



Informing Progress - Shaping the Future

FOIL's Focus for 2024

EXECUTIVE SUMMARY

In the previous FOIL Focus, we predicted a persistent period of choppy water and continued political, economic and legal upheaval making it difficult for FOIL members and their clients to plan and predict the future. That prediction has largely been born out by developments but the hope for calmer waters has not yet materialised. Global uncertainty remains with the Ukraine/Russia and Israel/Palestinian conflicts showing no sign of early cessation and continued geopolitical tension between China and the United States. Turmoil and legal action in US political circles are likely to dominate media headlines throughout 2024.

Domestically, we are probably looking at further periods of uncertainty from a General Election and considerable rule-changing activity impacting the claims insurance market. The Ministry of Justice has been extremely active, pushing out numerous consultations that the insurance and legal market has had to respond to. Digitisation of the pre-and post-action claims spaces and the extension of the fixed recoverable costs regime are going to present immediate and ongoing challenges to the flexibility, adaptability and resources of FOIL members. In the early part of 2024, we anticipate the UK Supreme Court decision on mixed injuries in the RTA space. As we move into the middle part of the year, the Personal injury Discount Rate and OIC tariff reviews should come front and centre with inflationary pressures a key consideration. FOIL will continue to support members as they navigate through these turbulent times.

The Insurance legal market has also faced its own challenges. Merger activity, closures and talent moves have had a significant impact on the sector and the resources available to FOIL. Insurers are under increased scrutiny with the new FCA Consumer Duty. This is having a knock-on impact on FOIL's membership, with extensive due diligence being extended to the legal supply chain as insurers explore ways to deliver good customer outcomes. This in turn highlights the ever-increasing importance of focus on the end customer and the need for FOIL members to find new ways to engage and deliver exceptional customer service. There is a renewed focus on the culture of business life and how corporate entities interpret/apply their legal and socio-ethical obligations following the RBS/Coutts scandal over the summer of 2023. Transparency and good governance are going to be key themes for members and insurers.

FOIL members have been proactive and worked hard to anticipate further changes in the employment and corporate landscapes after the Covid-19 pandemic. Members have flexed their systems and ways of working – in terms of how they work and communicate with clients; how they

continue to motivate, train and supervise staff using new hybrid working arrangements; and in how they navigate major changes arising from the digitisation of civil claims. FOIL acknowledges the important role that Tomorrow's FOIL can and should play in building and developing capacity, skills and resilience across member firms in the years ahead.

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. Internally, FOIL continues to adapt its structures and refocus on how it supports members. It remains 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. FOIL's strength remains in its ability to look behind the headlines, and in harnessing the combined experience of its member firms. The need for decision-making to be grounded in clear analysis and cogent evidence continues, but FOIL will place a renewed and sustained emphasis on proactively shaping the future legal landscape. Critically, FOIL's key aim remains to ensure that its members' voices are heard in the reform agenda.

Part A. The business world in 2024 – “Choppy Waters Ahead”

Set against the backdrop of an anticipated General Election, FOIL’s work in 2024 will include working with the insurance industry and members to:

- 1) navigate the impending changes in the areas of civil justice reform in all UK jurisdictions, providing support and challenge in equal measure, working closely with other key stakeholders and trade associations, such as the Association of British Insurers (ABI);
- 2) support the digitalisation of claims and court processes, in the pursuit of a progressive, ethical and sustainable civil justice system that embraces the use of new technologies to drive efficiency savings and optimal outcomes;
- 3) nurture and develop talent in our industry, using Tomorrow's FOIL as a vehicle to engage the future leaders of our respective firms, and collaborating to help member firms share experiences in flexible ways of working that maximise productivity and support the well-being of colleagues;
- 4) champion diversity and inclusion in the workplace and espouse the benefits of a truly diverse workforce in the delivery of solutions for our clients;
- 5) collaborate using the FOIL ESG Board to develop plans to help member firms to deliver on science-based emissions reduction targets.
- 6) empower our Sector-Focus Teams to proactively engage with the key issues of the day for the collective benefit of member firms and our insurance clients;
- 7) promote a customer-centric approach, supporting those who are vulnerable and supporting our clients in the delivery of the FCA's Consumer Duty.
- 8) address the discrete economic and policy challenges that affect the different jurisdictions in which FOIL operates – for example, the adverse impact of the Northern Ireland Assembly not sitting on business owners and consumers.

