

FOIL
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Brendan Gurrie, Modern Claims, spoke to Nigel Teasdale about the impact of the Osborne reforms on lawyers and insurers, and how both fraud and emerging technologies will shape the future of the claims sector¹.

Q What implications does the postponement of the Osborne reforms have on insurance lawyers?

A With the consultation on the autumn statement reforms first expected in March this year, the likely timetable for reform had already been extended before the recent announcement that the MOJ is not proceeding with the reforms at the moment, but is instead working on fresh proposals. The immediate impact of the postponement is that reform is now unlikely to be achieved in 2017, as previously hoped. Longer term, the implications for insurers and lawyers will depend upon the proposals that are ultimately put forward by the Government. It has been made clear that the current delay is only a postponement, and that reform proposals will be brought forward. We await the paper setting out the detail. In addition to reform of personal injury claims, shortly after the autumn statement announcement, FOIL put forward proposals to the MOJ to reform credit hire, calling for a new pre-action protocol for credit hire claims, a reduced limitation period and fixed costs. I hope the pause will allow for these to be included in the plans, to transform an area badly in need of reform.

Q What should be the main focus of insurance lawyers in the wake of the Osborne reforms?

A The detailed scrutiny of the practical impact of the autumn statement reforms has made it clear that reform is not as straightforward as just raising the Small Claims Track limit, and introducing a threshold for the recovery of general damages. If the reforms are to deliver on the objectives of reducing costs and discouraging fraud, it is important to develop a new claims process, making use of the best parts of the system that exists currently, whilst looking to take advantage of new ideas and future developments such as the work being done to introduce the online court. FOIL has been working on detailed proposals over the past year, working closely with the ABI. The proposals will need to be considered afresh once the Government's plans become clear to ensure that a workable system is developed, avoiding as far as possible 'unforeseen consequences' and opportunities to game the system.

Q How should insurance and legal professionals prepare for leaving the EU in the coming years?

A Insurers and lawyers are in the same position as the rest of the country on Brexit – it is not yet clear what the UK's future relationship with the EU will look like or, in the light of the recent litigation, what the final timetable for leaving the EU will be. Obviously, passporting rights are a major issue, with insurance companies already reacting to the possibility that they will be affected by the UK leaving the single market. From a corporate point of view, Solvency II and data protection provisions are important areas that may be affected. From a claims viewpoint,



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with no certainty at the moment on future effect of the directives on UK law, insurance professionals and lawyers need to have a full understanding of the areas likely to be affected, and be ready to ensure that Government understands the implications of change and reacts accordingly. In an environment where the UK is free to adopt or discard legislation arising from the EU, there will be the opportunity for a fresh look at some issues - the difficulties arising from *Vnuk* being one example.

Q What challenges might new and emerging technologies bring to the legal and insurance markets, and what opportunities will they present?

A Telematics are already with us, impacting particularly on motor insurance for young drivers and influencing the Government's thinking on driving restrictions and GDLs. Whilst fully automated vehicles are still several years off, Advanced Driver Assist Systems (ADAS) are already being used and are developing quickly, presenting enormous opportunities to make motoring safer and reduce accidents and claims. It is encouraging that the Government recognises the need for the insurance and regulatory framework to keep pace with technology, and the recent DfT

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consultation gave an opportunity to insurers and lawyers to influence Government thinking and to ensure future insurance arrangements and RTA law work effectively, both in providing compensation and identifying responsibility appropriately when accidents occur. Cyber cover is still relatively new, with the market likely to increase as the number of reported incidents increases. The challenge for insurers is in understanding the risks and developing effective policy wording.

Q How do you predict the type and volume of claims to change in 2017?

A Motor claims are likely to continue to marginally reduce whilst remaining high: if a new claims regime is introduced, we are likely to see the usual spike in claims as claimant representatives take advantage of the old system. It does seem as if the volume of late claims is decreasing, which I hope will continue to be a trend into 2017. Deafness claims also seem to be finally tailing off, with hopes that a new process arising from the current work of the CJC will further reduce the volume of unjustified claims being brought. Almost inevitably, reform in one area increases claims in another: travel claims and disease claims outside of deafness, such as repetitive strain injury, are likely to be growth areas.

