FOIL
FORUM OF INSURANCE LAWYERS

the VOICE of FOIL

Informing Progress - Shaping the Future

SPOTLIGHT

In this edition, we celebrate the rebrand and launch of London Market FOIL

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Future Editions

If you are interested in contributing material to a future edition of the Voice, please contact info@foil.org.uk

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In this Edition

Welcome to the August 2025 edition.

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

Welcome to the August 2025 edition of the Voice. We celebrate the rebrand and launch of London Market FOIL, which is offering a new standalone membership built to address the specific needs of lawyers in the London and Lloyd's insurance markets. The original London FOIL was launched as a subdivision of FOIL in 2018, designed to support the insurance and reinsurance law firms and lawyers working in the London and Lloyd's Markets – in the same way that the existing FOIL membership supports their clients. This model reflects the distinct nature of the London Market and its specific legal, regulatory, and operational challenges. On page 7, Fleur Rochester (London Market FOIL President) shares her ambitions for the newly refreshed division. There is also an opportunity to see photographs from the recent FOIL celebration event at Lloyds on 10 July 2025.

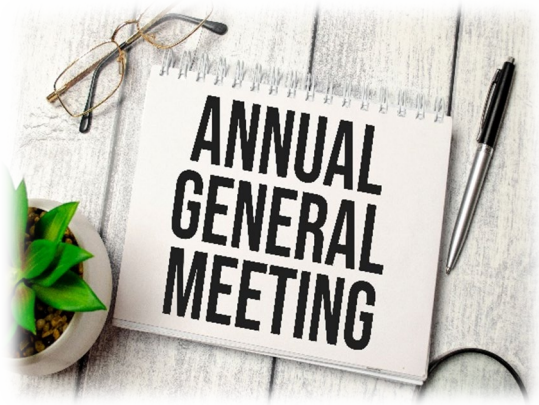
Howard Dean (FOIL President) starts us off with a horizon scanning article looking at various aspects of legal and policy reform. There follow articles from Steven Brownlee and Robert Annis, speaking to FOIL's successful event on the topic of 'Unlocking the potential of neurodiversity'. There are updates on the Data (Use and Access) Act 2025, the Justice Committee Inquiry on the County Court and on Open Justice developments. In addition, there are all the usual articles from FOIL's various divisions and operations team.

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



Notice of the FOIL Annual General Meeting and President's Conference

The FOIL AGM will be held in London on **Thursday 27 November 2025.** This will be followed by the President's Conference.

Please provide nominations for election to the national committee to the FOIL secretary Stratos Gatzouris via sarah.higgs@foil.org.uk or send by post to 1 Esher Close, Basingstoke, Hampshire, RG22 6JP.

The closing date for nominations is **28 August 2025.**

If you would like to attend the AGM, please click here to add the event to your diary.

The President's Page

Howard Dean (Keoghs and FOIL President)

A Legislative Surge…

In Brief

We are now halfway through 2025, and it is turning into a year of legal, regulatory and claims trends that will shape the insurance sector for years to come. This article aims to provide our members and their clients with a snapshot of what lies ahead. It covers property and motor reform, court delays, skills, and PFAS, together with the implications of Parliament's legislative programme, with a spotlight on the London Market.

In

1. A Wave of Property Legislation

Property-related legislation has dominated the first half of 2025, with three major Bills reshaping risk profiles:

- **The Planning and Infrastructure Bill**: Now in the House of Lords, with Royal Assent expected this autumn. Changes to land use, development rights and obligations on infrastructure delivery will impact insurers. There are also concerns that a focus on building so many houses in a short period of time will lead to quality issues and increased surface water flooding.
- **The Renters (Reform) Bill**: Nearing Royal Assent, this landmark reform strengthens tenant rights, restricts "no-fault" evictions, and increases landlord repair obligations - raising the bar for habitability standards and opening new avenues for disrepair and personal injury claims.

2. Employment Rights Bill and Workplace Exposure

Expected to receive Royal Assent shortly, the Employment Rights Bill is the most significant overhaul of employment law in decades. It extends unfair dismissal protections from day one of employment and increases the tribunal time limit to six months. Both changes are expected to increase EL claims and employment disputes - particularly in sectors with a high turnover.

The Bill also reintroduces employer liability for third-party harassment, with serious implications for service industries and retail. Insurers are already advising policyholders on taking "all reasonable steps" to protect staff from abusive customers - an increasingly difficult standard in real-world environments.

3. Court Delays Under Scrutiny

The Justice Committee's ongoing inquiry into County Court delays has revealed troubling statistics:

- Small claims trials are now taking over 14 weeks longer than pre-pandemic levels.
- Fast-track matters are delayed by over 20 weeks.

While the introduction of mandatory mediation for sub - £10,000 claims aims to alleviate the burden, there are concerns that resource pressure will simply shift to early-stage handlers and legal teams. The Committee's report **(now published)** may spark a fresh round of investment in digital case progression and alternative dispute resolution.

4. Focus on National Skills and Workforce

The new Labour government has made tackling the UK's skills gap a central pillar of its economic strategy. While the current shortfalls in skilled labour are contributing to claims inflation and liability exposure in construction, logistics, and healthcare, a more optimistic outlook is emerging.

Targeted investment in technical education and vocational training is underway. Of particular relevance to members' insurer clients is the emphasis on the electric vehicle sector, where the lack of skilled mechanics and engineers could hamper repair times and increase costs. Government recognition of this gap - and its alignment with broader decarbonisation and transport policy - is a welcome sign.

Similarly, the care sector remains under pressure due to staffing shortages, driving higher rates for long-term care in catastrophic injury claims. Addressing this gap through workforce strategy and improved training will not only relieve cost pressures but may improve care outcomes, reducing the frequency and severity of claims over time.

Insurers and their legal partners should monitor these initiatives closely and consider how evolving workforce capacity could influence claims patterns and liability exposure.

Motor and Property: What's Coming Next?

1. Civil Liability Act Review and Motor Insurance Taskforce

The long-awaited post-implementation review (PIR) of the Civil Liability Act will begin later this year, likely accompanied by a call for evidence. It is expected to consider:

- Effectiveness of the whiplash tariff system.
- Claimant behaviours and dormant claims.
- Whether further reform of medical reporting is required.

Meanwhile, the Motor Insurance Taskforce is now expected to publish in autumn.

2. Credit Hire: Protocol and Reform Pathways

A draft Pre-Action Protocol for Credit Hire is under development, with hopes the Civil Justice Council will adopt it by year end. A more comprehensive reform package may be recommended by the Motor Taskforce, though expectations from industry representatives in this respect are low.

3. Fixed Recoverable Costs – Review in October

The October stocktake will assess:

- Fast/intermediate track complexity bands.
- FRC interaction with Part 36 offers.
- Whether exemptions and exceptional circumstances provisions are working as intended.

While the review is expected to be narrow in scope, it may pave the way for more structural changes in 2026.

Digital Platforms, AVs and the Road Ahead

By the end of July, all sub - £10k money claims (including non-personal injury motor claims and credit hire claims) must be issued via the Online Civil Money Claims platform and undergo mandatory mediation. This digitisation push will continue across 2026 and beyond - reshaping the volume, flow, and nature of civil litigation.

Meanwhile, consultations continue under the **Automated Vehicles Act**, and two Private Members' Bills on e-scooter safety signal future regulatory direction in micromobility. London Market carriers writing transport and commercial mobility risks should remain alert.

Emerging Risks to Watch

1. Damp and Mould Claims Surge

The sector should prepare for a significant uptick in damp and mould claims, particularly in social housing. New October regulations under "Awaab's Law" will tighten enforcement of habitable standards. Early evidence preservation and risk audits are crucial.

2. Nurseries and Care Sector Risks

Recent high-profile cases have revealed fragmented oversight in the early years care sector, with multiple agencies (police, local authorities, coroners) often involved in post-incident investigations. We expect increased claims activity and reputational scrutiny. The care sector is also facing intensified CQC enforcement, with a 50% rise in inspections since 2021.

