



SPOTLIGHT

In this edition, we focus on housing related claims and future policy reform
There is also an introduction to the FOIL President's nominated charity: The
Insurance Museum

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Future Editions

If you are interested in contributing material
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Welcome to the February 2025 edition.

Stratos Gatzouris (DWF and Editor in Chief)
Jeffrey Wale (FOIL Technical Director and Assistant Editor)

Welcome to the February 2025 edition of the Voice and to Howard Dean of Keoghs as the new President of FOIL. In this edition we introduce the President's nominated charity for the year: the 'Insurance Museum'.

There is no doubt that we are braced for another busy year, with various points of disruption across all the jurisdictions that FOIL represents. In that vein, Laurence Besemer (FOIL CEO) highlights pending changes in the "Defendant Personal Injury" seat on the Law Society's Civil Justice Committee and invites members to review their terms of membership in advance of the voting process.

In this edition, we focus on housing related claims and policy reform, including housing disrepair and disease claims that have proliferated, especially in England and Wales. This landscape is influenced by different legislative and socio-economic considerations in each of the jurisdictions in which FOIL members operate. Michelle Penn (DWF) starts off the conversation with an overview of the claims landscape in England and Wales. Katherine Lees and Edward Sainsbury (Clyde & Co) consider the specific expansion of psychiatric injury claims in the housing disrepair arena. Nicola Dawn and Sarah Davisworth (Forbes) address the ongoing Government review of the Decent Homes Standard. Finally, Steven Brownlee (FOIL) looks at legislative reform of the rental sector and examines the Renters' Rights Bill as it passes through Parliament.

We have all the usual updates and news from FOIL with a spotlight on two FOIL Trade and Industry Partners: InfoProtect and Trust

Mediation. There is also an overview of our Diversity, Equity and Inclusion resources including a brand-new Toolkit offering comprehensive guidance to implementing DEI practices.

We also take the opportunity to highlight the **Joint Consultation on Rehabilitation in OIC claims**. Considerable work has been undertaken by FOIL and other stakeholders in designing a rehabilitation process for OIC claims, with the principal aim of building trust within the sector, to enable rehabilitation to be delivered on a firmer footing. Adoption of the new process will be voluntary, with interested parties able to adopt all or part of the process as they wish. No-one will be obliged to use the process or the standards in providing rehabilitation, or in accepting liability and paying for it.

It is proposed that the process should be included as an addendum to the Rehabilitation Code. The IUA act as custodians of the Rehabilitation Code and host the Code on their website. Before the process can be included as an addendum, a Rehabilitation Code Working Group will need to be convened to consider the request. To that end, we have asked our members to complete a short [survey](#) in relation to this proposal. The consultation will remain open until Friday 21 February 2025.

We hope that you enjoy reading the content and look forward to receiving your ideas for the next edition of the Voice. Once again, many thanks to Ian Thornhill for his work as the content coordinator on this edition.

Stratos and Jeff



FOIL - the Forum of Insurance Lawyers



@FOILlaw

The President's Page

Welcome to the first edition of the Voice for 2025



Howard Dean (Keoghs and FOIL President)

Last year brought significant political shifts and policy slowdowns. Under the previous government, legislative activity slowed significantly as it focused on managing public perception ahead of the upcoming general election. Once the new government took office, they wasted no time in establishing their Cabinet; however, they were soon beset with a series of crises, including riots and the challenge of managing overcrowded prisons.

The complexities of governance proved to be more difficult than anticipated, leading to a slower than expected policy rollout. The end of 2024 saw the government publish its response to the Whiplash Tariff Review, along with a summary of responses to the call for evidence published on 6 February 2024. Sadly, it did not contain the much-needed guidance on defining minor psychological injuries.

More recently, the Lord Chancellor determined that the personal injury discount rate (PIDR) in England and Wales should be a

single rate of +0.5% bringing it into line with the other UK jurisdictions.

2025 promises to be a much busier year for our members with a range of important regulatory and legislative changes civil justice such as a court track limits review, pre-action protocol reform, and the continuing review of litigation funding.

In 2024, mandatory mediation was rolled out for low-value claims not involving personal injury. The government are now looking at extending mandatory mediation to other types of claims and considering the procedural point of the case where it is likely to be most effective.

The issue of claims inflation remains an ongoing concern. In the motor sector, the Premium Finance Market Review is underway and is expected to conclude by the end of 2025. The Motor Insurance Task force is to examine issues such as claims inflation, as well as fraud, and the market dynamics in motor insurance. The national living wage increase (April 2025) and the Fair Work Agency Consultation to be set up under the Employment Rights Bill may have an inflationary effect on care related claims.

FOIL's priority remains to support members, to strengthen their presence in all areas of specialism and general business and to offer an independent and thought-provoking voice in the insurance market.

FOIL is perfectly positioned to look forward and assess the risks of future reforms, to use its voice to inform the debate and influence the outcome. That is not only the case in England & Wales, but very much so in Scotland, Northern Ireland and the Republic of Ireland as well. Their importance to our members' businesses and those of our insurance clients cannot be understated.

FOIL's work in 2025 will include navigating the impending changes in the areas of civil justice reform in all UK jurisdictions. To support the digitisation 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.

If you haven't yet had the opportunity to review the 'FOIL Focus' for 2025, you can access this here, [FOIL Focus 2025](#) or via the FOIL website.



FOIL President's Charity - Support for the Insurance Museum

FOIL is delighted to announce that the Insurance Museum is FOIL President, Howard Dean's, nominated charity for 2025.

Reg Brown Chairman of the Insurance Museum says,

As a former Liability Underwriter at Lloyd's and a Past President of the British Insurance Law Association the marriage between Insurance and the Law has been with me throughout my career, evidenced by the fact that the guest speaker at my Mansion House Lunch as President of the Insurance Institute of London in 1995 was none other than Lord Woolf at the time of his Woolf Reforms.

I'm therefore delighted that FOIL's President, Howard Dean, has chosen Insurance Museum as his Charity for 2025

The Insurance Museum and Insurance Law

The Insurance Museum's aim is to tell the global story of insurance past, present and future. It will engage with students, insurance professionals and the public through education programmes, exhibitions and events. The IM has the unique opportunity to tell the story of the legal profession's contribution to insurance, which goes back 100s of years, and the challenges it faces in the future.

Financial support

The Insurance Museum can only achieve its aims through sponsorship and donations from

the broad insurance community. Over the next three years, the IM will need £600,000 to deliver the education and careers programme and collections development. We are applying for grant funding but will need extra sponsorship to match-fund those grants.

Sponsorship from insurance lawyers

We are actively seeking sponsorship to develop and implement our programmes and there are many opportunities for FOIL members to become involved:

- Sponsor the education and careers programme would highlight the work and invest in the talent pipeline that will realise future professionals in insurance law. £50,000
- Sponsor an online gallery telling the story of insurance and law would highlight the important of insurance lawyers work and be used for educational purposes. £50,000
- Sponsor the IM's Meanwhile Museum in the heart of EC3, City of London. £200,000 per annum, for the next three years.

Benefits of sponsoring the Insurance Museum

By telling the story in insurance law in education programmes and exhibitions, we will:

- Raise profile of the unseen work the insurance law sector achieves.
- Reach a new generation of potential employees through the education programme.
- Attract new and diverse talent.

In addition, all IM sponsors are:

- Displayed on our website "Sponsors' Wall", which features in all webinars and talks.

