



Informing Progress - Shaping the Future

FOIL's Focus for 2023

The cautious optimism (in some quarters) following the UK's recovery from the constraints of the Covid-19 pandemic and the departure from the European Union has now been displaced by a fresh period of upheaval and uncertainty: from geopolitical instability in Ukraine and the Taiwan strait to energy supply challenges through to a new UK Government and recent disruption in the financial markets.

In the last FOIL Focus, we asked what comes after the storm – the answer, unfortunately, appears to be a persistent period of choppy waters and continued political, economic and legal upheaval making it difficult for FOIL members and their clients to plan and predict what lies ahead. FOIL members continue to respond to the disruption (and in some cases, the opportunities for new ways of working and thinking) generated and accelerated by the pandemic. Members are still trying to work out what the new normal might be – both in terms of how they work and communicate with clients; how they continue to motivate, train and supervise staff using new hybrid working arrangements, to ongoing attempts to accommodate seismic changes within the digital management of civil claims.

FOIL acknowledges that ongoing political and social uncertainty generates an urgent need for flexible and adaptable ways of doing business. Brexit will continue to create political and business uncertainty - with a Government determined to press for increasing divergence from the legal landscape that we inherited from our historic membership of the EU. The culture of business life remains under scrutiny, particularly regarding issues around climate change and diversity and inclusion, with a pressing need for a new approach. Put together, this creates a business environment with significant challenges but also opportunities for organisations that focus on thought leadership and adaptable ways of doing business.

In a smaller way, there have been internal changes within the FOIL team that has refocused the work that FOIL does to support members. Continued merger and business activity amongst members has created an opportunity and need to revisit priorities and the resources that FOIL will require to continue to support members for the journey ahead. For FOIL, the next 12 months will continue to be a period of evaluation. There remains the imperative to identify clear priorities, so that FOIL can rally its resources to respond to developments that matter the most for FOIL members and their clients. One of FOIL's specific strengths is its ability to look behind the headlines, to use the combined experience of its member firms to inform its thinking and develop innovative and pragmatic ideas and proposals. With so much change happening so quickly, more than ever decisions for the future need to be grounded in analysis and evidence: a clear view of what is working and should be retained, and what needs further change.

As always, alongside its members, FOIL seeks to work closely with the insurance industry, a sector which has faced its own challenges both in the claims environment and in a public examination of the role of insurers in delivering financial security and social change. FOIL's focus is on understanding the pressures and opportunities for the industry it serves and being at the heart of the ongoing debates.

Although FOIL's priorities will be informed by necessity as members respond to continued disruption, it also aims to support and help members chart a path through to what are hopefully calmer waters in the years ahead. FOIL's key aim remains to ensure that its members' voices are heard.

Part A. The business world in 2023 – “From Great Expectations to Uncertain Times”

FOIL's work in 2023 will include working with the insurance industry and members to:

- 1) support the insurance industry, with legal advice, innovation and empathy as the sector transitions to sustainable underwriting, employment, investment and purchasing practices and transitions to new ways of working and new forms of technology.
- 2) work collaboratively with each other to develop plans to bring their firm's net carbon output to at least zero, with an ambition of a net negative by 2030. Continue the work of the FOIL ESG Board to consider how changes will affect service suppliers and purchasers and how members can work together with their clients to strengthen relationships, through responsible corporate behaviours.
- 3) promote diversity, inclusion and well-being in the workplace. Businesses need the right people to manage and grow in these uncertain times.
- 4) support members and insurers as we find the best ways to work together during continuing periods of disruption and change. This includes the way that FOIL develops and supports events and sector-focus teams as ways of working continue to change.

Investors, regulators, customers and employees expect unequivocal evidence of corporate conduct that truly reflects the responsibility of business in these times. By being at the forefront of these conversations FOIL, London FOIL, FOIL Ireland, FOIL Northern Ireland, FOIL Scotland and Tomorrow's FOIL aim to add value for our members and their clients.

Part B. Technical and legal focus

FOIL's technical work in 2023 will include:

- 1) The continuing reform of the claims process - the work of the MOJ and the CJC over the coming year will see significant proposals for reform and developments in the civil justice regime, in particular around preaction-protocols, the use of remote hearings, online claims portals and digital case management. Further process reform is also expected in Scotland and Northern Ireland.