Part B. Technical and legal focus

FOIL's technical work in 2024 will include:

- 1)** The continuing reform of the claims process - the work of the MoJ, the CPRC, OPRC and the CJC over the coming year will see further developments and proposals for reform in the civil justice regime, in particular around fixed recoverable costs, ADR, online claims portals and digital case management. Further process reform is also expected in Scotland, Northern Ireland and the Republic of Ireland.
- 2)** HMCTS Structure and Resourcing – following the seismic changes to the civil justice regime during the pandemic, the focus now is on longer-term reform and work allocation. We have the recent allocation of work to the new Civil National Business Centre. Structural issues and resourcing will remain important issues in the offline and online court systems. The regimes in Scotland, Northern Ireland and the Republic of Ireland will also be under continued review.
- 3)** The Official Injury Claim (OIC) platform remains in the spotlight following the recent critical review by the Parliamentary Justice Committee. Further legal developments and changes are anticipated in the context of mixed injury claims and following the tariff review in May 2024. The technical operation, the working of the rules, and further developments of the process will be under continued scrutiny over the coming year. The MoJ are under pressure to demonstrate that the OIC platform is delivering real improvements and benefits for represented and unrepresented claimants alike.
- 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 Damages Claims Portal, 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, 2024 is likely to see numerous proposals for legal reform on a wide range of issues in all UK jurisdictions. It remains to be seen how far the UK will continue to diverge from the EU-derived legal framework following the passing of the Retained EU Law (Revocation and Reform) Act 2023. Of particular note, are the Online Safety Act 2023 and the Economic Crime and Corporate Transparency Act 2023. In the legislative pipeline, we also have the Data Protection and Digital Information (No2) Bill and the Automated Vehicles Bill. Of course, further legislative developments may well be hampered with the general election on the horizon.
- 6)** Critical planning and lobbying for the anticipated reviews of the discount rate(s) across the UK – discussions will come into sharp focus as we move closer and follow the start of the statutory review in July 2024. We may have to adapt to new models and approaches for setting the discount rate across the different constituents of the UK.

- 7)** The ongoing reform of costs –the seismic impact of the extension of the fixed recoverable costs regime, the continuing impact of QOCS and further anticipated developments in the CJC space. The control of legal costs and the anticipated satellite litigation from the FRC extension will remain a vital lobbying issue for FOIL.
- 8)** The challenge and opportunities arising from technological change and innovation – there is a continued impetus to use technology to support new business practices and to provide new claims-handling solutions. Effective digital supervision and case management of claims will remain critical. Technological disruption (including the development and use of generative AI) will continue to give rise to new risks and the need for new insurance products and areas of cover.
- 9)** The need to respond to the anticipated introduction of compulsory Alternative Dispute Resolution (and specifically mediation) within the Civil Justice Process.
- 10)** In Scotland, we will need to address regulatory reform in the legal market via the Regulation of Legal Services (Scotland) Bill, give further consideration to the possible introduction of a digital claims portal for low-value personal injury RTA claims and respond to further developments around the operation of the exceptions to QOCS protection.
- 11)** In Northern Ireland, responding to the future publication of the Guidelines on Personal Injury Awards in Northern Ireland (the ‘Green Book’).

Part C. FOIL's development

FOIL's strategic focus in 2024 will include:

- 1) Embedding a new structure within the FOIL secretariat, to include a wider pool of technical writing resource and a full time employed operations manager, enabling the CEO to concentrate on market facing activities.
- 2) Modernisation of our periodical publications.
- 3) Upgrading the website.
- 4) Reviewing practise and policy at FOIL Scotland to see whether there are better ways in which FOIL can support its members in that jurisdiction.
- 5) Significantly enhancing FOIL's presence on social media platforms.
- 6) 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 a company's carbon emissions and diversity & inclusion policies.
- 7) Building new, and reinforcing existing, relationships with other insurance, broking, loss adjusting and risk management trade bodies in the UK and overseas.
- 8) Ensuring that FOIL continues to walk alongside insurers and self insured corporations, acting as a trusted partner to them, as we all navigate ways forward through uncharted territory.

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