- Featured in the IM Newsletters and on social media.
- Offered tours, talks or webinars as part of the sponsorship package. If your company is interesting in multi-year sponsorship package, please contact Howard Bengel, the Insurance Museum Director to discuss options.

Notes

Discover more about the Insurance Museum on our website, <https://insurance.museum>, or follow us on and LinkedIn, <https://www.linkedin.com/company/insurance-museum>

The Insurance Museum is a Charitable Incorporated Organisation. Charity No. 1188138



THE LAW SOCIETY

Defendant Personal Injury Seat

Laurence Besemer (FOIL CEO)

Direct engagement with the Law Society and a deep understanding its own agenda and priorities are an important part of providing FOIL's support for our members.

FOIL has achieved a good level of that engagement and understanding over the years through a lawyer from a FOIL corporate member occupying the "Defendant Personal Injury" seat on the Law Society's Civil Justice Committee. That office has been occupied for the past 12 years by Nichola Evans, formerly of Browne Jacobson and Ward Hadaway and currently a partner at Kuits.

Nichola says "By inputting on strategy at the LS this also extends to the LS messaging to third parties including government departments. What I have been really pleased to see in my time on Council is how much more the defendant voice is heard on Council and therefore in policy decisions. There is much more balance in how things are dealt with. It may not be perfect but it is so much better"

Due to the Law Society regulations on time in office, unfortunately Nichola will no longer be eligible to hold the role beyond October this year and nominations for her replacement will be sought by the Law Society from the list of Defendant PI lawyers on the roll.

Although 90-95% of all defendant personal injury lawyers work at a FOIL corporate member, the Defendant Personal Injury seat is not actually a FOIL seat and it is therefore theoretically possible that a defendant personal injury lawyer who does not work at a FOIL corporate member could stand for election and take the seat, thereby

diminishing FOIL's input to, and visibility of, practice and policy at the Law Society.

To maintain our influence at the Law Society, it is important that Nichola's successor works at a FOIL member firm and is thereby able to take a seat on our National Committee as the Law Society representative to FOIL. This enables the appointed lawyer to input FOIL's views directly to the Law Society and to feedback to the FOIL National Committee.

The election of Nichola's successor will be handled entirely and directly by TLS which will consult only with lawyers registered on its role as members of the "PI, mainly defendant" constituency. It is essential therefore, if you wish to have input to the election of Nichola's successor, or indeed to the election of any other officers to TLS committees, that you personally visit the Law Society website: [Search: my constituency | The Law Society](#), click on "my constituency" and choose "PI mainly defendant" as your category.

FOIL will propose that Nicola Critchley, partner of DWF is put forward to take over from Nichola in October. However, it is critical that all lawyers at FOIL members confirm their constituency on the Law Society website to make sure that you are asked to vote on the proposal that Nicola becomes the defendant personal injury seat holder on the Law Society Civil Justice Committee

There is no need to confirm back to me that you have registered your constituency correctly, but I would urge you to check, if you are not currently sure how you are listed at TLS, to make certain that your vote on this critical role is sought by TLS when the time comes.

Diversity, Equity and Inclusion



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Towards the end of last year, we proudly launched a new Diversity, Equity, and Inclusion (DEI) page on the FOIL website, located under the 'About FOIL' section. This page was created with the aim of providing valuable information and resources to support DEI practices within your firm.

We kicked off the new page with a DEI Toolkit, which offers a comprehensive guide to implementing DEI practices. The toolkit highlights several essential steps:

- Assess Your Current State
- Educate and Engage Leadership
- Define Your Goals and Objectives
- Develop Policies and Practices
- Train and Educate Employees
- Measure and Monitor Progress

For detailed information on each of these steps, please visit our Diversity, Equity, and Inclusion page on the FOIL website.

In addition to the toolkit, the homepage features two insightful podcasts: 'Are we actually making progress with DEI?' with Gillie Fairbrother (Davies) and 'Equality to Equity' with Hannah Collins (Browne Jacobson).

The DEI page also includes two subsections:

- **Diversity, Equity, and Inclusion Articles:** This section will feature articles on DEI topics. Currently, you can read an engaging article from the latest edition of The Voice, written by Bridget Tatham and Marlene Henderson of Browne Jacobson.
- **Diversity, Equity, and Inclusion Resource Page:** This section will provide useful contacts and information. We have listed some of the notable speakers from our DEI event last year.

We invite you to explore the new DEI page and utilise the resources available to enhance your firm's DEI practices. [Diversity, Equity and Inclusion - Forum of Insurance Lawyers \(FOIL\)](#)

Finally, the DEI team is diligently planning an event titled '**Unlocking the Potential of Neurodiversity,**' which will be held on 1ST May 2025 at the DAC Beachcroft offices in London. We are delighted to announce that we have secured Sir Robert Buckland as the keynote speaker. Details of more speakers will follow. You can register for the event on the FOIL website here: [Calendar - Forum of Insurance Lawyers \(FOIL\)](#)

The FOIL DEI team are:

Bridget Tatham - Brown Jacobson (Chair)
Mark Huxley - Huxley Advisory
Sean McGahan – DAC Beachcroft
Tim Hague - Kennedys Law
Claire Quinn - Keoghs
Ashleigh Beaver -Horwich Farrelly
Hannah Brierley - Clyde & Co
Samrah Jaffrey - DWF
Laurence Besemer - FOIL CEO
Ian Thornhill - FOIL Operations Manager

**Housing Related
Claims and Policy
Reform: In Focus**



Are you interested in writing for the VOICE?

We rely on contributions from our members, sponsors, trade partners and others to produce each issue of the Voice. We are also interested in learning what subjects or themes you would like to see covered in the future.

If you are interested in contributing material to a future edition of the Voice or have any ideas for content, please feel free to contact info@foil.org.uk or any of the editors.

Many thanks.

THE FOIL EDITORIAL TEAM

The Rise and Rise of Housing Disrepair Claims...Why?



Michelle Penn (DWF, Consultant, Major Injury and Casualty)

In Brief

The article considers the proliferation of certain types of housing related disease claim; various strategies for prevention and the options available for pre-action claims handling.

Introduction

We have seen a significant increase in these claims in the last 10 to 15 years, perhaps 20 to 25 years ago, we saw the occasional toxic mould case, but rarely did we see claims alleging illnesses, usually respiratory ones caused by damp housing and general disrepair.

So, I will consider why we are seeing these claims and why we should rely upon the disease and illness protocol.

Why Disease

I have always treated these claims as disease

ones. Allegations of exposure to damp or mould would have been an ongoing, continuing event, therefore the disease protocol applies. It is not always easy persuading the Claimant solicitors of that, or indeed if the Claimant is acting as a litigant in person, but it is in my view fundamental that they are treated as disease because the disease and illness protocol allows you to obtain access to medical records. In the majority of these cases the Claimants can provide evidence that their property is in a state of disrepair, and will have evidence of the damp and mould, but proving causation is another challenge. The medical records are to a certain extent the only way to begin to assess any link between exposure and any alleged condition.

This is particularly relevant as claimants may well have pre-existing conditions and claimants will vary from the very young to the very old with a variety of vulnerabilities.

The Rise of these claims

I no longer receive cold calls asking if I have recently had an accident instead, I am asked if I am a tenant, does my home suffer from damp. What has changed? Are housing disrepair claims the new noise induced hearing loss claims? Noise claims tend to be legacy, and these housing disrepair claims are happening right now. They are of course public liability claims, and the Defendants include an array of different types of landlords from private to social to local authority.

I think it might be quite interesting to look at what causes damp and mould?