3. Forever Chemicals

PFAS (per- and polyfluoroalkyl substances) are a family of synthetic chemicals commonly found in grease-resistant food packaging, non-stick cookware, and water-repellent textiles. Known as "forever chemicals" due to their persistence in the environment and human body, PFAS have been linked in US litigation to serious health concerns including cancer, fertility issues, and hormonal disruption. The US has seen a wave of class actions and multi-billion-dollar settlements targeting manufacturers and retailers over PFAS in packaging and consumer goods.

Although PFAS litigation has not yet gained traction in the UK, we are closely monitoring developments. UK and EU regulators are moving toward broader restrictions, and consumer interest in product safety and environmental issues is growing. As we have seen with talc litigation, trends in US group claims often eventually cross into the UK market.

Conclusion: Strategic Priorities

The pace of change in 2025 is striking. For lawyers and insurers alike, three themes stand out:

- **Scrutiny and transparency**: From leasehold insurance to premium finance, regulators and policymakers are demanding clearer disclosures and stronger consumer protections.
- **Resilience in claims**: Delays, social inflation, and skills shortages are forcing more proactive case management and sharper operational planning.
- **Future-proofing portfolios**: Emerging risks - from damp to PFAS - require horizon scanning and consideration of risk appetite.

FOIL will continue to engage with government, judiciary, and regulators to ensure a balanced and evidence-led approach to reform. As always, we welcome your input, insight and involvement.

Evolving with the Market: The Next Chapter for London Market FOIL

Fleur Rochester (London Market FOIL President & Kennedys)

We are proud to highlight how London Market FOIL continues to evolve and strengthen its role within the international insurance and reinsurance landscape.

London remains the world's leading hub for direct insurance and reinsurance, particularly in handling major, complex risks. The strength of this position is built on the close, interdependent relationships between insurers, reinsurers, brokers and legal professionals. This collaborative dynamic has always been vital to the success of the London Market and its international reach.

Recognising the need for a dedicated legal voice in this unique environment, the original London FOIL was launched in 2018 as a subdivision of FOIL. It was established following extensive consultation with stakeholders across the London Market – insurers, brokers, MGAs, and legal experts. The vision was to create a focused platform that could represent and support insurance and reinsurance law firms and the legal professionals working within Lloyd's and the broader London Market. While FOIL already represented 95% of insurance law firms serving the UK domestic market, London Market FOIL was designed as an additional layer of membership – targeted specifically at the challenges and dynamics of this globally significant marketplace.

From the beginning, London Market FOIL has offered a bespoke platform for peer discussion, training, education, and lobbying – tailored to the complexities of international insurance law. Our ambition has always been greater than simply representing law firms; we aim to serve as an active and embedded part of the broader insurance ecosystem. This includes developing strong, strategic partnerships with insurers, brokers, and trade bodies to drive innovation, promote diversity, and help address sector-wide challenges.

Since its launch, engagement from the London Market has far exceeded expectations. Lawyers at existing member firms have actively engaged with FOIL's specialist offerings, and the appetite for a dedicated London Market focus has only grown stronger. We are now taking the next step in that journey.

A new phase – evolving membership for a stronger future

To reflect the needs of the market and the legal community that supports it, we are pleased to announce an enhanced membership structure for London Market FOIL. Under this new model, law firms serving only the London Market can now access standalone London Market FOIL membership at a reduced cost. This creates a clearer, more accessible path to membership for firms that are London-focused but may not engage with the wider domestic insurance market.

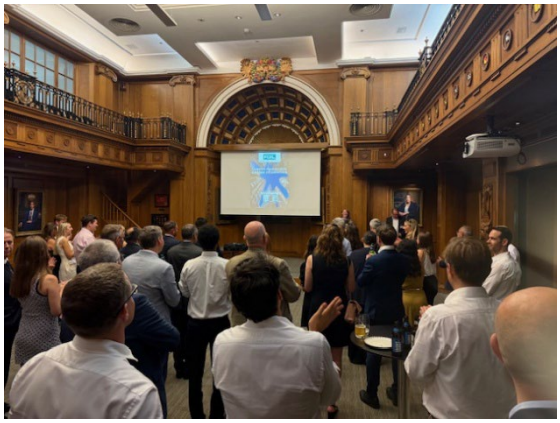
This refreshed model allows us to better align our agenda with the issues that matter most to the industry – whether it's supporting the market's modernisation agenda, lobbying on regulatory matters, or working together to

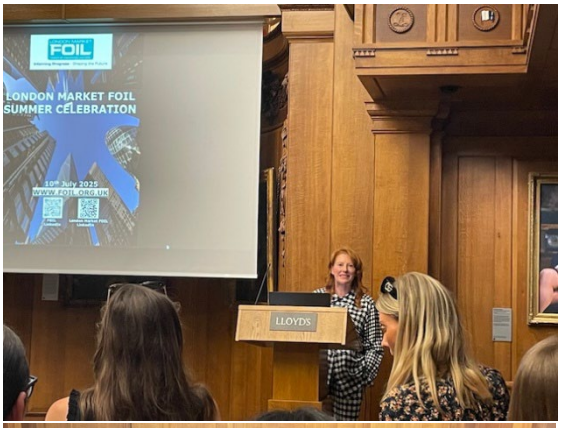
tackle the industry's talent and diversity challenges.

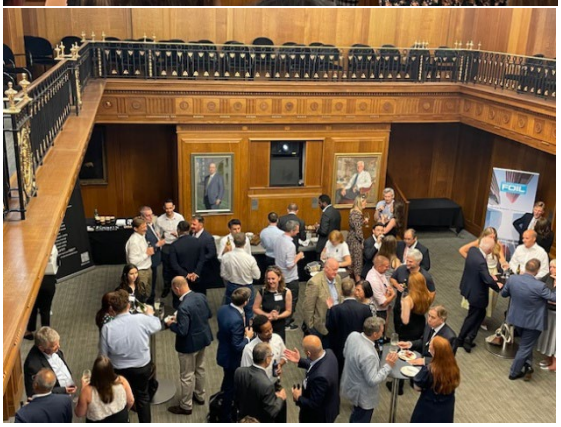
At the heart of London Market FOIL are our sector focus teams – collaborative groups of specialist lawyers drawn from across member firms. These teams work together to address thematic challenges across key sectors including marine, reinsurance, energy and construction and financial lines, with more sectors under active consideration. By pooling insights and expertise, these teams provide a collective voice on the most pressing issues facing the London Market.

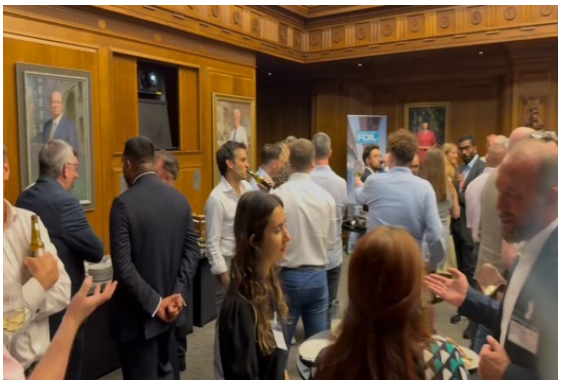
Through this renewed structure, London Market FOIL will continue to consult closely with insurers, reinsures, and trade associations – while maintaining its independence and clarity of purpose. We are here to advocate, to collaborate, and to lead. Law firms that are committed to supporting this dynamic and vital market are warmly invited to join the new London Market FOIL. Together, we can continue to strengthen the legal foundation that supports the global insurance industry.

Photos from London Market FOIL Summer Celebration held at Lloyds on 10th July 2025









Diversity, Equity and Inclusion

'Unlocking the Potential of Neurodiversity' Event @ DAC Beachcroft on 1st May 2025

Steven Brownlee (FOIL Technical Author)

FOIL welcomed members to a discussion on *Unlocking the Potential of Neurodiversity*, a thought-provoking event hosted by DAC Beachcroft at their offices in London. The session brought together experts to explore and highlight the rich opportunities a truly diverse workforce can offer.

The morning began with a welcome from Sean McGahan of DAC Beachcroft, who reminded us that every individual is unique, and progress lies in recognising and optimising the differences between people.

