



Informing Progress - Shaping the Future

FOIL's Focus for 2020

With 2019 dominated by the introduction and development of huge projects with major implications for insurers, will 2020 be the year of delivery and implementation? On any analysis, 2020 is going to be a very significant year for FOIL, its members and the Insurance community generally.

1. 2020 Legal Landscape

FOIL's technical and legal focus in 2020 will include: -

- The Civil Liability Act 2018 put the legislative structure in place for the new low value RTA claims regime, and the MOJ, working with stakeholders including FOIL, has worked during 2019 to develop the new RTA claims service which the MOJ/MIB still anticipate will be introduced in April 2020.
- The CPRC are working on the PAP and the rules governing the new RTA claims service and a secondary legislation S.I. will be required regarding the whiplash tariff figures.
- With almost no clarification on Brexit over the past three years, it seems likely that 2020 will be the year in which the matter is resolved, and the year, if the UK leaves with or without a deal, when attention turns to the resulting changes in the law, regulation and in legal procedure.
- Lord Justice Jackson's Supplemental Report on Fixed Recoverable Costs is the last part of his proposed reforms which, following MOJ consultation, is likely to be implemented in 2020.
- In Scotland, with some of the Civil Litigation (Expenses and Group Proceedings) Scotland Act 2018 now in force, 2020 should see the implementation of perhaps the most significant part – QOCS.
- We should also see reports from the Independent Inquiry into Child Sexual Abuse and the Grenfell Inquiry, with the prospect of significant change arising from the recommendations.
- The continued development of the technology and the rules required to deliver the Online Court.
- Whether the increasing focus on mental health in the workplace will see a corresponding increase in the number of claims.

There is considerable work still to be done on the detail of all of the above major areas. Primary and secondary legislation and new court rules will be needed, alongside significant ongoing IT development in the case of the new RTA service. The government is likely to consult further on some of the proposed changes. Once the law is in place, the implications and practical impact of the

reforms will present a major challenge for FOIL members and their clients. Put against the backdrop of the General Election on 12 December 2019, we may yet see expectations confounded. Add in the outside chance of a Scottish IndyRef2 and we seem set for a turbulent year, with both huge opportunities and challenges for FOIL and its members.

If we have learnt anything over recent years it is that change is a constant. As moves to tame whiplash reach fruition, the DfT's 'Future of Mobility: Urban Strategy' outlines a transport environment focusing on automated technology and micro mobility. AI and new technology will continue to impact on the insurance industry and legal services. The work of the DBA Reform Project may bring forward new funding strategies. Just as new claims areas and claimant strategies, including Gastric Illness Holiday Claims, Cavity Wall Insulation and Neurodegenerative claims, have come to prominence over recent years, 2020 is likely to see its own growth areas, requiring the development of new defendant strategies to tackle and contain such claims. With its specialist FOIL SFTs (Sector Focus Teams), FOIL will continue to be at the forefront of such strategies in all areas of insurance law.

2. FOIL in 2020

FOIL's strategic focus in 2020 will include: -

- London FOIL – building on the excellent initial reception that this new division has received from members and the London insurance market, working on a wide range of non-injury claims law, including reinsurance, marine / aviation and energy as well as climate change and US and Latin American risks underwritten in London.
- FOIL Ireland – agreeing a mandate from the new members for this division and enhancing its place in a new market.
- Areas of insurance claims law – further diversification into more new areas of claims law.
- Areas of insurance law - further diversification into areas of non-claims insurance law such as policy wordings.
- Trade bodies – greater co-ordination between FOIL and the main insurer / compensator trade bodies in the various markets to ensure efficient focus on common areas.

Part A FOIL's Technical and Legal Focus

1. The challenges arising from Brexit.

The UK has wrestled with the concept of Brexit over the past three years, with much still to be clarified. In reality, leaving the EU is just the start of the process, with changes to the UK's law, regulation and business environment still to be hammered out:

- 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.
- The complications thrown-up, as cross-border disputes become more complicated

2. The reform of the claims process

The development of the new SCT RTA claims service, now reaching a conclusion, and the recently published CJC proposals for lower value clinical negligence claims, will accelerate the process of civil dispute resolution away from the traditional court environment, with the introduction of the Online Court another major driver away from face to face justice. Work is needed to ensure that carefully balanced measures developed to deter fraud and ensure cost efficiencies are translated into the new processes, and that all parts of the new civil justice regime work together effectively:

- The development and introduction of regulations and the new service for SCT RTA claims.
- The introduction of new Small Claims Track limits for RTA and EL/PL claims.
- The MOJ response on Part 2 of the whiplash consultation, including rehabilitation and credit hire.
- Engagement with the reforms arising from Lord Briggs' Review of the Civil Court structure including the required legislation, introduction of an Online Court and changes to the court structure and litigation process.
- New regimes for NIHL and lower value clinical negligence claims.
- Support for the Serious Injury Guide and the Rehabilitation Code.
- The effective defence of neurodegenerative claims.
- The use of existing and new methods of ADR, including ODR, to improve claims handling and cut costs in both low value and high value claims.