The causes of damp and mould?

Properties can be effected by three types of damp: condensation, penetrating damp and rising damp. Most of the claims we see are damp caused by condensation

There is always moisture in the air, even if you cannot see it. Condensation is when moisture

in the air collects on a cooler surface. We all have some condensation, but condensation can lead to mould and if there is too much moisture in the air or if the moisture is left on surfaces for too long it can cause condensation. So, condensation is caused by potentially too much moisture, lack of airflow and ventilation, insufficient temperature control and cold surfaces.

Were you aware that just drying clothes indoors can add nine pints of condensation every day, cooking and using the kettle adds six pints, two people at home breathing adds three pints, taking a bath or shower another two pints and washing dishes adds two pints? That is a total 22 pints of moisture in the air. You can see what the impact of overcrowding can do to moisture levels. I had a claim where the claimant, a litigant in person had four large dogs. The dog's breath was blamed for the increased moisture and therefore the subsequent damp.

The key issue is that dampness caused by excessive condensation can lead to mould growth on walls and furniture, mildew on clothes and other fabrics, and the rotting of wooden window frames.

There is clearly an education piece for all landlords when taking on new tenants and a constant re-education of tenants to see what they can do to reduce this problem. This is really about prevention. However, what we know is that with or without this education, there is limited success on preventing the problem, which can lead to damp with the inevitable complaint about disrepair which in turn can lead to an illness claim.

So, what is causing homes to increasingly have this issue and what is driving the claims? I think there is a combination of factors as follows:

Climate change

I am starting with climate change because we know it is having an impact generally. Clearly,

we all know that there is increased chance of flooding which will obviously lead to damp and mould, but is climate change leading to increased moisture, therefore, condensation and therefore damp?

Our concern about climate change seems to coincide with the increase of these claims. The atmosphere can hold more moisture as it warms up. Are homes ready for climate change?

Financial constraints

Tenants do complain about disrepair. They produce evidence of mould and damp and they can be given instructions on how to deal with it, special paints be used and can delay the return of mould but it will grow back, but really once mould appears it needs to be dealt with as quickly as possible and not all landlords can deal with these problems as quickly as perhaps they once could.

If the disrepair is not resolved quickly the tenant will become concerned about the impact of continued exposure to damp and complain to their landlords about the potential of an illness being caused particularly if they are vulnerable and/or their family is vulnerable.

Poor building construction can also lead to damp but with a housing crisis there is limited ability to move tenants to better and potentially less overcrowded housing.

We all have seen the publicity concerning local authorities suffering significant financial pressures due to higher demand on social care and lower council incomes. On 19 January the Guardian reported that a quarter of English councils may have to sell homes as the social housing finance " crisis" has already led to 37% of local authorities cutting back on repairs and maintenance.

Energy poverty

It is advised that to manage condensation and mould is to reduce moisture in the air and partly to do so would be to set heating to come on for longer periods but at lower temperatures rather than putting it on in short, high bursts. Advice is to keep all rooms throughout the house at a similar steady temperature (between 18° and 21°). Insulation and draught proofing will help keep the whole house warmer and cut fuel bills and the advice is to lay thick carpet with thermal underlay and hang thick, heavy lined curtains in rooms. All good advice. However, we all know that tenants, in particular in social housing, will not be able to afford to keep the heating on and certainly would not be keen to open windows to help increase airflow and ventilation.

Some social landlords and authorities are providing help and guidance to tenants who are struggling with the cost of living, in particular, the cost of gas and electricity.

Publicity

There has been a significant amount of publicity about tenants living with damp and mould.

There was the tragic death of two-year-old Awaab Ishak on 15 November 2022. The coroner found that he died as a result of a severe respiratory condition due to prolonged exposure to mould in his home environment. As a result, on 5 December 2022 the minister for climate change wrote to all social landlords with the aim of ensuring that social landlords put measures in place to specifically identify and address reported issues with damp and mould.

There have been other inquests, but this was probably the high point and local news if not national news will regularly report on individual tenants showing films of their living conditions. This has of course reputational issues for landlords, but there seems to be a

never-ending supply of anecdotal stories of poor housing, with tenants living in poor conditions.

In my experience, most Claimants and/or litigants in person initiate a claim, i.e. make allegations of an illness linked to exposure to damp and mould, but their main focus is to resolve the disrepair issues. However, once they mention an illness, whether their own or a member of the family, usually a child or an elderly parent, it becomes a claim. The disrepair and the illness claim will continue together but require very different technical skills and focus. It is, of course, simpler if the disrepair has been resolved and then the illness claim is pursued, but there is limited control over that scenario.

Claims farmers

I alluded to this in my introduction, when I referred to cold calling. These are complex public liability disease claims, and they can be lucrative. The portal does not apply to public liability disease claims and although there are fixed recoverable costs there will be vulnerable claimants, children and the elderly. Therefore, it is a potential growth area for those representing tenants. On the other hand, this is an area which has a significant number of litigants in person, which in itself adds another layer of complexity and costs to handling claims.

Those representing tenants have not created the problem, but they are encouraging tenants to claim and litigate.

Combination of factors

All these factors combined have led to the rise of the claims, but unlike, for example hearing loss claims, there has been limited attention by groups such as the civil justice council. There is a housing disrepair protocol but that is aimed at the disrepair and not about any illness.

As I have set out, the disease and illness

protocol is there and does apply equally to public liability claims; there should probably be a standalone protocol for handling these claims that combines housing disrepair and illness. More importantly, there should be greater focus on education and prevention so that once a complaint is made, landlords would have the ability to resolve issues as quickly as possible before the tenant experiences damp and mould which leads to a claim.



The Impact of Psychiatric Injuries in Housing-Related Disease Claims and the Rise of Claims for Standalone Psychiatric Injury



Katherine Lees and Edward Sainsbury (Clyde & Co)

In Brief

Landlords and insurers have seen increases in housing disrepair claims in recent years, including claims for related personal injury, both physical and psychiatric. These psychiatric claims can significantly influence overall housing disrepair claims, and so defendants, and their insurers, should have strategies to manage and mitigate these claims.

Background

No tenant deserves to live in a property which is unfit for human habitation. It is noteworthy that the Regulator of Social Housing published a report on 2 February 2023 indicating that between 1-2% of social homes (40,000 to 80,000) are estimated to have serious damp and mould problems, and a further 3-4% (120,000 to 160,000) to have notable damp and mould.

It is perhaps unsurprising therefore that landlords and their insurers have seen a sharp rise in housing disrepair claims in recent years. According to figures released by Inside Housing in September 2023, over the last 4 years there has been a staggering 132% increase in housing disrepair claims against local authorities.

Whilst this is in part because of increased public and media scrutiny, such as that following the inquest into the tragic death of Awaab Ishak, and the changing legal landscape (i.e. such as the introduction of the *Homes (Fitness for Human Habitation) Act 2018*), a significant driver is claimant firms actively seeking to pursue these claims, as they offer a lucrative revenue stream.

Although claims are principally brought to address alleged disrepair (i.e. specific performance of contractual repairing obligations), a large number include (or pursue separately) a claim for personal injury. Such claims increasingly involve psychiatric, as well as physical, injuries. Common examples include anxiety, depression, and stress-related illness linked to living conditions such as dampness, mould, or unsafe environments.

Perhaps more concerning, is the rise of standalone psychiatric injury claims, which are ordinarily the domain of traumatic events or seen in the context of work-related stress.