Sean highlighted how embracing neurodiversity can significantly enhance organisational capability. For instance, in the context of risk management, a team composed entirely of highly risk-averse individuals may stifle innovation and slow strategic growth. In contrast, a diverse group that embraces a range of thinking styles, perspectives, and attitudes toward risk is perhaps better positioned to assess challenges and leverage opportunities.

Sean's words set a powerful tone for the morning, framing neurodiversity not as a challenge to be managed but as a strength to be harnessed.

The first guest speaker, Sir Robert Buckland, addressed ***Achieving True Diversity in an Age of Culture Wars,*** drawing on experience gained from a distinguished career as a criminal barrister, a Conservative MP, and a member of the Government. As a long-standing advocate for diversity within the legal system and judiciary, Sir Robert led a recent independent review examining the workplace barriers faced by individuals with autism, particularly at a time when global attitudes towards D&I are shifting.

Sir Robert underscored the importance of the protective framework of the Equality Act in the UK but indicated that legal safeguards alone are not enough. Meaningful progress requires organisations to look beyond simply meeting compliance standards and recognise the real value and strength diversity brings.

Only 3 in 10 working-age autistic adults are employed in the UK, compared to 8 in 10 for non-disabled people. Additionally, the disability pay gap means autistic adults are paid less and therefore can be dependent on benefits. These economic factors can overshadow the positive steps taken and exacerbate existing employment disparities.

As part of the government's Plan for Change, Professor Amanda Kirby will chair an independent panel to develop recommendations for more inclusive workplaces and for the government to erode the barriers to opportunity for people with neurodiverse conditions. Ministers keenly await the findings, but any inclusivity targets

should include neurodivergent individuals at the centre of any policy changes.

Quiet, effective action is needed to drive change, but broad targets risk diluting impact and neurodivergent voices must be central to reform. Sharing best practices on recruiting neurodiverse staff can help towards organisations seeing the individual and not the protected characteristic. Estimates place the total of undiagnosed neurodivergent adults in the UK at 2.5 million, meaning many cannot access the support often available with the right diagnosis.

Sir Robert concluded by highlighting the capacity AI has to transform workplaces by supporting efficiencies and multi-tasking through automation. This can remove some of the anxiety and fears surrounding the workplace and help neurodiverse individuals prioritise and focus on core tasks. The pace, culture, and technology of modern workplaces have changed, and developments in AI will accelerate this change as we move forward.

Next, Robert Annis from the charity Neurodiversity in Business spoke on ***How the future of ideation and innovation is best achieved by the most diverse mindsets***. Robert has been diagnosed with ASD, ADHD, Prosopagnosia, Aphantasia, Dyslexia, and episodic memory loss and draws upon his lived experience and business psychology expertise to identify creative, evidence-based solutions to complex organisational challenges.

Robert shared experiencing panic attacks and difficulties with maintaining social and professional relationships that have at times been debilitating. It is important to understand that neurodivergent people experience life in a different way and that each neurodivergent condition brings its own strengths and challenges.

The human brain features an average of 86 billion neurons and 100 trillion synapses. Neurons are the brain's building blocks that process and transmit information, and their number is largely consistent. Synapses, however, which are the junctions where neurons communicate, vary in number due to factors such as age and activity. Neurodivergence is characterised by differences in brain development and function, which include how synapses evolve and the impact this has on learning and behaviour.

Robert warned against strategies driven by virtue signalling, arguing that inclusive practices must offer tangible business value. Businesses are fundamentally built in the same way, and outdated, output-driven models must evolve into service-based approaches that leverage diverse perspectives to gain a competitive edge. To illustrate the point, Robert cited Microsoft's success in recruiting from non-traditional talent pools, including those experiencing homelessness.

Diversity requires a change in culture and starts with leaders. Cultures have become focused on individuals fitting in, instead of around staff. Frédéric Laloux's book *Reinventing Organisations* called for decentralised, purpose-driven workplaces that support self-management and individual growth. It has become an influential text on management principles for people who recognise that organisations should be run differently and in a more 'soulful' way.

The presentation finished by touching on self-actualisation and how individuals and businesses exploring how they can become better can be transformational and help build organisations to attract the best people. As

more people are diagnosed or self-diagnosed as neurodivergent, to do so, they must embrace neurodiverse people.

The event's final speaker was Maeve Monaghan, Chief Executive of NOW Group, an award-winning social enterprise based in Belfast that supports neurodiverse individuals and those with a learning disability into work. Maeve's presentation introduced the JAM (Just a Minute) Card and App, practical and empowering tools designed to support people with invisible disabilities, of which there are estimated to be more than 1 billion worldwide.

Raising awareness of invisible disabilities by leveraging the principle "*You show it, they know it*", the JAM Card is used by over 190,000 people and 3,500 businesses. It helps users communicate the need for patience or support, particularly in stressful situations such as public transport or customer service. Originating from lived experience, the tool exemplifies how practical solutions can create real inclusion. The vision is to grow the number of users to over 1 million in 10 years while expanding the community of JAM-friendly organisations looking to make their workplaces more inclusive.

Existing supporters include private and public sector organisations, where staff can benefit from an e-learning module that takes just 20 minutes to complete and helps enhance the understanding of invisible disabilities and how they impact the workplace, with examples given.

Organisations must understand their current position regarding neurodiversity before mandating new initiatives. The NOW Group has recorded a 93% retention rate after 6 months for people it has placed, and the JAM Card is proving an effective tool in building inclusive workforces through attracting and retaining neurodiverse talent.

The event concluded with a panel discussion facilitated by Mark Huxley, a seasoned insurance professional and advocate for social change. The discussion began by exploring the current state of the 'culture war' surrounding neurodiversity, stressing that misinformation can reinforce misconceptions and hinder progress.

Questions on the perceptions of 'normality' were also raised, with the panel urging a shift away from rigid definitions to a greater understanding of the diverse ways in which people think, communicate, and contribute. While younger generations and rising late-stage diagnoses may bring change, panellists agreed that progress remains fragile. Allyship, they agreed, begins with listening. Neurodivergent individuals often feel pressure to mask their differences, and true support lies in empathy, not perfection.

The next topic touched on allyship, with the speakers highlighting that being a good ally starts with something simple: listening. Neurodiverse people, like everyone else, want to be heard, and this means asking standard, respectful questions rather than making assumptions. Being a supportive ally doesn't mean always having the perfect answer or solution; it means recognising that not knowing what to do is perfectly fine and a willingness to listen and learn is far more valuable. The panel also challenged the 'superpower' narrative, warning it can create unrealistic expectations and pigeonhole individuals, rather than allowing them the freedom to explore their full potential.

The conversation extended to highlight that neurodivergent individuals can be outstanding innovators and business owners, yet the focus of processes, such as Access to Work, is often

placed on what they cannot do rather than the unique talents they bring. This often stifles innovation and prevents organisations and society from realising their full potential.

An audience member referenced The Lilac Review, an independent review launched in February 2024 to address inequality among disabled business founders. Estimates suggest that improving opportunities could release an additional £230 billion for the UK economy; currently, disabled entrepreneurs represent 25% of the UK's 5.5 million small businesses, yet they account for just 8.6% of turnover. The review aims to eliminate the obstacles preventing these entrepreneurs from thriving to promote a more prosperous economy.

The session ended with the speakers stressing the need for ongoing support and transparency in neurodiversity discussions. Greater emphasis at an early stage will create better opportunities as people grow. Traditional education pathways can be daunting for neurodiverse people, and supported internships have been shown to be effective in leading to full-time careers.

Sean McGahan from DAC Beachcroft opens the event

Mark Huxley takes questions from the audience for panel members Sir Robert Buckland, Robert Annis and Maeve Monaghan.

Unlocking Neurodiversity: From Awareness to Empowerment in Law and Beyond

Robert Annis, Co-Founder of NEURO (The Neurodiversity, Empowerment, Understanding and Resilience Organisation) & Organisational Psychologist

In Brief

What happens when lived experience meets professional insight in a room full of lawyers? Unexpected laughter, meaningful connection, and a quiet revolution. In this article, I reflect on the FOIL neurodiversity panel and introduce NEURO: a new charity built to support organisations in creating cultures where neurodivergent people not only feel safe—but flourish.

