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FOIL comes out against PI reforms as leading defendant firm floats lawyer-free IT process

The Forum of Insurance Lawyers (FOIL) will not be following its members' clients in supporting the government's personal injury reforms, it has announced.

However, leading defendant firm Kennedys has urged caution in adopting such a stance, and suggested that small claims could even be handled without lawyers at all by adopting technology.

FOIL announced this week that "following an extensive consultation process, it intends to put forward an 'independent and principled' response to the Chancellor's announcement in the Autumn Statement to raise the small claims track limit for personal injury claims and remove the right to general damages for low value whiplash".

CEO Laurence Besemer said: "The approach we are putting forward has overwhelming support within FOIL. Regrettably we are not able to support fully the Association of British Insurers' stance on this issue but nor are we willing to align ourselves with the "strategic alliance" formed by Association of Personal Injury Lawyers, Motor Accident Solicitors Society and the Law Society.

"It is unfortunate that there has not been a willingness on the part of the government to wait until the effects of recent reforms have come to fruition before proposing further change. What's needed is a well thought-through package of measures to bring about the government's objectives and we believe that the proposals FOIL will be putting to the Ministry of Justice go some way to achieving that."

FOIL said increasing the small claims limit would create "claims inflation", increase costs by increasing the number of claims brought by litigants in person, and do nothing to address fraud.

President Duncan Rutter said: "If the small claims limit is to be increased – a move we would caution against in view of the likely consequences – FOIL believes that the change should be introduced alongside a number of measures to make sure the new regime is workable.



Besemer: overwhelming support within FOIL

“FOIL members would like to see online access to justice for claimants, whether through the portal or by way of a new online process, which should make allowance for individuals with limited access to technology; better regulation of claims management companies; and a process allowing claimants to value their own claims.”

FOIL said removing general damages for low-value whiplash claims was a “blunt instrument” to tackle the so-called compensation culture, saying the recommendations of the Insurance Fraud Taskforce were a better route.

This change also risked unintended consequences, it added, including the development of “credit rehabilitation”.

Kennedys said it had advocated that lawyers should only be used when unavoidable, helping their clients to become independent from, rather than dependent on, their legal advisers.

It acknowledged that the government’s proposals “undoubtedly raise sensitive issues, challenge convention and, if enacted, will disrupt existing legal business models”.

The firm said: “The prospect of raising the small claims track limit, in particular, will inevitably divide opinion within the industry. However, we support the proposition that further steps are required to continue to drive efficiency into the litigation process.

“The need to target and remove disingenuous claims, claims farming and unnecessary litigation costs is vital, provided the Ministry of Justice also ensures balance so that genuine claimants receive appropriate compensation quickly and not naturally at the gain of a lawyer.

“Given it is unlikely that the government will back down on the proposal to increase the small claims limit, Kennedys considers that it is important to maintain a meaningful dialogue with officials in order to avoid unintended consequences flowing from the proposed reforms.”

Partner Richard West explained that technology was key: “It should now be possible to create a 21st century, IT-based process that entirely removes lawyers from both sides in small claims matters. So long as appropriate safeguards are in place to ensure that justice is done, and is seen to be done, and that neither side can exploit the process, the time is right to seek to create a fair, balanced and automated process for such cases.”

He said safeguards could include retaining the option for parties to instruct lawyers to conduct the automated process – but no costs would be recoverable.

“Some policymakers and regulators will continue to struggle to fully understand the far-reaching consequences of the digital age that we now live it,” he said.

“Private actors within the industry therefore have an extraordinary opportunity to engage with each other and with government to help define the justice frameworks of tomorrow.”

In his interim report on the structure of the civil courts last month, Lord Justice Briggs set out radical plans to create an online court, which could become the compulsory starting point for money claims worth up to £25,000, and which would be designed "for use by litigants without lawyers".

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