These psychiatric injuries can significantly influence the dynamics of a claim; broadening their scope, complexity and therefore cost. They often require additional expert opinions

and pose challenges in quantifying damages. Furthermore, from a strategic perspective, their inclusion often extends the timeline for resolving claims presenting unique challenges in managing strategy, tactics, and costs.

Defendants, and their insurers, can and should be implementing strategies to navigate these challenges and minimise the associated cost.

Personal Injury Related Housing Disrepair Litigation

Housing disrepair litigation often involves complex scenarios where alleged substandard living conditions are alleged to contribute to both physical and psychological injuries. Key examples include:

1. **Damp and Mould:** Can be connected with respiratory illnesses and is frequently alleged to contribute to stress and anxiety due to the ongoing impact on living standards and health risks.
2. **Structural Deficiencies:** Broken windows, faulty heating, and poor ventilation are often alleged to contribute to discomfort and physical risks, compounding psychological distress for tenants.
3. **Pest Infestations:** Infestations are often alleged to cause fear and anxiety, particularly in vulnerable populations such as children and the elderly, further complicating claims.

Claimants often rely on a combination of photographic evidence, medical reports, and expert testimonies.

Standalone Claims for Psychiatric Injury

Claimants who suffer from a foreseeable physical injury as a consequence of a defendant's breach of duty can also seek to recover for associated psychiatric injury. There is no need to prove the foreseeability of that

psychiatric injury. Sub-clinical reactions, grief, anguish and distress are not actionable in common law; per *Page v Smith* [1996], a claimant must suffer from a recognised psychiatric illness.

Accordingly, a claimant who suffers from repeated exacerbations of asthma caused by damp and mould in a property, can arguably claim for associated psychiatric injury (e.g. such as a generalised anxiety disorder). However, the position is arguably different for a claimant who alleges suffering solely from a psychiatric injury as a consequence of damp and mould in their property.

The law has, not least for public policy reasons, sought to define that category of individuals who can claim for "pure" psychiatric injury. Historically such claims fell within the category of those who were involved in a disastrous event or accident which had the potential of causing them physical harm, see for example *Page v Smith* [1996] AC 155, wherein the claimant was involved in a road traffic accident and successfully claimed for pure psychiatric injury.

However, the position has shifted somewhat, and we have seen for example the rise of claims for work related stress. There has been significant debate as to the degree of risk or danger there must be (assuming this is necessary), but what appears to be key is that the claimant's fear for his or her safety is reasonable (see *McFarlane v Wilkinson & Hegarty v EE Caledonia Ltd* [1997]).

For a claimant to succeed as a primary victim in a claim for a housing related psychiatric injury, they must prove (amongst other things) genuine, even if mistaken, fear of personal harm as a consequence of the alleged disrepair. If that fear of harm is mistaken, then the claimant must prove that the circumstances could injure a person of reasonable fortitude, as in *Alcock* [1992] 1 AC 310.

Ordinarily, therefore, it seems unlikely that a claimant will be able to succeed in typical claims for damp and mould, not least as minor cases of damp and mould within a property are unlikely to cause physical injury and therefore, by extension, psychiatric injury.

However, claims for standalone psychiatric injury arguably become more meritorious where:

- The disrepair is deemed to be a significant a hazard to health (NB the Homes (Fitness for Human Habitation) Act 2018 arguably provides claimants with a useful yardstick by which to measure harm in these circumstances).
- A landlord is put on notice that the claimant is vulnerable (i.e. suffering from recognised psychiatric illness) and therefore may not be deemed a person of reasonable fortitude.
- Other members of the household, such as children of the claimant, have suffered injury (i.e. exacerbation of asthma).

Defendants must carefully consider their defence in such claims, including:

- Whether there is clear evidence of the alleged disrepair and any remedial steps taken;
- Whether there is clear evidence of the Claimant suffering from a recognised psychiatric illness;
- Whether there is notice of C's vulnerabilities and therefore foreseeability;
- The likelihood of the Court providing permission for the defendant to obtain supporting countervailing expert medical evidence;
- The floodgate potential, including claims by other members of the household; and
- The reputational implications in defending the allegations to trial.

In most cases there will likely be a viable defence to these claims. However, each case should be carefully considered on its own facts and there are likely to be some cases which are meritorious and in which defendants are best suited in compromising on best terms, thereby avoiding unnecessary, costly and potentially unhelpful judicial scrutiny.

Interactions Between Insured and Non-Insured Elements of a Claim

Public Liability policies typically cover damages and legal expenses for accidental bodily illness or injury (and damage to property) occurring during the period of insurance. Ordinarily cover does not extend to claims for housing disrepair (i.e. specific performance to remedy the disrepair).

Further, it is often the case that a policy will only respond if the claimant's medical evidence supports a diagnosis of a recognisable psychiatric condition, or the exacerbation of a pre-existing condition, so careful analysis of the medical evidence is required.

This division raises important questions about the allocation of responsibility and the appropriate allocation of costs between those dealing with the insured and uninsured elements of the claim.

Strategic and Tactical Considerations

To suitably manage these claims, and the interplay of insured and non-insured elements, legal and insurance professionals must adopt a holistic approach. Strategies include:

1. *Early Risk Management*: Education of complaint handlers is key. Most HD claims start as a complaint to a landlord. The language of a complaint is a useful clue as to whether a claim is likely to follow. Terms such as

“stress”, “distress”, “anxiety”, “asthma” etc. are often a precursor to a claim. Early triage of a complaint can therefore either prevent a claim (by ensuring the complaint is suitably escalated) or provide a defendant with an opportunity to proactively gather and retain evidence in readiness of litigation.

2. *Proactive Case Management*: early identification of psychiatric, and standalone psychiatric injury claims will enable tailored strategies to mitigate risks. Upon notification of a claim, practitioners should work in conjunction with defendants and insurers alike to undertake investigations as soon as possible, including obtaining disclosure / lay witness evidence and arranging an investigation of the property at the earliest stage.
3. *Early Decision-Making* – once the aforesaid investigations have been concluded, a decision should promptly be made on liability, in the interests of minimising costs. If breach of duty is found, a further decision will need to be taken in respect of causation upon receipt of medical evidence. Often commercial factors will play a role here, as it may prove more costly to appoint an expert than offer a nominal amount for a psychiatric injury.
4. *Managing Litigants in Person* – many claimants pursuing claims for HD are unrepresented. This will often mean that cases are not suitably particularised or evidenced, thereby hindering investigations and early liability decisions. Further LiPs will often not appreciate the true merits or value of their claims, thereby further unnecessarily protracting matters. The Court will have significant sympathy for an

unrepresented claimant in any failings to comply with directions and orders, and therefore litigation timetables often become protracted.

Conclusion

The inclusion of psychiatric injuries, in claims for housing disrepair, represent a multifaceted challenge, often requiring consideration of legal, medical, and insurance issues. However, by understanding these dynamics and adopting proactive strategies, defendants and practitioners can navigate the complexities effectively, ensuring fair outcomes for all stakeholders.



Housing disrepair and housing related disease claims

Nicola Dawn and Sarah Davisworth (Forbes)

There is an increasing trend in housing disrepair claims linked to health conditions particularly respiratory and dermatological diseases highlighting the critical relationship between adequate housing standards and health. A housing disrepair claim can be made against a landlord if a tenant's health has been harmed by the condition of their rental property. Potentially claims can be brought for the following conditions –

1. Respiratory issues. - Damp and mould can cause breathing problems such as asthma, bronchitis, pneumonia and wheezing.
2. Skin irritation - Mould can cause skin irritation.
3. Mental Health Issues – The stress and inconvenience of living in a disrepaired property can negatively impact mental health.
4. Asbestos related diseases – Older houses may have asbestos which can cause illness.