On 1 May 2025, I found myself standing in front of a room full of insurance lawyers as part of FOIL's event, *Unlocking the Potential of Neurodiversity*. As a late-diagnosed autistic and ADHD adult, I'm fairly used to masking. But on that day, something wonderful happened: I didn't have to.

The warmth, openness, and curiosity of the audience made space for something rare: honesty. I was invited not only to speak but to *be*. And if you've spent a lifetime being misunderstood or camouflaging your cognitive wiring, that is no small thing.

As a quick introduction, I should explain that I am an organisational psychologist with a history of successful leadership development, conflict resolution and organisational change.

At the FOIL event, I shared stories about my autism, ADHD, prosopagnosia (face-blindness), aphantasia (the inability to form mental images) and episodic amnesia (lack of experiential memory), and the quirks and gifts that accompany this invisible wiring. Some of it was serious, some of it ridiculous. (Try networking when you can't remember what people look like. Now imagine if nobody is wearing name badges!). Most importantly though, it was human.

So often, neurodiversity is framed in terms of labels, deficits, or compliance checklists. But what I tried to communicate—what I always try to communicate—is that neurodivergent people are not problems to be solved. There is also potential to be unlocked.

That's why I recently co-founded NEURO.

The NEURO Charity

NEURO stands for the Neurodiversity, Empowerment, Understanding and Resilience Organisation. Our mission is to move beyond tokenism and into transformation. We will work with businesses, schools, charities, and public bodies to create systems and environments where difference is not just tolerated but celebrated.

Our motto, *Fortitudo ex varietate* ('Strength from variety'), reflects our core belief: diversity in cognition is not just a moral imperative but a strategic advantage.

We are launching a membership programme and a neuroinclusion accreditation designed specifically for organisations that want to do more than tick a box. We will offer training, education, consultancy, community, and connection. And crucially, do it in a way that is evidence-based, psychologically grounded, and informed by lived experience.

What could this mean for FOIL members?

The legal and insurance professions are built on logic, rigour, and the ability to manage complexity. Neurodivergent minds often *excel* in these areas. Whether through pattern recognition, divergent thinking, or relentless attention to detail, people with atypical cognition bring extraordinary strengths—if we create cultures where those strengths can shine.

This isn't just about kindness (though kindness is good law). It's about performance, innovation, and risk management. Neuroinclusion makes organisations *better*.

So, whether you're looking for:

- Training that goes beyond awareness to real-world competence
- Insightful, impactful speakers (with a dash of humour and not too many scary acronyms)
- A structured pathway to cultural transformation

NEURO is here, and we'd be honoured to support you.

Gratitude and Contact

A heartfelt thank you to Ian Thornhill, Laurence Besemer, Sean McGahan, and FOIL itself, for the invitation; to my fellow panellists, Rt Hon Sir Robert Buckland KBE KC, Mark Huxley and Maeve Monaghan, for your wisdom and warmth.

And thank you, especially, to everyone who came up afterwards to say the words every neurodivergent person longs to hear: "I see you. That made sense."

If you'd like to learn more about NEURO, host a talk, or explore becoming a member or accredited organisation, please reach out: robert@gwspartners.co.uk and visit the websites: https://www.neurocharity.org/ and https://www.linkedin.com/company/neurocharity/.

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 Data (Use and Access) Act 2025: Implications for Insurance Lawyers and Insurers in the UK

Paul Finn (FOIL Technical Author)

Introduction

The Data (Use and Access) Act 2025 ("DUAA" or "the Act"), which received Royal Assent on 19 June 2025, introduces extensive amendments to the United Kingdom's data protection framework. It updates elements of the **UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018)**, and the **Privacy and Electronic Communications Regulations (PECR)**.

The legislation reflects the government's ambition to promote economic growth while maintaining the UK's high standards of data protection and brings with it both opportunities and risks for the insurance sector. For insurance lawyers, the DUAA presents a significant shift in the regulatory landscape requiring careful legal analysis of its technical implications.

This article provides a detailed overview of the legal ramifications of the Act for insurers, focusing on automated decision-making, data subject rights, enforcement, and international data transfers, while referencing applicable legal precedents and statutory provisions.

1. Automated Decision-Making (ADM) in Insurance

One of the most notable innovations in the DUAA is the modified regime for automated decision-making that has legal or similarly significant effects on individuals. Under the previous regime in **Article 22 of UK GDPR**, such decisions were principally restricted unless strict criteria were met. The DUAA introduces greater flexibility, allowing these decisions so long as the insurer:

- Notifies the individual that an automated decision is being made.
- Provides a mechanism for the individual to contest and request meaningful human intervention; and
- Implements suitable safeguards to protect the individual's rights and freedoms, particularly where the data involves special category personal data.

This legislative shift is significant for an industry increasingly reliant on algorithmic solutions in underwriting, fraud detection, and claims triage. While the legal and operational scope for using such technologies has widened, insurers must ensure that human oversight mechanisms are effective, auditable, and communicated clearly to data subjects.

2. Subject Access Requests and the Principle of Proportionality

The DUAA addresses longstanding industry concerns regarding the administrative burden placed on insurers responding to extensive subject access requests (SARs), particularly those made in the context of litigation or suspected fraud. Key provisions include:

- A new **"stop the clock"** mechanism, which allows controllers to pause the statutory one-month SAR response period while awaiting clarification of the request from the data subject.
- A formalisation of the requirement that controllers conduct only **"reasonable and proportionate"** searches, thus recognising the technical limitations insurers often face in legacy systems.

These amendments codify established judicial reasoning, exemplified in **Deer v University of Oxford [2017] EWCA Civ 121,** where the Court of Appeal confirmed that data controllers are not required to conduct disproportionate or speculative searches. This legal protection is particularly valuable in the context of voluminous underwriting files or historical claims data.

3. Internal Complaints Handling Procedures

The DUAA introduces statutory obligations for data controllers to implement a comprehensive internal complaints procedure, requiring them to:

- Offer an accessible, electronic method for data subjects to make complaints.
- Provide a timely, written decision and clear rationale in response to every complaint.
- Inform the individual of their right to escalate unresolved concerns to the **Information Commissioner's Office (ICO).**

This provision places a clear onus on insurers to develop formalised internal pathways for dealing with concerns about personal data handling before they escalate into regulatory disputes or legal claims. Legal teams will need to review and, where necessary, overhaul internal procedures to ensure compliance.

4. Recognised Legitimate Interests as a Lawful Basis

Under **Article 6(1)(f) UK GDPR,** data processing based on legitimate interests previously required a balancing exercise between the interests of the controller and the rights of the data subject. The DUAA introduces **"recognised legitimate interests"**, thereby dispensing with the balancing test. These include:

- Prevention of crime and fraud.
- Security of networks and information systems.
- Compliance with regulatory requirements laid down by law.

The implications for insurers are significant, particularly in relation to fraud detection operations, anti-money laundering checks, and processing necessary for compliance with regulatory obligations (e.g., PRA or FCA frameworks). While Data Protection Impact Assessments (DPIAs) are not required for recognised legitimate interests, legal teams are advised to continue risk assessments when high-risk processing or special category data is involved.

5. Scientific and Commercial Research Clarified

The DUAA reinforces that scientific research exemptions in UK GDPR extend to commercial research activities. Actuarial modelling, predictive analytics, and behavioural studies undertaken by insurers are unequivocally included within this scope.

Significant elements of the new framework include:

- The ability to use broad consent for related future research activities, enhancing operational flexibility in long-term research programmes.

- A requirement to implement technical and organisational safeguards such as pseudonymisation, particularly when processing sensitive data types.

The Act thereby supports ambitious data-driven innovation initiatives while maintaining legal accountability.

6. Strengthened ICO Enforcement Powers and Reputational Risk

The DUAA strengthens the investigatory and enforcement capabilities of the ICO:

- The Commissioner now has the power to compel oral evidence from employees and require internal documentation, including technical assessments and audit trails.
- Fines under PECR have been brought into alignment with UK GDPR thresholds of £17.5 million or 4% of annual global turnover, whichever is higher.

