



**Informing Progress** - Shaping the Future

## **FOIL UPDATE 23<sup>rd</sup> March 2022**



### Digital Claims in the County Court

This event took place on 16<sup>th</sup> March 2022. The digitalisation of the courts system is a long-term government initiative and the county court is the latest phase.

The intention is that claims will be issued and served online and progress to the directions stage. FOIL has been involved in the process since May 2021, working with HMCTS and the CPRC. The ABI and others have had presentations by the government about the system.

FOIL has concentrated on three areas:

1. The new system: how it works, the detail and how it might be improved to work efficiently;
2. Implementation: how it can be introduced into claims handling and the IT requirements of both solicitors and insurers.
3. Concerns that the system could be made compulsory prematurely.

On the first issue, FOIL had collated feedback from members, which had been fed back to and discussed with the courts service, to secure improvements to the system.

On the third issue, there has been frustration on the part of senior judiciary at the slow take-up of the pilot system. Defendants support the process and see its potential. Concern from defendants has focused more on the detail of implementation. However, this is in the light of a limited number of claims, making the testing of the process very difficult. Many claimant firms have only issuing online and then taking the traditional route from service onwards.

The lack of take-up prompted a suggestion that from April the system would become mandatory for claims worth up to £4,000. However, in the light of concerns expressed about implementation, that will not happen, but it is clear that there is a real appetite among the judiciary, including the Master of the Rolls, for compulsion.

It is important that in the limited time available, FOIL members (in liaison with insurer clients) take the opportunity to test the system and report back concerns, so that improvements to the system may be suggested.

The discussion today was to enable FOIL to be in a position to feedback the further concerns of members and their clients to the various bodies involved in the process on the government side, including HMCTS, the CPRC and the judiciary.

### **Comments from delegates**

The current problem is that claims served through the system are in very low volumes and no one present had been able to respond to a claim or dealt with a claim which had progressed towards directions, as envisaged.

One firm had agreed with a claimant firm that it would work through the pilot but its name could not be found on the system as being signed-up to the process (see later).

Another firm had been willing to engage in the pilot but was waiting for the problem around email addresses to be resolved, which was proving problematic. Such change as had been made was of little practical assistance. There seemed, at present to be more queries than answers. It was agreed that provision must be made for a central email address for service.

Another problem is the arrival of documents through the portal, which cannot be automatically allocated, creating problems also with supervision. Existing systems deliver up the documents to the appropriate supervisor/member of the support team, in accordance with the file reference. Any solutions to this problem create a burden on the defendant firm.

It was felt that while consent to accept digital service was a necessary requirement at this stage, it failed to reflect the usual practices within a defendant law firm. The system should enable the defendant lawyer to identify the nature of the claim and who its client is and also provide a reference. The system could and should require the claimant solicitor to put in some basic but helpful information. This would go some way to enabling firms to follow their usual triage procedures.

A further issue is the lack of integration with existing case management systems (CMS). Defences need to be uploaded separately and there is concern that the lawyer is then asked to confirm the accuracy of the information, which may not always be appropriate. There are also conflicts between rules and time limits on the system and the corresponding rules and time limits in the CPR.

How this system will link with the OIC was one of a number of 'what/if' questions that appear not yet to have been thought through. Although the system has been live for some time, there are still many, both within, and outside law firms who know nothing about it, which may have contributed to a lack of take-up.

It was recognised that problems within the system (including not being able to operate it) raised legal risks to defendant firms. Time limits are monitored by the system and there is no 'wiggle room' as under the 'paper' procedure.

A firm reported that even where consent had been denied, the claim issued in the portal had still been served through the system and was detected in the firm's unallocated case file. The claim had then been withdrawn. FOIL had reported the problem to HMCTS and had received confirmation that at present, when a claim is issued and served, HMCTS case managers are checking with the claimant representative that the defendant representative has agreed to accept digital service. If consent has not been given HMCTS will remove the claim from the process. If an error occurs and a claim is received by a defendant representative when consent has not been given and it is not automatically removed, HMCTS can be asked to remove the claim using email address

[DamagesClaims@justice.gov.uk](mailto:DamagesClaims@justice.gov.uk)

This may become a greater problem if the volume of claims increases.

An issue had arisen from the training video clips. It appeared to be suggested that when filing the defence, the defendant should also complete the directions questionnaire (DQ) and draft directions. This seems odd, when the claimant's response to the defence will not be known. This further highlighted the problem of there being no test system to play with.

Data protection concerns arise where the proceedings are sent to the wrong firm, or where there are other defendants. What provision is made for the reassignment of claims?

An insurer expressed the concern that the problems faced by defendant lawyers in trying to integrate with yet another web-based system was even greater for them.

The courts have focused on whether this works as a stand-alone system, without looking adequately at the bigger picture.

It would be helpful to obtain a comprehensive road map from HMCTS so that it can be seen what is proposed.

It had been reported that there were 1,604 claims in the system in early March and given that member firms have so few, the query was where are those claims? One possible explanation is that claimant firms are uploading the claims onto the system but then indicating that the defendant has not given consent: the claim then falls out.

Also, the published list of firms participating in the pilot does not appear to be correct and is missing many of the firms represented at this roundtable. This seems to be because the firm registration list only includes firms that have taken action in the portal.

### **What are the priorities for FOIL members?**

As far as supervision is concerned, if the supervisor becomes the user, with a high volume of cases, they will be swamped. This needs to be addressed. The key factor will be API/CMS integration. The development of proper API is vital, particularly before the process is extended.

One way of dealing with the issue of consent would be a requirement for the claimant solicitor to upload the letter or email from the defendant firm confirming its involvement, which would also provide much of the information needed when the claim was served. This would also prevent a claimant firm using the email address provided for another case, where the case handler may no longer be in a position to deal with a claim being served.

### **Actions arising**

It is of concern that the event prompted the reporting of so many issues and problems arising from the new process. Whilst there is support for the system from FOIL members and insurers, and much work has been done to understand the new system and integrate it into the claims handling process, the problems reported are of such a degree that the new system does not appear fit for purpose.

The immediate concern is that a decision may be made to prematurely make the system compulsory. FOIL first engaged in correspondence with the Master of the Rolls in January, arguing that use should remain voluntary, and a further letter has now been sent seeking a meeting between the MR, FOIL and the ABI, to enable the concerns expressed to be properly discussed. FOIL is also in contact with Lord Justice Birss who has responsibility for the technical aspects of the system.

As highlighted at the FOIL event, this is an issue likely to also cause concern to claimant representatives and FOIL has contacted APIL with a view to a joint approach to ensuring that the system is fit for purpose before it is introduced fully.

Further updates will be published as more information becomes available.

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