continued with the removal of civil liability for H&S regulation breaches and the recent Civil Justice & Courts Act. As such, they could be very receptive to any further proposals that reduce the burden on the civil courts system and/or improve its ability to be self-funding.

“This would present a reasonable opportunity for insurers to influence beneficial change in current gap areas such as whiplash.

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“ It should be noted that a new Parliament will contain new ministers and a host of new MPs of various political persuasions. It will take time to work out who will be championing civil justice matters and what their personal objectives are. There is also the strong possibility that the EU referendum issue means civil justice is sidelined

championing civil justice matters and what their personal objectives are. There is also the strong possibility that the EU referendum issue means civil justice is sidelined for the next two years.” ●

Nick Parsons, President of the Forum of Insurance Lawyers (FOIL)



“While early reports suggest that repealing the Human Rights Act will be at the top of the new Justice Secretary's list of priorities, the claims process and the cost of civil litigation will undoubtedly continue to be major issues. The Conservative manifesto included mention of modernisation of

the courts system. That is certainly something FOIL supports. Our members increasingly report difficulties with the administration of the court service, most often around delay. Also, on the

theme of access to justice, FOIL will continue to support the Law Society's campaign for reduced, rather than enhanced court fees.

“FOIL remains keen to assist the Ministry of Justice in its continuing reforms. One area needing continuing vigilance is fraud. Some good reforms are now in place, but inventive organised fraudsters will find other ways to cheat the system. We all need to remain vigilant.

“My greatest wish is that the Government that introduced LASPO continues to allow the reforms to bed in. Taken together, the reforms offer a very coherent package of reforms that really can drive down unwarranted cost without sacrificing quality of service for parties. We should unpick the reforms at our peril.” ●

Helen Spillards, director, Accident Rehab

“As rehab providers not only have we had to get to grips with the Jackson reforms, but we have also had to get our heads around the changes in the health and welfare reforms.

“It has certainly been a very interesting few years for our industry as we have gone through a transition period across the board.

“As a result of the changes I found that our industry has become

more adversarial with more and more time being wasted on report writing rather than the facilitation of rehabilitation, making the job of the health professional to act in the best interests of the client extremely difficult.

“What I would like to see from the new Government is for them to be actively encouraging independent rehabilitation providers with an understanding of the market to become more involved in their decisions when it comes to implementing reforms.” ●

Gary Beazleigh, partner at Parabis Law

The only constant is change as the position of Justice Secretary passes from Chris Grayling to Michael Gove. One would expect legislators and the Civil Procedure Rules Committee to remain secure in the knowledge that their positions remain tenable as the new Government, free from any coalition ties, will seek to continue the legal gymnastics that it performed in the previous term.

"The key sentiment that has fuelled the changes to date is unlikely to veer from its current course. The overall objective of reducing the volume of litigation, costs and fraud is widely accepted and the set of the sail is clear. Whilst a wide range of measures have already been introduced, the increase in the personal injury small claims limit was

notably absent. If the Government's objectives are not met, this will in all probability be revisited.

"Costs and proportionality will also remain high on the agenda. It is perhaps predictable that legislative change to yield powers to the court to set pre-action budgets will occur. It is also not difficult to imagine the introduction of fixed fees in certain categories of multi-track personal injury cases.

"There remains a myriad of steps that could be implemented during the next term, some more likely than others. One certainty is that when Mr Gove arrived at his desk for his first day of duty, his Inbox contained the memo from Mr Grayling entitled 'Unfinished Business.' ●

Jonathan Wheeler, President, Association of Personal Injury Lawyers (APIL)



While the last Government did make good on its commitment to help some victims of asbestos

in the form of the mesothelioma scheme, we will campaign for an extension to other work-related illnesses where the insurer cannot be traced. Logic dictates that if the scheme works for mesothelioma sufferers, it should also apply to those in the same boat who have contracted different cancers or other long-tail diseases.

"Above all where reform is called for from either side of the

claimant/ defendant divide, we want to see the Government acting on evidence, and adopting a fair and compassionate approach to injured people.

"That said, we don't just believe that improvement can only come through legislation; we are prepared to put the work in ourselves to improve injured people's experiences of the justice system. APIL continues to advocate the importance of accreditation and training, and we're working even harder to promote rehabilitation to our members as a key part of the service of putting an injured person's life back on track." ●

Susan Brown, Chairman of The Motor Accident Solicitors Society (MASS)

In the last five years we have seen enormous change to the claims sector with some positives, such as a commitment from insurers to reduce premiums, better co-operation between insurers and solicitors and better fraud prevention, but there have also been some considerable negatives, with the overall balance in the system moving in favour of defendants and insurers instead of ensuring the claimant's right to justice remain the focus of any reforms.

"MASS will continue to support the basic principle that injured people have the right to access the affordable legal advice that they need to recover the compensation they are entitled to after an accident. We will be campaigning for the end of the practice of third party capture, a total ban on pre-medical offers in whiplash claims, better enforcement of data protection legislation and to ensure that those with claims of limited value can still access independent professional legal advice." ●

Darrin Pearson, senior claims handler at Claim 500

The new Government needs to support personal injury solicitors to give people better access to justice. There are many changes that would benefit the current situation, but even small ones have the potential to offer significant improvements.

"For example, consider an increase of stage 1 and 2 fixed MOJ Portal costs for RTA, employer liability (EL) and public liability (PL) claims. Current costs are too low and do not reflect the quality and quantity of work involved and we are seeing a trend where some solicitors do not feel able to take on certain types of case. This is restricting access to the right to claim after suffering a

personal injury.

"Another welcome change would be to reduce the upper limit for EL/PL claims back to £10,000, which would also be fairer to solicitors and claimants. Cases valued above this amount have significant complexities and do not fit neatly into a lean, fixed cost process.

"Solicitors should get paid properly for the job they do, however long it takes, and therefore be allowed to offer claimants the reassurance and support of thorough, good quality legal services that stand the best possible chance of achieving the right outcomes for victims of personal injury." ●