

FOIL**Prepared by Kysen PR****Date** 26 February 2018**Publication** Claims Magazine**Type of publication** Insurance press**CIIL.CLAIMSMEDIA****FOIL: What's coming up in 2018**

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BY MARK DUGDALE ON FEBRUARY 24, 2018

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The focuses of FOIL for 2018 include reform of the claims process, accessing new jurisdictions, and much more, as CEO Laurence Besemer explains

As trade groups go, the Forum of Insurance Lawyers (FOIL) packs a particularly powerful punch. Its membership stands at a sizeable 46 law firms, which employ approximately 8,000 practitioners and support staff, and command £1.4 billion per year in fees from insurance claims work.

Between them, FOIL's membership and Besemer's team have several key focuses this year, including Brexit, technology and issues external to legal services and insurance, such as the General Data Protection Regulation, which affects all businesses, regardless of specialism or size.

As far as claims are concerned, reforming the claims process is an important focus for FOIL in 2018, with multiple rules and regulatory changes working their way through Parliament and elsewhere that will affect low-value claims such as whiplash, soft tissue injuries and hearing loss.

This remains an ongoing process for FOIL and its members, according to Besemer. "Facilitators of low-value claims can make significant amounts of money from them, so there will always be an interest in finding new types of claims and mining those."

"Hearing loss claims, for example, have gone off the radar somewhat, after huge flurries in 2015 and 2016. But it's still a big problem. Claims of this type are a case of follow the money. They could even be likened to a game of whack-a-mole. You solve the issue in one area and it pops up somewhere else."

Besemer adds: "Every time fee levels are reduced and the profitability of the facilitators concerned is reduced, they move on to a new area. The big one in 2017 was gastric illness. Tourists who had been on holiday to an all-inclusive resort would claim that they had some kind of transient gastric illness. If proven, that would probably yield a few hundred pounds in compensation. But the agents encouraging and bringing those claims would earn far more in fees."

A lot still needs to be done to tackle the problem, says Besemer, not least because it's ordinary people who are paying the price.

Besemer says: "To be clear, it's not about denying access to justice or denying the rights of claimants to make a genuine claim. But this rampant compensation culture has a detrimental impact on ordinary people. Take the gastric illness example: some hotels and resorts refused to take bookings from British people because the cost of claims was too high."

Issues exist in high-value claims of the kind seen in clinical negligence cases, too. The NHS is under increasing pressure after yet another winter crisis, and the money spent on settling claims against the NHS was the subject of intense scrutiny in the media during January, [when a coalition of organisations called](#) for urgent action to reduce the spiralling cost of clinical negligence claims in England, after £1.7 billion was paid out last year alone. Claimant legal costs accounted for £487 million of that and, in nearly two thirds of cases, claimant legal costs exceeded the money paid to the claimant.

The [cost of clinical negligence claims to the NHS is complicated](#), but one area identified by the coalition to be particularly problematic was last year's change to the personal injury discount rate, from 2.5% to -0.75%. This will be the subject of a FOIL event on 19 April, [where Lord Edward Faulks QC will deliver the keynote speech](#).

According to Besemer, aside from the monetary costs, intense farming of clinical negligence claims could also lead to less openness in the NHS, and a tendency to over diagnose.

"The increase in the number of claims could lead to less openness," says Besemer. "That's post-event, which isn't good, but if you extrapolate that even further, doctors will begin to think differently in the way they diagnose. They may feel they have to send patients away for lots of expensive and largely unnecessary treatment, because they cannot take that small risk of missing something."

"This is because of the encouragement of claims management companies and their solicitors to blame the doctor when something goes wrong"

Expansion plans

Another focus for FOIL is its expansion into new jurisdictions, including London, Ireland, the Channel Islands and the Isle of Man.

Besemer says: "We want to build on the success we've enjoyed in the UK domestic market. We celebrated our 25th anniversary last year and continue to enjoy a 100% renewal rate, while the range of insurance claims we're covering continues to increase. However, we're keen to expand our membership and one way to do that is by jurisdiction."

"While we're strong in the UK domestic market, there are firms in London that don't see FOIL as relevant. We plan to have conversations with our current members with large London presences, as well as prospective members, to find what we can do differently so that FOIL applies to the London market. London FOIL is a big part of our plans, as are jurisdictions such as the Isle of Man."

He adds: "Our members are law firms and their clients are insurance companies. We've always had a good relationship with the insurance industry generally, and we're interested in taking that further and working with more sectors of the industry"

FOIL has also established a new sector focus team dedicated to directors and officers (D&O) liability, in response to the rapid recent increase in claims against corporate leaders and board members.

The D&O group is FOIL's 20th sector focus team. Each team is made up of five to six lawyers drawn from different member firms and helps to develop policy for the wider FOIL organisation.

The creation of the D&O sector focus team comes in response to the significant growth in this class of insurance, which in turn is a response to the increased scrutiny of the actions of senior individuals in business, according to FOIL.

It is two years since the introduction of the Senior Managers and Certification Regime, which aimed to make individual working in financial services more accountable for their conduct and competence.

The introduction of the General Data Protection Regulations in May could also see directors becoming more accountable for data losses and other issues.

Laurence Besemer is CEO of the Forum of Insurance Lawyers (FOIL)