Q How will the type and volume of fraud change in response to changes in the claims sector?

A Considerable efforts have been made to tackle fraud over recent years, but whatever the changes, I can't see it disappearing from motor claims. Part of the challenge in developing detailed reform proposals is ensuring that opportunities for fraud are not opened up: for example, carrying out appropriate checks on litigants in person will need to be addressed. Fraudsters are notoriously nimble, and as one area is closed down, they will seek to find areas in which they can still operate. EL, PL and property claims will continue to be at risk, and we may see an increase in credit hire fraud as the personal injury sector is tightened.

Q Is enough being done to promote collaboration between insurers and claimant solicitors?

A Press reports will always focus on confrontation within the sector, but behind the scenes, claimant representatives and insurers can, and do, work together. The Serious Injury Guide is an example of the ways in which collaborative processes have been developed. It has improved the handling of higher value claims - we can do more to promote it, and other similar initiatives, to encourage buy-in. APIL, FOIL and MASS have worked together to develop a register of personal injury mediators who meet commonly agreed standards, to improve the ADR process, which will be launched over coming months. We may not always agree, but we need to keep talking.

Q What should be the focus of the Government to improve the claims sector and service for customers?

A The priority must be to publish proposals for whiplash reform, but there are other issues that also need attention. We

support the work Lord Justice Jackson is undertaking to develop Government policy on extending fixed costs, and look forward to further developments on that next year. The Government has accepted the recommendations of the Insurance Fraud Taskforce, and it is important that they are implemented. I'm pleased to see that work is continuing to review progress. We are also awaiting the introduction of the reforms to CMCs recommended by Carol Brady - hopefully we will see legislation shortly to move CMC regulation to the FCA. Tougher regulation is needed to prevent abuse.

Q Do you see any of the postponed reforms being implemented in the future, and how might they differ from those originally proposed?

A I think the Government will put forward proposals for reform and I'd like that to be sooner rather than later - we have a significant problem with the frequency and cost of whiplash claims and that needs to be tackled. Although there has been delay, and Brexit has distracted Government attention and diverted resources, I believe the MOJ accepts the need for reform and is also aware that a new process will be needed rather than just headline changes to the Small Claims Track limit and entitlement to general damages. I hope the paper, when it comes, will be the start of the detailed work needed to develop that new claims regime. Away from whiplash, the consultation fixed costs in clinical negligence claims is also overdue, but it's been good to see recent progress on fixed costs generally.

Q What are FOIL's aims for 2017?

A Clearly, we'll be involved in reforming the claims system both through process reform and in Lord Justice Jackson's work on an extended fixed costs regime, which has been a long-term priority for FOIL. Very significant changes in the civil justice system are also underway in Scotland and Northern Ireland, and we'll be involved there. Away from claims, we want to increase our work on issues of significance to the London Market. In the area of training and professional standards, there has been a great deal of interest in the FOIL Statement of Competence since it was launched in July this year, and I would like to see 'working to the FOIL standard' become the normal expectation for law firms. Aside from that, we'll be responding to whatever arises, from the courts, new legislation, consultations, or in the market - I'm expecting a busy Presidential year! ●

The Ministry of Justice announced its whiplash consultation after this interview. Nigel Teasdale commented: "There is a great opportunity now for significant reform. We need to focus on getting the detail right to deliver a workable, effective new process."

"Several other consultations are in train or pending and this offers a real opportunity for a joined-up approach by the MOJ and other interested parties to achieve comprehensive, cohesive reform."

"FOIL has already undertaken detailed work on various reform proposals and will be keenly involved with this latest consultation."

NIGEL TEASDALE is President of the Forum of Insurance Lawyers (FOIL) and Partner at DWF.