- 2) Civil Litigation Post-COVID – following the enormous changes to the civil justice regime to keep the system operating during the pandemic, the focus now is on longer-term reform – what changes should stay and what further reforms are needed. HMCTS resource remains an important issue. The regimes in Scotland and Northern Ireland will also be under review.
- 3) The Official Injury Claim (OIC) platform remains under review and legal developments and guidance are anticipated in the context of mixed injury claims. The technical operation, the working of the new rules, and further developments of the process will be under scrutiny over the coming year.
- 4) Harnessing the benefits of cross-industry working and collaboration – there are sound reasons for a cross-industry approach to problems where that is possible. This includes collaborative working with the ABI, NHS Resolution, Government departments and claimant representative bodies (from the Serious Injury Guide, the OIC advisory group to Universal Credit and the cross-industry rehabilitation initiative).
- 5) Wider governmental reform – beyond the remit of the MOJ, 2023 is likely to see proposals and legislation on a wide range of issues in all UK jurisdictions and in particular, determined attempts to diverge the UK from any EU-derived legal framework in many areas of critical importance. Of particular note are the Retained EU Law (Revocation and Reform) Bill and the Data Protection and Digital Information Bill.
- 6) Critical planning and lobbying for the anticipated reviews of the discount rate(s) across the UK – discussions are likely to come into sharp focus as we move into the latter stages of 2023.
- 7) The ongoing reform of costs –the extension of the fixed recoverable costs regime, the continuing impact of QOCS and anticipated developments from the CJC consultation on costs (from budgeting to guideline hourly rates). The control of legal costs will remain a vital lobbying issue for FOIL.
- 8) The challenge and opportunities arising from technological change and innovation – the pandemic has given increased impetus to the use of technology to support new business practices and to provide new claims-handling solutions. Effective digital supervision and case management of claims will be critical. Technological disruption will continue to give rise to the need for new insurance products and areas of cover.
- 9) Responding to changes and the possible mandatory use of Alternative Dispute Resolution within the Civil Justice Process.
- 10) The ongoing legal, householder and practice fallout from the Grenfell Tower fire (e.g. the Building Safety Act 2022 and forthcoming secondary legislation).

Part C. FOIL's development

FOIL's strategic focus in 2023 will include:

- 1)** Business support – continuing to increase the focus on the benefits to business that collaboration brings for FOIL members, majoring on the increased importance to investors, regulators, customers and employees of organisational sustainability and diversity & inclusion policies.
- 2)** Trade Bodies Association – building up this group of like-minded trade bodies into a coherent and powerful lobby. Continue to offer and review the support that FOIL provides to Industry Bodies (e.g., BIBA, UKCMA, Forum of Scottish Claims Managers).
- 3)** FOIL Scotland – increasing the influence and profile of this division of FOIL in Government, judicial and insurance circles in Scotland and supporting the new regional FOIL president in their work.
- 4)** FOIL Northern Ireland – similarly increasing the influence and profile of this part of FOIL in Government, judicial and insurance circles in Northern Ireland. Continuing to develop an independent defendant voice in the Northern Ireland market.
- 5)** FOIL Ireland – developing a clear mandate from the members of this division and enhancing its place in new markets. Supporting the new regional FOIL president in their work.
- 6)** Tomorrow's FOIL – strengthening the appeal of this division of FOIL to lawyers with less than 5 years PQE and generally, raising the profile of insurance law to encourage new talent that will strengthen the operations of FOIL members. Extending the benefits of this group to those in training and recognising the importance of early career staff to the future success of FOIL members.
- 7)** London FOIL – wider promotion of the work of this division designed to support (re)insurance lawyers serving the London and Lloyds markets, to increase awareness and understanding of the specific value of this division in times of global conflict and economic uncertainty. Recruiting new members and representing new areas of expertise through the sector-focus team framework.
- 8)** Training and Development – building new innovative and market-leading ways of providing technical training for insurance lawyers. Review the way that FOIL uses digital platforms to support FOIL members and deliver events.
- 9)** Development and strengthening of international links and collaborative opportunities with a range of stakeholders (including, the Commonwealth Insurance Forum and Canadian Defence Lawyers).
- 10)** Publications – to continue to provide a distinctive portfolio of publications and updates that raises FOIL's profile and offers members the necessary tools and information for their operational and education portfolio. Specifically, FOIL aims to be a source of information and expertise in new areas of claims.

- 11)** Broadening capacity and depth of coverage, particularly within the FOIL sector focus teams and in response to sector developments, regulatory reform and new types of claims (for e.g., arising from remote driving, e-scooters or the use of wearables).

- 12)** Embedding the principle of “working to the FOIL Standard” using the FOIL Statement of Competence and the Statements of Legal Knowledge (where applicable).

**Laurence Besemer, CEO,
Nicola Critchley, Vice President,
Dr Jeffrey Wale, Technical Director.**