These powers significantly escalate the legal and financial exposure for insurers found to have misused personal data, particularly in the context of marketing communications, profiling, or cross-border transfers. Legal advisers should review D&O insurance policies to evaluate whether regulatory fines and associated legal costs would be covered in light of these stricter enforcement mechanisms.

The Upper Tribunal in **Delo v Information Commissioner UKUT 155 (AAC)** upheld the ICO's broad discretion in imposing penalties, a trend that is now firmly embedded in the post-DUAA enforcement landscape.

7. International Transfers of Personal Data

The DUAA introduces a more pragmatic approach to international data transfers, allowing UK standard contractual clauses (SCCs) to be more easily updated and tailoring adequacy regulations to UK-specific economic and geopolitical priorities.

Insurers conducting multi-jurisdictional operations must continue to:

- Conduct transfer risk assessments.
- Monitor adequacy decisions made under the revised principles of international data sharing.

Although the burdens of **Schrems II** are partially mitigated, insurers cannot overlook the obligations to ensure equivalent safeguards.

8. Cookies and Online Tracking Technologies

Under DUAA reforms to PECR, cookies and similar technologies used solely for service improvement, functionality, or basic analytics no longer require consent. However, where cookies are used for behavioural profiling or targeted advertising—as may be common in telematics-based insurance or app-based wellness incentives—prior consent remains mandatory.

Insurers should revisit cookie banners, consent platforms, and privacy notices to ensure legal compliance under the new regime.

9. Child-Focussed Standards in Digital Insurance Products

Any insurers whose digital services are likely to be accessed by children remain bound by heightened privacy obligations under the Children's Code, now entrenched by DUAA requirements. Legal teams must ensure that all digital interactions with young users are:

- Transparent and explainable.
- Data-minimising and proportionate.
- Consistent with the developmental capacities of children.

Insurtech providers and life insurers offering online products must now revalidate UX (user experience) design, data retention policies, and parental consent mechanisms in light of these enhanced provisions.

Judicial Context and Precedents

Case law provides essential context to DUAA compliance. Key decisions include:

- **WM Morrison Supermarkets plc v Various Claimants [2020] UKSC 12 –** The Supreme Court clarified the limits of an employer's vicarious liability for data breaches, relevant for insurers facing group litigation on breach incidents.
- **Lloyd v Google LLC [2021] UKSC 50 –** The Court held that loss of control over data alone is insufficient for damages under data protection law, reducing the threat of US-style class actions absent demonstrable harm.
- **Deer v University of Oxford [2017] –** Recognises the boundaries of proportionality in SAR compliance, now echoed in law by the DUAA's codification.

Conclusion

The Data (Use and Access) Act 2025 represents a pivotal moment for data protection law in the United Kingdom. While it introduces simplifications and clarifications beneficial to insurers—most notably around legitimate interests, subject access, and international transfers—it retains the high standards expected of data controllers and processors under UK GDPR principles.

For the insurance sector, this means maintaining robust procedures around automated processing, children's data, and internal complaints, while embracing the broader operational flexibility granted through recognised research exemptions and lawful processing grounds. Insurance lawyers will play a key role in ensuring that legal, compliance, and underwriting functions are aligned with the new data era ushered in by the DUAA.

It is beyond doubt that the DUAA marks a distinct evolution in the UK's data protection jurisprudence—one which demands continued diligence, legal expertise, and proactive governance from insurers and their advisers alike.

FOIL's Recommendations Closely Aligned with Justice Committee Findings on County Court Reform

Steven Brownlee (FOIL Technical Author)

Following a comprehensive inquiry that opened in October 2023, the House of Commons Justice Committee recently published its final report into the work of the County Court. In its report, the Justice Committee proposes urgent and extensive reform, highlighting a wide range of challenges facing the civil court system that currently hinder access to justice in England and Wales.

Many of the Justice Committee's observations and recommendations echo concerns raised by the Forum of Insurance Lawyers (FOIL) in its response submitted earlier in the inquiry process. FOIL represents over 8,000 defendant solicitors and insurance lawyers across the UK and drew upon widespread consultation with its membership, in addition to engaging court users' surveys.

In its response, FOIL points toward a "*chaotic, disorganised service, where there appears to be little accountability and where error, delay and inefficiency are the norm*". Within the detail of its response, there are several areas of alignment between FOIL and the Justice Committee's conclusions, demonstrating a clear consensus on the need for County Court reform, particularly related to delays, digitalisation, judicial capacity and resourcing.

Delays and Regional Disparities

FOIL's submission painted a picture of chronic delay across the County Court system, both in terms of progression to trial and the handling of interim applications. Delays for small claims in 2023 were recorded at an average of 53.4 weeks, up from 51.7 weeks in 2022. Delays for fast and multi-track claims were much longer and showed drastic increases from figures recorded in 2013.

The Justice Committee's report reiterates these concerns, citing similar statistics and finding that "*unacceptable delays are a systemic issue*", particularly in London and the South East. It went on to urge greater investment in judicial resources and administration to reduce waiting times. FOIL had also flagged the severe consequences of delays in interim hearings, particularly for defendants needing judgments set aside or directions issued, highlighting that delays hinder access to justice and inflate costs.

Furthermore, the Justice Committee's call for improved speed and efficiency through better case management and resourcing supports FOIL's demand for a system overhaul backed by measurable service standards and oversight.

Late and Multiple Adjournments

Among FOIL's major concerns was the routine adjournment of trials, often at very short notice. Survey data showed that 84% of FOIL members had experienced such delays, and anecdotal evidence suggested some courts were adjourning up to 50% of cases, with examples given that underscored the personal and financial toll repeated or last-minute adjournments can cause.

The Justice Committee expressed equal concern, stating that "*adjournments, especially late ones, undermine the efficient administration of justice*". The committee also called for better listing practices and judicial engagement, measures FOIL has long advocated, such as early-stage listing

conferences and a commitment to fixed re-listing where adjournments occur.

There is clear alignment between FOIL and the Justice Committee in this area, with both recognising that the unpredictability and inefficiency of current listing practices damage the credibility of the system and create frustration for claimants and defendants.

Condition of the Court Estate

FOIL's submissions delivered evidence of a dilapidated court estate, citing examples of asbestos, rat infestations, faulty lifts and an absence of conference rooms, which surfaced in a survey by The Law Society at the end of 2022. The Committee's report confirms these findings, making numerous references to reports from the 195 court buildings in England and Wales that lead to a damning description of it as "*dire and requires urgent attention*".

While acknowledging the £220 million in court repair and modernisation funding announced by the government in 2023, FOIL and the Justice Committee are sceptical that this would be sufficient in addressing the long-term neglect. The Justice Committee has recommended that the Ministry of Justice (MoJ) and HM Courts & Tribunals Service (HMCTS) publish a detailed breakdown of how the £220 million in capital funding was spent. FOIL suggest there has been no improvement in the condition of the court estate since 2023 and proposes more imaginative use of court buildings and regional facilities, an idea supported by the Committee's recommendation for an audit of estate capacity and suitability.

Use of Technology and Digital Platforms

FOIL's submission offered a detailed assessment of the Damages Claims Portal (DCP) and Online Civil Money Claims (OCMC) platform. While supportive of digitalisation in principle, FOIL raised concerns about insufficient practitioner engagement, awkward interfaces, decentralised systems and operational inconsistencies that affect the smooth progression of claims.

The Justice Committee appears to have taken this on board, recommending that HMCTS involve users more proactively in the design and testing of digital systems and address the shortcomings in platform functionality before further development. FOIL's joint letter with the Association of Consumer Support Organisations (ACSO), calling for a 'pause and reflect' period before expanding the DCP to Intermediate and Multi Track claims, is consistent with the Justice Committee's own view that "*All future digital reforms must be co-designed with users and stakeholders and should not be rolled out until they have proven reliable through extensive piloting and testing*."

Notably, FOIL and the Justice Committee are also aligned on the need for standardisation, particularly in relation to e-bundles and hearing formats, to ensure consistency, reduce costs and improve court efficiency.