Condensation and damp in homes can lead to mould growth and inhaling mould spores which may lead to the above respiratory conditions. A combination of older housing stock and poor ventilation can lead to damp and mould occurring and this is why a documented system of inspection will be crucial to landlords when faced with these types of claims.

A tenant pursuing a housing disrepair claim will require clear evidence linking their health condition to the state of the property such as medical records, expert reports and photographic documentation.

Landlords must demonstrate that they took reasonable steps to mitigate risks including regular inspections and prompt repairs. The

landlord and their solicitors will also investigate causation and whether there any pre-existing conditions such as a history of that medical condition which pre-dated a tenant moving into the property or if there are any alternative causes for the alleged condition.

Private and social landlords must adhere to a number of regulations related to damp and mould including the Housing Act 2004, Environmental Protection Act 1990, Homes (Fitness for Human Habitation) Act 2018, Landlord and Tenant Act 1985, Decent Homes Standard and Minimum Level of Efficiency Standard. Works to the heating and ventilation systems and replacement of windows are all controlled works and landlords must comply with the Building Regulations 2010.

The Decent Homes Standard is currently under review by the Government. This review will consider a number of changes including –

1. An updated list of items which must be kept in a reasonable state of repair for a home to be considered decent.
2. An updated list of services and facilities that every property must have to better reflect modern expectations for a decent home.
3. Whether the current Decent Homes Standard sets the right standard on damp and mould to keep residents safe.
4. Updates to how the condition of building components such as roofs and walls are measured to make sure that buildings which are not fit for use cannot pass the standard.
5. The introduction of a minimum Energy Safety Standard for the social rented sector.

It is clear that a landlord's responsibilities will continue to evolve in this area and that disease claims will continue to be a growth area in housing disrepair claims.

Renters' Rights Bill: Key Provisions and Impact



Steven Brownlee (FOIL Technical Author)

Targeting a transformation in the private rental experience, the Renters' Rights Bill represents a landmark shift in housing legislation, a sector where reform is long overdue. Aimed at delivering better protection for tenants in the private rental sector, the bill seeks to end 'no fault' Section 21 evictions, which have often left renters vulnerable to sudden displacement. With a focus on providing tenants with greater security and stability, the legislation introduces new obligations for landlords to ensure renters have a clearer understanding of their rights.

The Renters' Rights Bill implements pledges made by the Labour Party in its 2024 manifesto and now passes to the House of Lords for further scrutiny, with an expectation it will pass into law by spring. By abolishing fixed term assured tenancies, the 11 million private renters in England could enjoy far greater flexibility and security in their housing situations. Furthermore, it will give authorities greater scope to challenge those unscrupulous landlords who may exploit, mistreat, or discriminate against tenants. The implications

of this legislation, therefore, extend beyond policy changes and have the potential to fundamentally affect the dynamics of landlord-tenant relationships and foster a more equitable rental market.

Historical Context

The conversation surrounding renters' rights is rooted in a long history of housing laws and regulations. Key legislative changes have shaped the current landscape of tenancy and landlord-tenant relationships, reflecting the evolving needs and protections for renters over time.

Evolution of UK Housing Laws

The evolution of housing laws in recent decades has significantly influenced renters' rights, beginning with the Rent Act of 1977, which provided enhanced security of tenure and protection against arbitrary eviction for tenants who qualified for protection. The Rent Act set a precedent that would shape future legislation and set the foundations for the Landlord and Tenant Act, which followed in 1985.

Subsequently, the introduction of the Housing Act 1988 deregulated the majority of private tenancies and introduced a more market-oriented approach. The private rental market saw renewed growth at the end of the 1980s, and while the Housing Act 1988 brought about perceived legal benefits for landlords, it sparked concerns over the erosion of tenant protections and affordability introduced via previous legislation.

More recent developments include initiatives to increase tenant rights, as rent increases, and government focus on reducing housing benefit expenditure highlight the need for greater

control. The Renters' Rights Bill aims to address these issues by improving living conditions and providing greater legal resources for renters facing challenges in the private sector. Housing policy is a devolved matter, so the introduction of the Renters' Rights Bill seeks to address the challenges in England, with action taken in Scotland and Northern Ireland perhaps taking different forms.

Impact of Previous Legislation

Previous legislation has laid the groundwork for the current rights of private renters and established essential safeguards. A pivotal example is the Protection from Eviction Act of 1977, which fortified tenants against illegal eviction by mandating that landlords required a court order, reinforcing the principle of due process.

The Localism Act 2011 later introduced measures for addressing homelessness by shifting some responsibilities and powers away from central government to local authorities. This shift has highlighted the relationship between housing policy and social support systems, giving councils greater control in utilising local private rented accommodation for social housing needs.

Core Provisions of the Renters' Rights Bill

The Renters' Rights Bill introduces several key measures aimed at enhancing tenant security and ensuring fair practices in the private rental market. These provisions focus on the security of tenure, rent control, and the responsibilities surrounding repairs and maintenance.

Security of Tenure

Landlords are restricted from serving notices seeking possession without valid grounds, such

as breach of tenancy, meaning tenants cannot be evicted easily unless there is a clear violation.

Furthermore, tenure security is reinforced by preventing landlords from issuing Section 21 notices for the first twelve months of a tenancy. This allows tenants to settle in without fear of sudden eviction and aims to foster stability in the rental market by encouraging longer tenancies.

Rent Control Measures

The bill proposes specific rent control measures to address rising rental costs, including limiting how often landlords can increase rent and by how much within a given period. In addition, notice requirements aim to ensure tenants are notified well before any rent increases.

This framework seeks to protect tenants from sudden additional financial burdens while promoting greater transparency in rental agreements to make housing more affordable and predictable for renters.

Repair and Maintenance Responsibilities

Although most landlords provide a good service, the private rental sector in the UK is considered the least affordable, poorest quality, and most insecure of all housing options. Under the bill, landlords will have legal obligations to maintain properties in a safe and habitable condition, including ensuring essential services like heating, plumbing, and electrics meet minimum standards.

Tenants will have the right to a well-maintained property and to request necessary repairs, and landlords are compelled to act

within a specified timeframe. For example, Awaab's Law, introduced initially for the social housing sector, is to be extended to ensure landlords promptly address reported damp and mould issues. Failure to meet these obligations may result in penalties or enforcement actions.

Tenant Protections and Responsibilities

The Renters' Rights Bill seeks to establish several essential aspects of tenant protections and responsibilities, including anti-discrimination clauses, eviction protocols, and reporting obligations that combine to shape the relationship between landlords and tenants.

The introduction of a national landlord register is intended to help local authorities monitor and engage landlords failing to meet appropriate standards, with additional funding to ensure the resources and powers to uphold tenants' rights.

Anti-Discrimination Clauses

The bill emphasises the importance of anti-discrimination by prohibiting landlords from discriminating against tenants based on protected characteristics such as race, gender, disability, or age. The aim is to ensure that all individuals have equal access to housing without fear of facing bias.

Tenants can seek remedies if they experience discrimination for reasons such as receiving government benefits or having children. Providing a formal process to address grievances that landlords must strictly adhere to makes it incumbent upon them to establish fair and transparent selection practices that foster an inclusive renting environment and promote fairness.