3. Tackling the 'squeezed balloon'

An enduring feature of the claims landscape, well recognised by insurers, lawyers and the MOJ, is the movement of the claims industry into new areas of claim and the development of new market practices in response to legal and regulatory reforms in an established area. This trend has already created spikes in NIHL and Gastric Illness Holiday Claims with the potential for increased activity in other areas:

- The potential for CMCs to dominate the new RTA portal
- Additional injuries claimed alongside whiplash
- Cavity wall insulation claims, with the potential to involve builders and surveyors
- The rise of McKenzie Friends
- Forum shopping in Scotland
- The implications of QOCS in Scotland

4. Working closer with clients

The ability to apply legal concepts to practical situations is a key skill for business lawyers. FOIL members understand the business imperatives of the sectors in which they work and are trusted advisors to their clients, helping them to tackle the new challenges thrown up by change:

- The introduction of the new RTA claims service
- The civil litigation regime after Brexit.
- The compulsory motor insurance regime after Brexit
- The impact of the Grenfell Tower fire and the on-going Inquiry on the construction and insurance industries.
- The legal and practical challenges presented by automated and driverless cars, and the growth of micro mobility including e-scooters.
- Outcomes from the Independent Inquiry into Child Sexual Abuse – and the challenges of claims for historical abuse.

5. The development of fixed costs and costs management

Effective costs management is a keystone of successful resolution of insurance-backed claims. There are only two ways to control costs in advance: fixed recoverable costs or costs management. FOIL will be pressing for the widening of both regimes.

- 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 extension of costs budgeting to mesothelioma claims
- The introduction of fixed costs in clinical negligence and the widening of their use for NIHL claims.
- Effective and proportionate development of e-billing
- The reform of the Damages Based Agreements regime
- Effective control of court fees.

6. The excessive costs of compensation for financial loss

Alongside control of PSLA damages, claims for financial loss also need be reformed to reduce costs, reduce friction, and control the behaviour of disreputable third party organisations:

- The excessive cost of replacement vehicles obtained on credit.
- Continued leadership of the cross-industry working group on rehabilitation in lower value claims.
- The increase in recoverable benefits brought about by Universal Credit.

7. The challenge of technological change and innovation

How long before Alexa can be asked to arrange insurance or start a claim? Technological and medical advances are fast-changing the face of insurance, claims handling and compensation awards. An open minded, well-informed approach is needed from both insurers and legal professionals:

- The growth of Online dispute resolution and ADR.
- The development and application of AI and digital working.
- The legal and regulatory challenges presented by the development of autonomous and driverless vehicles.
- The use of 'black-box' technology to resolve RTA liability disputes
- 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 and medical advances to improve the outcome for claimants.
- The evolving nature of product risks.

8. Tackling fraud

As the law reports make clear, claims fraud is a fact of life which must be tackled to reduce claims costs, reduce premiums and deter future fraudulent behaviour:

- Supporting the continued development and extension of MedCo.
- Deterring fraud in the new RTA claims service
- Effective use of "fundamental dishonesty" provisions, to include exaggeration
- Developing ever more sophisticated technological solutions to counter fraud, while working within the constraints of data protection regulations.

9. London market issues

Whilst many of the subjects set out in 1-8 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.

- Environment / climate change
- Hours Clauses in reinsurance treaties (links to increase in natural disasters caused by climate change)
- US litigation trends expected to cross the Atlantic (e.g. opioids crisis)
- Latin American risks markets underwritten and reinsured in London
- Lloyd's electronic trading platform and TOM

Part B. FOIL's strategic Focus.

2020 will be a year of consolidation for FOIL after two consecutive years of expansion.

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 bed down the two new divisions, London FOIL and FOIL Ireland.

In certain quarters, FOIL is still regarded as an organisation for injury lawyers only. This legacy dates back to 1992 when FOIL was first established. Since 2010, FOIL has steadily expanded its reach and sphere of influence to cover many more areas of insurance claims law.

Perhaps not in 2020, but certainly in time, FOIL will be able to cover many more areas of insurance law including regulation and compliance.

We will look to create a more coherent platform for the major insurance and risk trade bodies, such as the IUA, the LMA, the ABI and AIRMIC.

We will look internally at the structure and financing of FOIL to ensure that revenue is spent fairly and efficiently across all parts of the organisation.

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 worked on improving that in 2019 and created FOIL Champions at every member firm, whose role is to be keenly aware of all that FOIL offers to the individual lawyers at their firm and ensure that knowledge and information are accurately and appropriately distributed within the firm.

A new members' survey will be run in 2020.

1. Extending FOIL's practice areas.

FOIL's corporate members practice in many areas of insurance claims law and 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 particularly in Northern Ireland where members there have asked for teams to look exclusively at Disease and Credit Hire issues in that jurisdiction, and London FOIL division where we want to look at environment and climate change issues together with US and Latin America covers underwritten in London.

- Ensuring all SFTs are fully supported and able to be active in their own area.
- Establishing a suitable number of SFTs in Ireland with agendas appropriate to that market.
- Building on FOIL's work in regulatory law and its impact on claims law.

- Using the London FOIL platform to engage with lawyers practising in areas of insurance claims law not currently covered by FOIL.

2. 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 2018 in the Channel Islands and the Isle of Man as well as further development of the FOIL Ireland focus.

- 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 other FOIL members handling cases in those jurisdictions.

3. 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.

4. 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.

- A new online members' survey.
- Detailed understanding of website traffic patterns and Mail Chimp campaign data leading to better understanding of what members actually look for.
- Engagement with the "FOIL Champion" at every member firm. These receive a monthly one page bulletin, summarising all FOIL activity to promote as appropriate within their own firm.

5. 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, the FCA and the CII.
- Providing insight into the ways in which disruptive technology and AI are changing business.

6. 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.
- Greater focus on outgoings including additional specialist resource to support FOIL's function and strategy.

Laurence Besemer, CEO,

Anthony Baker, President,

Shirley Denyer, Technical Director.