Judicial and Administrative Capacity

FOIL's submission supported the widely held view that there is insufficient judicial capacity in the County Court, leading to delays and extended waits for reserved judgments. The Committee repeated this concern, noting that recruitment and retention challenges among district judges are exacerbating the inefficiencies already embedded in the system and continue to harm its functioning.

To underscore the point, it referenced a previous report into the subject in 2022 led by Lord Burnett, then Lord Chief Justice, which

found "*judicial capacity was vital to the efficient and effective delivery of justice*".

Additionally, FOIL's account of poor administrative support, highlighting lost files, repeated requests to refile documents and the absence of dedicated case handlers, is reinforced by the Justice Committee's finding that current court staffing levels and centralised administrative services introduced through previous reviews are often inadequate, disruptive and sometimes counterproductive. The effect has been a "*devastating impact on the delivery of justice*".

FOIL and the Justice Committee agree on the need for greater local accountability, better resourcing and increased investment in technical and back-office support.

Court Fees and Access to Justice

FOIL raised a specific issue concerning its view that the application of court fees for bringing Part 20 claims is misinterpreted and inconsistently applied by HMCTS, which it argues impedes access to justice. FOIL's concern is that some courts wrongly require a full issue fee instead of the reduced fee of £67 set out in the Civil Proceedings Fees Order 2008.

FOIL draws attention to a general exasperation with the level of court fees and their relationship to the service levels delivered and facilities available. The Justice Committee acknowledges the broader issue of court fees rising above inflation in the context of a substandard service, recommending a comprehensive review of the fees regime to ensure fairness and alignment with service delivery. While it did not comment directly on Part 20 claims, the Justice Committee's call for fee transparency and fairness aligns with FOIL's concerns.

Fixed Recoverable Costs and Procedural Anomalies

FOIL's submission revisited the Court of Appeal decision in Bird v Acorn [2016] EWCA Civ 1096, which classified disposal hearings as trials for the purposes of Fixed Recoverable Costs (FRC). FOIL argued that this interpretation distorts the cost regime and is being intensified under the extended FRC rules for the fast and intermediate tracks.

Although the Justice Committee report did not delve into FRC mechanics in detail, it did express concern about the lack of standardisation and predictability in County Court procedures and acknowledged the detrimental impact that placing matters in block or floating lists can have on claimants. FOIL's proposed solution is for greater consistency in how hearings are listed and more precise definitions within the rules.

Future Reform

Looking ahead, FOIL cautions against further reforms before existing changes have been properly embedded. The Justice Committee similarly recommends that HMCTS and the MoJ focus on ensuring that digital and procedural reforms already in place are functioning as they should. However, it recommends "*an urgent and comprehensive root-and-branch review of the County Court*" by Spring 2026, suggesting the need for transformation cannot wait until this is complete.

Overall, the Justice Committee's report on the work of the County Court lends substantial weight to the concerns expressed in FOIL's submission, with many of its recommendations mirrored in several of the Justice Committee's findings and endorsed in its final proposals.

For insurers, defendants and legal practitioners, the report provides cautious optimism that long-overdue systemic issues are recognised at the highest levels. However, FOIL is right to sound a note of pragmatism by highlighting that without measurable performance standards, clear accountability and meaningful stakeholder engagement, the current inefficiencies are likely to persist despite increased political and public scrutiny.

TOMORROW'S FOIL FORUM OF INSURANCE LAWYERS

Informing Progress - Shaping the Future

Rebecca Barton (Tomorrow's FOIL President & Forbes)

Tomorrow's FOIL members have been creating new ideas on how to generate interest and give an insight into the working life of paralegals and young lawyers working within the insurance law sector.

Since the last article in May 2025, I attended the 'Unlocking the Potential of Neurodiversity' event in London on 1 May 2025. This event heard from Robert Annis, Sir Robert Buckland and Maeve Monaghan and what they are trying to achieve when it comes to helping people either obtain work or retain employment when they have challenges relating to Neurodiversity. I created a short video to join in with the 'A day in the life of' series from attendance at the event. Watch out for this on the Tomorrow's FOIL LinkedIn page.

Also, I have created a further video for the 'A day in the life of' series. This shows my attendance at a trial in Manchester; unfortunately, due to restrictions there is no video footage of the trial itself. This will also be available through the Tomorrow's FOIL LinkedIn page shortly.

CEO FOIL Laurence Besemer and Mark Huxley were joined by Jersey Tambue, Ben Winstanley and Rebecca Byrne, all from DWF, for a podcast around the Level 7 apprenticeships and what the latest developments are in relation to them. Jersey is also one of the Tomorrow's FOIL Team Members. This should be released on the FOIL website soon, so if you are interested in knowing more about this then keep an eye out on LinkedIn for the updates on this podcast.

Tomorrow's FOIL are also joining with Forbes Solicitors and Nine Chambers to hold a further Mock Trial event. This will be held in Manchester at the Nine Chambers new offices in October 2025. Further details to follow.

If you have not already then please head over to LinkedIn and follow Tomorrow's FOIL for all the latest updates for anyone considering a career in insurance law – click on the link to follow Tomorrow's Foil | LinkedIn.

FOIL NI
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Department of Justice launches consultation on proposals to criminalise sexually explicit deepfake images in Northern Ireland

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

On 21st July 2025, Justice Minister Naomi Long launched a public consultation to address the exponential rise in the proliferation of non-consensual deepfake images

A deepfake image is a digitally altered image created using artificial intelligence, specifically deep learning techniques. This technology manipulates an image to replace the original person's face or body with that of another person, making it appear authentic. Deepfakes can also be applied to videos and audio recordings, creating realistic but fake representations.

There is currently no dedicated legislation in place in the Northern Ireland jurisdiction to protect adults from deepfake images or recordings and the minister has indicated this lacuna is to be addressed as a priority and will be included in the amended justice bill, which is before the Stormont Justice Committee for review.

There are already protections in place for children. Under article 3 of the Protection of Children (Northern Ireland) Order 1978 it is an offence to take, make, distribute or show an indecent photograph, or pseudo-photograph of a child under 18. Consequently, the recently launched consultation is limited to the consideration of the introduction of offences to criminalise the creation and non-consensual sharing of sexually explicit deepfake images of an adult or requesting the creation of such images.

As part of the consultation, consideration has been given to the Data (Use and Access) Act 2025, which applies to England and Wales, along with the Scottish provisions in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016 and the Harassment, Harmful Communications and Related Offences Act 2020 in the Republic of Ireland.

The Department of Justice is proposing legislation to criminalise four offending behaviours related to creating a sexually explicit deepfake image as follows:

1. Intentionally creating a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, with the intention of causing humiliation, alarm or distress to the person depicted in the image.

2. Intentionally creating a sexually explicit deepfake image of an adult, without consent, or a reasonable belief in consent, for the purposes of sexual gratification.

3. Intentionally requesting the creation of a sexually explicit deepfake image, without consent, or a reasonable belief in consent, with the intention of causing humiliation, alarm or distress to the person depicted in the image.

4. Intentionally requesting the creation of a sexually explicit deepfake image, without consent, or a reasonable belief in consent, for the purposes of sexual gratification.

In addition to the above, the Department is proposing to legislate to criminalise offending behaviours related to sharing, or threatening to share, a sexually explicit deepfake image, with the offences being dealt with as 'hybrid' offences, capable of being tried in the Magistrates' Court or in the Crown Court.

The aim of the consultation is to bring Northen Ireland legislation up to date with advancements in artificial intelligence imaging and the widespread proliferation of altered images. The consultation will close on 6th October 2025 and can be accessed via the following link:

Proposals To Criminalise Sexually Explicit Deepfake Images | Department of Justice

FOIL FORUM OF INSURANCE LAWYERS IRELAND
Informing Progress - Shaping the Future

A modern twist on Sisyphus

Pushing a wheelbarrow up a dunghill

Declan Devereux (DWF)

Introduction

A recent case provides a salutary reminder to lawyers working in the personal injury space of the need to get back to basics when considering a claim. Should an everyday mishap merit compensation merely because it happens in a workplace setting? In such case is expert engineering evidence necessary to determine liability?