Eviction Protocols

Eviction protocols are designed to protect tenants from arbitrary evictions, and the legislation limits landlords' ability to issue notices seeking possession without just cause, ensuring tenants have greater security in their homes.

Among the most significant aspects is the ban on Section 21 'no fault' evictions for at least the first twelve months of a tenancy. This gives tenants the stability to settle into their homes without fear of sudden displacement. Should an eviction be deemed necessary, landlords must follow legally defined procedures, which include safeguarding tenants' rights by allowing them to contest the eviction.

Reporting Obligations

Tenants have specific reporting obligations outlined in the bill, primarily related to the prompt reporting of any maintenance, repair, or safety issues impacting living conditions to landlords. This ensures landlords address requests in a timely manner, with failure to do so leading to potential legal repercussions for the landlord.

Tenants are also encouraged to report health and safety concerns, the intention being to contribute to overall community welfare, establish accountability and foster cooperative relationships between tenants and landlords.

Landlord Obligations

Landlords have specific obligations and rights that mandate maintaining safe and habitable properties and govern their interactions with tenants. Current laws provide scope for landlords to request unlimited rent upfront, placing often impossible demands on most renters. The new bill proposes landlords can

request one month in advance, with the addition of a security deposit. This will make renting more accessible to more people while retaining landlord confidence that tenants can sustain their tenancy agreements.

Property Access Rights

Landlords have the right to access their properties, but this is subject to specific conditions; they must provide reasonable notice, typically 24 hours, except in cases of emergency. When entering the property to conduct inspections, carry out maintenance, or show the property to prospective tenants, landlords should do so at times that are convenient for the tenant, such as during working hours.

Failure to respect access rights can lead to disputes or claims of harassment from tenants, so landlords must ensure they always maintain clear communication and compliance with the terms of rental agreements to avoid facing exposure to legal action.

Mechanisms for Dispute Resolution

Disputes between landlords and tenants can arise for reasons including unpaid rent or property maintenance issues. Mandatory registration with a new Private Rented Sector Landlord Ombudsman Service will be introduced under the bill, with the ability to provide binding decisions in the event a tenant makes a complaint about their landlord.

The service offers a free route for tenants to raise formal complaints, and the bill places a legal obligation on landlords to join. Local authorities will have the power to enforce penalties for non-compliance, including significant fines or criminal prosecution for repeat offenders. However, the new

ombudsman offers a neutral ground for both parties to discuss issues and seek mutually agreeable solutions. Landlords also have access to support to help them improve their existing processes and resolve complaints cost-effectively.

Implementation and Enforcement

Effective implementation and enforcement of the Renters' Rights Bill will be central to ensuring meaningful change and that the rights of tenants are upheld. The new enforcement abilities given to local authorities are sure to play a significant role in this process, as will the frameworks of penalties and remedies for violations by landlords.

The responsibility for enforcing the provisions set out in the Renters' Rights Bill falls with local authorities, who must ensure landlords comply with new regulations, which include preventing no-fault evictions under Section 21. Their powers to collect and retain revenue from financial penalties imposed on landlords will help underpin effective and proportionate enforcement.

Local authorities will have the power to carry out inspections and investigate complaints from tenants about landlord practices. Additionally, they will be expected to work with local housing organisations to ensure tenants are provided with information on their rights.

Training programmes for staff will enable local authorities to effectively implement the bill's requirements and ensure that enforcement actions are conducted fairly and consistently across different jurisdictions.



Informing Progress - Shaping the Future

**Rebecca Barton (Forbes)****Tomorrow's FOIL in Brief**

Tomorrow's FOIL was launched in 2012 to cater for lawyers at member firms with less than 5 years' post qualification experience. This division runs learning and social events, helping to build career long relationships with fellow practitioners and counterpart insurance professionals.

Since our last update, the Tomorrow's FOIL committee have come up with several new ideas and posts on LinkedIn and the FOIL website.

I have again agreed to sit another 12 months as President of Tomorrow's FOIL.

Two of the committee members, Rebecca Barton and Tatiana Dall have been involved with an AI working group which has now been separated into 3 subgroups. The groups will

meet and discuss the current matters around AI and how these are being used in insurance.

Tomorrow's FOIL has now uploaded a video to their LinkedIn page called "A day in the life of a young lawyer in the insurance industry" featuring Tatina Dall's day at the office and her attendance at an event in London hosted at the National Army Museum. Although we cannot say that every day is like this being an insurance lawyer, this was a particularly interesting day that Tatina shared with us. The committee are planning on putting together more videos like this so keep a watching the Tomorrow's FOIL LinkedIn page for more of these videos coming out.

The Committee have also discussed a further fireside chat with other members of the insurance community about the interesting areas of insurance that they work in, further updates to follow.

Laurence Besemer is also meeting with the CILA group again on 10 February 2025 to continue the discussion around getting young people interested in insurance law and becoming insurance brokers. Again, updates to follow this meeting.

Tomorrow's FOIL are always keen to hear new ideas about how we are able to generate interest into the amazing world of Insurance Law by the future generation of lawyers. Please keep an eye on LinkedIn and other relevant Social Media platforms for content relating to Insurance Law.



Informing Progress - Shaping the Future

Update on developments in Northern Ireland



Cathal O'Neill (Carson McDowell LLP and Chair of FOIL NI)

Department of Justice plans to 'reset' the justice system in Northern Ireland

On 2nd December 2024, Justice Minister Naomi Long announced a proposed 'reset' of the Justice System in Northern Ireland. Within the reform programme titled 'Enabling Access to Justice', a number of issues were considered with the aim of answering the question - is justice being served? Several proposed changes have been outlined to the Northern Ireland Assembly, with the aim of better meeting the needs of those engaged with the justice system.

Those aims are encompassed within five key areas:

1. Improving access to Justice:

This area includes improving the legal aid system, ensuring those most in need have access. The Minister also noted that she wants to incentivise early resolution of cases and reduce delays within the system.

2. Ensuring Appropriate Quality Services:

Ms Long notes in respect of this aim that the support required often goes beyond the formal institutions of the legal system and hopes to improve provision of specialist support, particularly to vulnerable groups.

3. Ensuring Value:

It is noted that appropriate and fair remuneration is necessary to ensure the long-term viability of the justice system and, as such, an increase in fees is proposed.

4. Managing Public Funds:

This is the other side of the access to justice coin in many ways, and Ms Long reflects on the importance of ensuring legal aid funds are used to "support the most vulnerable".

5. Oversight:

Finally, the Minister wishes to measure and assess the performance of the justice system, through the setting of overarching principles and measuring the extent to which these are met.

The Programme Delivery Plan is subject to consultation and FOIL are currently making representations to the Department of Justice on behalf of insurers.

Review of Scale Fees:

An increase in scale fees is another avenue by which the Minister aims to ensure that fair and appropriate remuneration is provided.

A consultation document had previously been published in July 2024. Key amongst the proposals was increasing the current County Court (fixed) scale costs by 23%, to reflect inflation since 2002. The document also recommended reviewing scale costs on a three-year cycle to ensure that they remain in line with the economy as a whole, while travel expenses are also considered, with an uplift of 32% suggested.

The consultation paper did not advocate for an automatic uplift in cases with multiple defendants, as it was hoped that the pre-action protocol would reduce the need to identify multiple possible defendants. The consultation period has closed, and we await formal introduction of the changes, which will be of considerable interest to insurers and the subject of future updates of the Voice.