In delivering a resounding no to both questions and dismissing the claim, Twomey J in a High Court judgment delivered on 26 June 2025 in the case *of Lawless v Keatley [2025] IEHC 364* emphasised the need for a claim to be properly pleaded and that an expert's report is not a pleading. He dismissed the claim.

The accident happened when the Plaintiff was mucking out horse manure and on reading his judgment one might be forgiven for thinking that the judge thought that summed up the Plaintiff's claim.

The background

The Plaintiff alleged that on 9 March 2016 he sustained back and neck injuries in the course of mucking out horseboxes at the defendant's

stables where he worked as a stable hand while emptying a wheelbarrow load into a dungstead.

There is scant detail of the procedural history of the claim in the judgment other than that the proceedings were issued in 2017, but it is apparent from the title of the proceedings that this was an appeal by the Plaintiff from a dismissal of his claim in the Circuit Court.

The core of the Plaintiff's claim was that "in the course of pushing the heavy wheelbarrow and tipping its contents out into a dung heap" he injured his neck and back (Personal Injuries Summons) and that he "was obliged to overfill the wheelbarrow" (Replies to Particulars).

The Plaintiff obtained an engineer's report some 6 years after the accident.

The Evidence

The Plaintiff's evidence to the High Court was that the accident happened when he pushed the wheelbarrow up an incline of soiled hay in the dungstead and proceeded to tip out the wheelbarrow while it was on the incline. His back went into spasm at the time. He was doing the job on his own.

The dungstead was a specially constructed 3 sided structure with concrete flooring and walls.

The precise nature of the accident only surfaced for the first time after the Plaintiff's engineer issued his report. By the time of inspection, the Defendant had ceased operating at the stables and as the case focused on the operation of the dungstead, and not its construction, the judge found the engineer's report and photographs of limited value as they depicted the dungstead as maintained by the new operator rather than the Defendant.

A contractor gave evidence that he emptied the dungstead every 2 to 3 weeks when it was two thirds full and he attended every 4 to 6 days with machinery to push back the soiled hay towards the back of the dungstead so the floor at the front was completely clear and a greater area of flat surface was available for emptying the wheelbarrow which frequency the Plaintiff's engineer conceded was appropriate. The Plaintiff was free to ask the contractor to attend to push back the soiled hay as and when he felt it was needed.

The Defendant's engineer's report only addressed the wheelbarrow's condition. It was not defective and was perfectly fit for purpose which was not disputed. It had pneumatic wheels which were set further back than the traditional wheelbarrow and the container part of the barrow was on its own axis at the front which made it particularly easy to empty. The Defendant's engineer was able to operate it with the power of just his fingers.

Another stable hand working for the Defendant at the time gave evidence that the Defendant took particular pride in keeping his yard clean and that it would defy all logic for a person to try to go up an incline to empty a wheelbarrow. To attempt to do so would require the "*strongest man in the world*". Shades of Sisyphus.

Both the Defendant and his engineer gave evidence that it would be nigh impossible to push a full wheelbarrow up a soft surface such as soiled hay and dung and empty it on an incline as the axle would get caught in the surface.

The Plaintiff's GP note of 21 April stated "*back pain - upper and lower. Since fall 1 ½ month ago while looking after horse*". Another doctor's letter stated that the plaintiff had no symptoms until about 2 to 3 days following the incident. An admission note stated "*no symptoms immediately after injury 2 days later developed pain in neck and reports spasm*".

The Decision

The Plaintiff was tasked with throwing loose soiled hay from the floor of the dungstead with a fork onto the higher mounds of soiled hay so as to keep the concrete floor clean and flat. This procedure enabled the wheelbarrow to be tipped out on a flat surface.

It was clear to the judge that if the incident had occurred in the Plaintiff's home/garden it would be regarded as an unfortunate everyday mishap accident (in the true sense of that word i.e. no one was to blame). The court did not need expert engineering evidence on emptying a wheelbarrow and could bring common sense to bear on this everyday activity. The judge held:

- The Plaintiff was mistaken in his recollection that he rolled the wheelbarrow up an incline. It was unorthodox and if he had done so he would have pleaded it.
- He felt pain while emptying the wheelbarrow from a flat surface which was an everyday misfortunate mishap for which his employer was not liable.
- Even if he emptied the wheelbarrow in the unorthodox way he was not permitted to make that claim at hearing as it was never pleaded. The Defendant was not given sufficient precision in the pleadings of the case he had to answer.
- Even if he could make that claim it was his responsibility to ensure that the surface from which he was emptying the wheelbarrow was flat. There was no suggestion that the Defendant instructed him to empty the wheelbarrow in the unorthodox way.

Accordingly, he dismissed the appeal and his preliminary view was that the Plaintiff should pay the costs of both courts, but he would hear submissions on this at a later date.

Case law relied on

In arriving at his decision Twomey J synthesises 3 judgments - Noonan J in Nemeth v Topaz Energy Group Limited [2021] IECA 252, O'Donnell J (as he then was) in Rosbeg Partners v LK Shields [2018] 2 IR 881 and Collins J in Morgan v ESB [2021] IECA 29.

He drew on the remarks of O'Donnell J in Rosbeg that the court should approach claims by applying common sense and some degree of scepticism in assessing evidence. Memories and accounts become subtly and unwittingly adjusted under the focus of a case and in the light of the consequences of failure.

Noonan J in Nemeth stated when dealing with expert engineering evidence on ordinary everyday matters with which most people would be expected to be familiar the court can bring its own common sense to bear. The task of bending down to access a ground level press at work and standing up afterwards was an ordinary everyday activity of a kind undertaken very frequently by most people in a domestic and work setting and fell to be considered as such.

Collins J in Morgan cautioned that unless pleadings are clear and meaningful, the value of verifying affidavits is significantly diluted. Parties are required to state clearly and precisely what their claim or defence is and identify the basis for it in their pleadings and must then verify that on affidavit.

Comment

It is heartening to note the judge's deconstruction of the aura surrounding a claim and his willingness to use common sense and holding the Plaintiff to account on his pleadings.

Defendants are entitled to know the case being made against them. The Plaintiff only provided a meaningful description of the accident late in the day and then only in his engineer's report.

There is merit in treating an everyday activity whether at home or in work as a mere accident for which no one is to blame and that commonsense be used in determining such.

The comparison is not always straightforward. A homeowner carries out a task at home on their own volition and at their own risk. An employee carries out a task at work at the direction of their employer who should have risk assessed the task.

It is debatable whether most people frequently use a wheelbarrow. Being one wheeled it can be unstable when being manoeuvred. Being adept at using a wheelbarrow is learned from experience and trial and error.

While the judge did not consider engineering evidence necessary, he does appear to have been influenced by the Defendant's engineer's evidence as to the ease with which the wheelbarrow could be emptied.

Conclusion

While Twomey J's decision to extend an everyday activity from a body movement (Nemeth) to an activity involving the use of equipment, albeit a humble wheelbarrow, is questionable, the decision to dismiss appears to be justified on the evidence.

The case is a timely reminder that a defendant should insist that a plaintiff pleads their case clearly and precisely so that the defendant knows the case they have to answer and that the plaintiff discloses and verifies by affidavit the mechanism of the accident before agreeing to an inspection of a workplace accident locus.

Operations Update

Ian Thornhill (FOIL Ops Manager)

In the last quarter, our social media presence has seen a notable increase. Our FOIL LinkedIn followers have grown from 1,152 to 1,242, and Tomorrow's FOIL now boasts 61 followers. Additionally, we launched the new London Market FOIL LinkedIn account just two weeks ago, and it already has 56 followers.

It's been a busy time on the events front, with numerous online and in-person gatherings to mention. On May 1st, we hosted an in-person event titled 'Unlocking the Potential of Neurodiversity' at DAC Beachcroft, which has been reviewed in this edition.

On May 22nd, we held the first of three FOIL Ireland events this quarter, focusing on Data Breach GDPR / PI & Negligence. Fred Gillian BL and James Burke BL were the speakers at this in-person event held at the offices of Kennedys in Dublin.

June 17th saw us hosting a Housing-related disease/illness claims event at Risk Management Partners in London. Following this, on June 24th, we had our second FOIL Ireland event, an online session with Garvan Corkery SC discussing the recent judgment in Brendan Kirwan v Connors & Ors.