Informing Progress - Shaping the Future

Update on developments in Scotland

The Scottish Law Commission's report on damages for personal injury

The Scottish Law Commission's report on damages for personal injury, published on 4 December 2024, represents an effort to overhaul and modernise the legal framework governing awards of damages for such claims in Scotland. This report was accompanied by a draft Damages (Scotland) Bill. There is no proposed timescale for consideration of the draft bill at present.

The Law Commission's proposals are outlined below:

1. Expanding the Definition of "Relative"

One of the most significant recommendations in the report is the expansion of the definition of "relative" to include ex-cohabitants and people accepted into the family of an injured person. In addition, it seeks to permit awards for services provided by people other than relatives, such as friends and neighbours. This proposed change reflects the evolving nature of social support networks and ensures that individuals who provide essential care and services to an injured person, or who receive such services from them, are eligible for compensation. By broadening this definition, it is considered the law would better reflect modern familial and social dynamics by acknowledging that support often extends beyond traditional family boundaries.

2. Clarifying Deductions from Damages

The report addresses the complex issue of deductions from damages awards. Currently, there is ambiguity regarding what should be deducted from compensation, particularly concerning benefits received under employer health insurance schemes. The Commission recommends that payments made to an injured employee under a permanent health insurance scheme that they have contributed to financially should not be deductible from damages. There is also to be a statutory provision to allow an injured person to claim for private medical treatment, care, accommodation and equipment, rather than requiring them to utilise available NHS or local authority support.

3. Provisional Damages and Asbestos-Related Diseases

A critical area addressed by the report is the treatment of provisional damages, especially in cases involving asbestos-related diseases. Under current legislation, individuals diagnosed with conditions like pleural plaques face a time-bar that can prevent them from claiming for more serious conditions such as mesothelioma if these develop later. The Commission proposes removing this time-bar, allowing claims to be made when symptoms of the more serious conditions manifest. This change is seen as being crucial in safeguarding claimants' rights, ensuring they are not disadvantaged by the progressive nature of certain diseases and avoiding wasted court procedure.

4. Enhanced Management of Children's Awards

To protect the interests of children who receive damages awards, the report recommends increased court supervision over these funds. This measure is designed to ensure that children's compensation is

managed prudently and used for their benefit. By implementing stricter oversight, the courts can help prevent mismanagement or misuse of funds intended to support a child's recovery and future needs.

(adapted from a FOIL Update authored by Paul Finn)





Informing Progress - Shaping the Future

Professional Liability - claims trends in 2024 and 2025 predictions



Fleur Rochester (Kennedys & London FOIL President) and Abbie Wood (Kennedys)

This article reviews the claims trends over the last 12 months in relation to matters involving construction professionals and solicitors, and sets out our predictions for 2025.

Construction

The construction industry has suffered from recent economic difficulties (e.g. labour shortages and supply chain problems). Consequently, there has been a rise in insolvencies and a corresponding increase in claims against the insolvent companies' insurers via the Third Parties (Rights Against Insurers) Act 2010 (the "2010 Act"). Under the 2010 Act, third parties have the right to bring proceedings directly against insolvent companies' insurers, without first establishing the liability of the insured. Unfortunately, this trend is likely to continue while the current economic difficulties persist and,

consequently, there may be a larger number of disputes going to trial, adjudication or arbitration.

2024 saw a number of key judicial decisions relating to the 2010 Act. A notable case was the *Scottish Gas Network PLC v QBE UK Ltd* [26.09.2024]. In this case, a default judgment was obtained against an Insured in Scotland, which had the effect of binding the Insurers under the 2010 Act. If this decision is followed in the English courts, there may be an increase in successful claims against insurers under the 2010 Act. This is because, where a default judgment has been obtained against the insured, the only available defence to insurers will be the argument that liability is not covered or excluded from the policy.

In *Riedweg v HCC International Insurance Plc* [11.11.2024], the court held that an insurer who sued under the 2010 Act was unable to bring a contribution claim against a third party, pursuant to the Civil Liability (Contribution) Act 1978. This is because the insurer's liability to indemnify under a policy was not the 'same damage' as the damage suffered by the claimant. As a result, the third party in that case was not liable to the claimant for the 'same damage' as the insurer. This decision makes it more difficult for insurers to make a recovery claim against a third party, where a solvent insured would have been able to seek a contribution. We understand that HCC has been granted leave to appeal to the High Court

We are also likely to continue to see various fire safety related claims in 2025. This is particularly as the Government seeks to increase the urgency to remediate unsafe buildings by 2029 via the Remediation Acceleration Plan.

Solicitors

The number of claims against solicitors has been rising for the last fifteen years. Since 2019, there has been a particular increase in the volume of claims, driven by higher numbers of lower value claims (i.e. those with quantum of less than £100,000).

In terms of solicitors' professional indemnity claims, the property practice area accounted for 46% of all claims in 2024, with 36% of those claims relating to the provision of negligent advice. Litigation accounted for 20% of practice area claims, whilst private client accounted for 16% of all claims. However, the private client practice area accounted for 68% of damages claimed across all claims.

The data indicates that negligent advice was the most common cause for claims and accounted for 32% of all claims. *'Failure to provide advice'* accounted for 16% of all claims, dishonesty accounted for 7% of all claims and due diligence failings was the cause of 5% of all claims.

We expect that the property and private client areas will continue to present the largest areas of risk for Insurers in 2025. However, it will be interesting to see whether the changes in practice implemented as a result of the Covid-19 pandemic will lead to the property and private client areas accounting for even larger volumes of claims in the future. The recent tax changes implemented by the Labour government could also result in even greater numbers of claims in this area, which could increase the pressure on premiums for firms who specialise in this area.

It is interesting that claims against solicitors arising from data breaches accounted for less than 1% of claims in 2024. Despite this, we expect data protection issues to continue to trend towards the top end of the list of

priorities for all firms for the foreseeable future.

The data breach space will continue to be closely monitored, and we expect that firms will need to commit ever greater resources to this area to minimise the number of claims. Insurers should also ensure that insureds have sufficient protections and training to combat the threats arising from data breaches.



Operations Update



Ian Thornhill (FOIL Ops Manager)

It almost feels like yesterday that I penned my first article as Operations Manager, having joined FOIL in January last year. Reflecting on the past year, I'm thrilled to share that our FOIL LinkedIn account saw remarkable growth, doubling our followers from just over 500 at the start of 2024 to over 1,000 by year's end.

Towards the end of last year, we decided to focus our social media efforts solely on LinkedIn. With this strategy in mind, we also launched a separate LinkedIn account for Tomorrow's FOIL towards the end of last year, where we can now share alternative content to our main FOIL account. If you haven't yet visited the Tomorrow's FOIL LinkedIn page, I highly recommend it and in particular, check out the 'Day in the Life of a Young Lawyer' video. We hope this will be the first of many interesting videos and podcasts from Tomorrow's FOIL throughout the year.

[FOIL - the Forum of Insurance Lawyers: Overview | LinkedIn](#)

[Tomorrow's Foil: Overview | LinkedIn](#)

Looking back, I'm also very pleased with the significant enhancements made to our website last year. These improvements have

made our site more aesthetically pleasing to the eye, user-friendly and informative, greatly enhancing our online presence and accessibility.

Our two charity events last year required a lot of organization but were incredibly enjoyable. The golf event at the Warwickshire Golf Club and the charity quiz in Manchester were both great successes, raising a combined total of £1,500, which was doubled thanks to Gift Aid for Kintsugi Hope.

Looking ahead to 2025, we have exciting plans in the works, including a new monthly bulletin for our trade and industry partners. This bulletin will provide valuable insights, updates, and opportunities for collaboration. Our charity efforts this year will focus on supporting the Insurance Museum, the President's chosen charity. I'm looking forward to organizing events and initiatives to support this worthy cause.

We hosted many successful online and in-person events in 2024, too numerous to mention here. However, one of the standout events was our PFAS: From Nonstick to Never Gone presentation by Dr. Jake Irwin from Hawkins. This fascinating and, at times, rather alarming look at 'forever chemicals' can be viewed in full under the streamed events section of the FOIL website, along with other recent interesting events.

Upcoming events include the rescheduled **'Using AI to Predict Injury Risk in Sport – An Insurance and Medico-Legal Perspective,'** which will take place on March 20th after being postponed due to a bereavement. You can now register for this event on the FOIL website. [Event Registration](#)

We also have several events in the early stages of planning, so keep an eye out for updates coming your way soon!

FOIL in the Media (October 2024- January 2025)



FOIL members regularly contribute to external media publications. Here are the contributions over the last quarter:

Emelia Bezant-Gahan, FOIL Member, of Weightmans, offered commentary on the case *Tindall v Thames Valley Police* in **Law360**. (23 October 2024)

Andrew Steel, Public Sector & Blue Light SFT, of Weightmans, wrote an article discussing the implications for public authorities and their insurers from the *Tindall v Thames Valley Police* in **Insurance Day**. (7 November 2024)

Howard Dean, President of FOIL, of Keoghs was appointed to FOIL president, and this news was covered in:

- **Insurance Post** (22 November 2024)
- **Solicitors Journal** (22 November 2024)
- **Modern Insurance Magazine** (25 November 2024)
- **Insurance Edge** (25 November 2024)
- **Insurance Business** (25 November 2024)

- **Reinsurance News** (26 November 2024)
- **Claims Magazine** (28 November 2024)
- **The Legal Diary** (29 November 2024)
- **Insurance Age** (29 November 2024)

Howard Dean, President of FOIL, of Keoghs provided commentary to **Insurance Post** after the insurance industry urged the government to increase the small claims track limit. (29 November 2024)

Howard Dean, President of FOIL, of Keoghs commented on the current issues in personal injury claims in **The Law Society Gazette**. (3 December 2024)

Howard Dean, President of FOIL, of Keoghs featured in a career profile article in **New Law Journal**. (2 January 2025)

Howard Dean, President of FOIL, of Keoghs participated in a profile Q&A after the news of his appointment to FOIL president in **Insurance Business**. (7 January 2025)

Simon Murray, FOIL Tech and Cyber SFT, and partner at Weightmans discussed the impact of AI in the insurance sector in 2025 in the **Modern Insurance Magazine**. (January edition 2025)

Shirley Denyer, Technical Consultant at FOIL, and Pete Allchorne, of DAC Beachcroft, were published in **Insurance Day**, discussing how the Labour government could shape the civil process and the potential privatisation of justice. (23 January 2025)



Latest News

Dr Jeffrey Wale (FOIL Technical Director)

Consultations and Calls

As we move through 2025, a steady stream of consultations and calls for evidence have been published by a range of stakeholders. Here are some examples that FOIL aims to respond to:

Ministry of Justice, Call for Evidence - The use of evidence generated by software in criminal proceedings

This Call for evidence follows the Post Office Horizon IT Inquiry and is available at the following [link](#). The Call closes on the 15 April 2025.

Justice Committee Inquiry on the work of the County Court

This is a relaunch of the previous Committee Inquiry into the work and state of the County Court to which FOIL previously responded. There is a tight deadline for further written [submissions](#) (13 February 2025).

Public Engagement on the Transparency and Open Justice Board's Key Objectives

Lady Chief Justice Carr has created a Transparency and Open Justice Board to “*lead and coordinate the promotion of transparency and open justice across the Courts and Tribunals of England & Wales*”. The Board is

now consulting with a view to finalise their [Key Objectives](#). The deadline for responses is 28 February 2025. Open Justice is going to remain an important issue for FOIL throughout 2025.

SRA Consultations - Client money in legal services - safeguarding consumers and providing redress

The SRA have published three consultations concerning the handling of client money and the funding of compensation payments. Combined they raise important questions around the appropriate level of regulatory oversight and regulatory burden placed upon legal service providers. These consultations are due to close on 21 February 2025. If you have not done so already, please complete the related FOIL [survey](#).

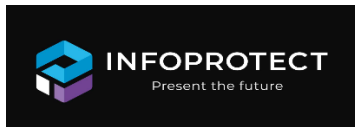
Damages Claims and OCMC Portals

There are important changes on the horizon for the DCP and OCMC portals. There is planned expansion to the intermediate/multi tracks and mandatory use for legal representatives in the OCMC. FOIL and the Association of Consumer Support Organisations (ACSO) have written jointly to the Online Procedure Rule Committee to seek a pause in expansion until improvements have been made to the existing platforms and to demand a transparent user survey which can offer a benchmark for future change. Watch this space.

Legislation

The highly anticipated Employment Rights Bill is currently at the Report stage in the House of Commons. The Terrorism (Protection of Premises) Bill has cleared the House of Commons and is at the Committee stage in the House of Lords. The Renters’ Rights Bill has now cleared the Commons and is in the Lords.

Trade and Industry Partners Spotlight



The Knotty Issue of Cyber and Professional Indemnity Insurance: Challenges for Insurance Law Firms.

The convergence of cyber risks and professional indemnity insurance (PII) is transforming how insurance law firms manage risk. While the PII market has stabilised since 2023, the increasing prevalence of cyber threats and AI-related liabilities presents challenges that demand a new approach. Issues like 'silent cyber', where PII policies do not explicitly address cyber risks, create ambiguities, making clear coverage definitions essential.

At **Infoprotect UK**, we provide "cyber risk management as a service," delivering a comprehensive evaluation of an organisation's cybersecurity posture through a framework-based cyber risk assessment. This approach identifies potential vulnerabilities, offering a risk overview and detailed gap analysis. These assessments enable organisations, insurance brokers, and insurers to understand their cyber risks and better determine coverage needs, particularly against ransomware and the broader threat landscape.

Infoprotect's expertise, backed by over 30 years of industry experience, helps firms adapt to these changes. Our detailed risk assessments and insights equip businesses to navigate evolving regulatory and market demands confidently. By addressing these challenges proactively, insurance law firms can strengthen their risk strategies and deliver value in an increasingly interconnected

insurance landscape. For more information, call Brad Fraser on 01689 487056 or email brad.fraser@infoprotect.co.uk



Trust Mediation boasts a panel of 27 highly specialised Personal Injury and Clinical Negligence Mediators who are also qualified as solicitors, barristers or doctors, and practising at the forefront of their field. Many of the mediators work at the UK's leading law firms and chambers, giving them a deep understanding of the industry.

In response to the ever-evolving landscape of Alternative Dispute Resolution, **Trust Mediation** have launched a toolkit of ADR options, under the name TM+. This toolkit gives clients a wider choice of ADR solutions, which can be flexed to meet their needs and the options include the following services:

- Facilitative Mediation
- Evaluative Mediation
- Neutral Evaluation
- Arbitration
- Mediation combined with Arbitration
- Mediation combined with Evaluation

Trust Mediation offer a range of training services to equip law firms with the knowledge and practical tools they need to adopt ADR effectively for different case types and litigation scenarios. Leveraging the specialised expertise of their mediators, the training is highly tailored and focused on addressing the unique needs of each lawyer.

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