On July 4th, we organized the 'AI Legal Product Online Showcase,' where four companies

presented their software and answered questions. The London Market FOIL Summer Celebration took place on July 10th, as mentioned earlier in this edition.

Finally, on July 24th, we concluded our third FOIL Ireland event for the quarter, with Niall Fitzgibbons SC speaking online about The Consumer Insurance Contracts Act.

As we enter the holiday season, we have no events lined up for August. However, we are planning several events for the upcoming months:

- Tomorrow's FOIL is working on a Mock Trial event scheduled for October 9th at Nine Chambers in Manchester.
- An online event centred around the SQE route of qualifying is being planned for September/October by Tomorrow's FOIL
- A FOIL Ireland online event on Case Management and Pre-Trial Protocols in Non-Personal Injury Litigation is pencilled in for November 13th.

Finally, it was disappointing to cancel this year's Charity Golf Event due to low numbers. However, we are thrilled to announce a new fundraising initiative. We have teamed up with The Insurance Museum to co-host a Charity Quiz at 39 Essex Chambers. Last year's charity quiz in Manchester was a great success, and we hope to see many teams participating this year. We are also seeking raffle prizes, so if you can contribute, please contact myself or Sarah. Full details can be found on page 30.

New Trade and Industry Partner

FOIL is pleased to announce a new member to our list of partners.

MDD
A Davies Company

MDD are part of the Davies Group and are a forensic accounting firm specialising in business valuations, shareholder disputes and economic damage quantification.

Trade and Industry Partners Spotlight

SX3 – Specialist Audit, Consultancy and Resourcing for the Insurance Sector

At SX3, we provide independent audit, consultancy and resourcing solutions for the insurance market – all built on real operational experience and delivered with clarity, candour and confidence.

We founded SX3 in 2014 because we believed the market needed a better option: not large consultancies without lived experience, nor niche firms without delivery scale – but a practitioner-led team capable of delivering bold, expert-led solutions.

Today, we're trusted by leading insurers, MGAs, TPAs and legal service providers to deliver high-quality audit and assurance services – particularly across motor, casualty, property and London Market claims. Our work spans handling quality, leakage, reserving, compliance and run-off oversight. Clients value that we don't just review performance – we offer practical, evidence-based recommendations that help them move forward with confidence.

Alongside our audit offer, we provide tailored consultancy support to address both strategic and operational challenges. Whether it's cost management, regulatory response, claims transformation or customer experience design, we bring deep insight, clear thinking and a bias for action.

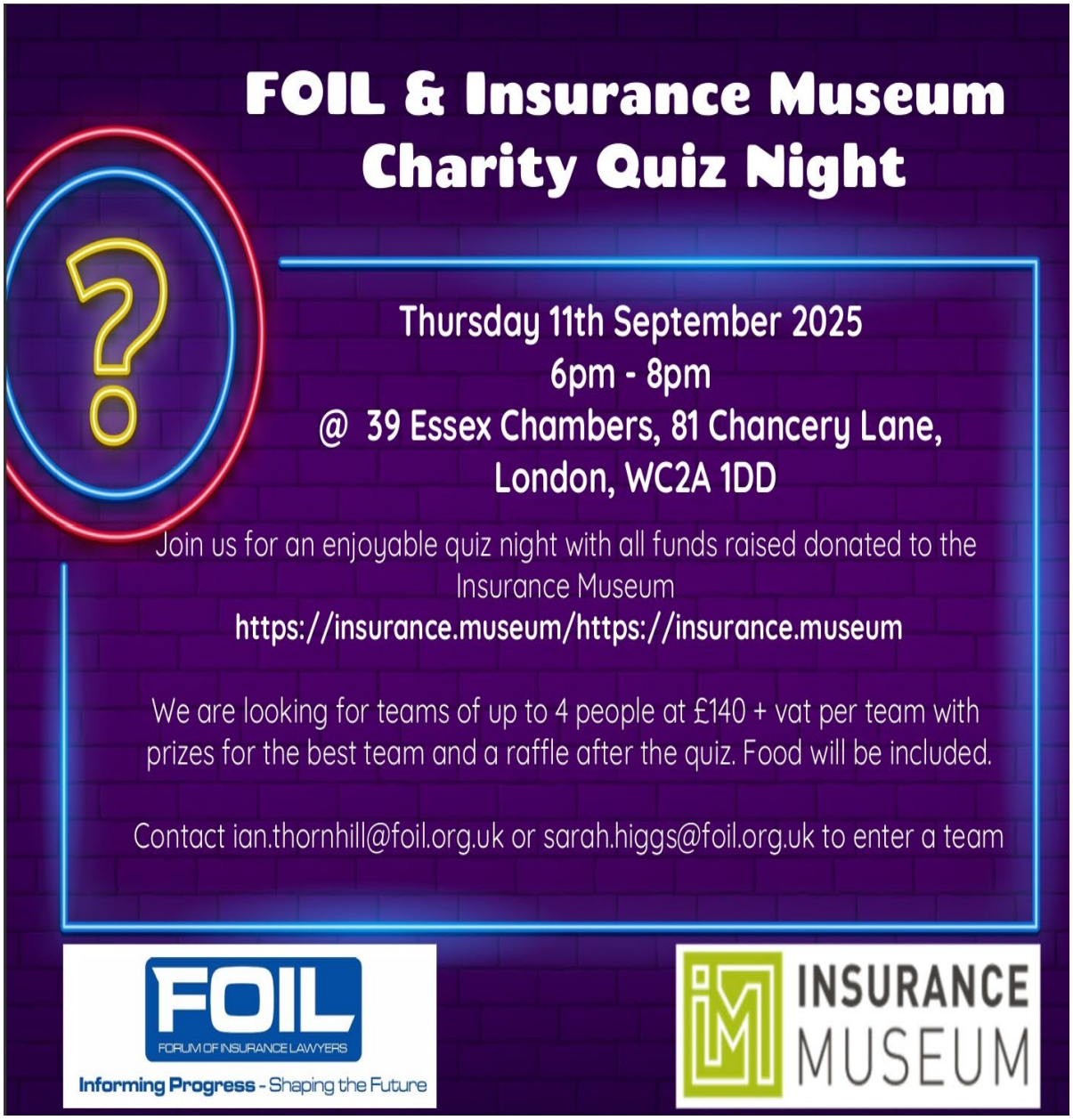
Our team blends core SX3 staff with a curated network of over 50 highly experienced Associate market practitioners, enabling us to flex to any assignment, across any line or geography. We support clients not only across the UK and Ireland, but also in Europe, the Middle East and North America – providing market-relevant insight and delivery in multiple jurisdictions.

We also help clients tackle their talent challenges through our resourcing services – from sourcing interim operational leadership to permanent recruitment and discreet market search support. Every assignment is grounded in cultural alignment and performance delivery, supported by our Associate network and first-hand sector knowledge.

What makes us different is how we work. We lead with quality, not quantity. We're refreshingly candid in how we communicate, and we only take on projects where we know we can deliver measurable value. Clients consistently tell us we cut through complexity, build consensus fast, and produce results that stand up to scrutiny.

As the demands across the insurance market continue to evolve, we bring clarity, capability and lived experience – offering our clients practical support from people who've walked in their shoes.

To learn more about what we do and how we work, visit www.sx3.co.uk or contact Adrian Gilbert, Managing Director, at adrian.gilbert@sx3.co.uk


FOIL & Insurance Museum
Charity Quiz Night
Thursday 11th September 2025
6pm - 8pm
@ 39 Essex Chambers, 81 Chancery Lane,
London, WC2A 1DD
Join us for an enjoyable quiz night with all funds raised donated to the Insurance Museum
https://insurance.museum/https://insurance.museum
We are looking for teams of up to 4 people at £140 + vat per team with prizes for the best team and a raffle after the quiz. Food will be included.
Contact ian.thornhill@foil.org.uk or sarah.higgs@foil.org.uk to enter a team
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FOIL in the Media (May 2025 – July 2025)

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

Laurence Besemer, CEO of FOIL, highlighted concerns around diversity and access to the profession in **Solicitors Journal**, following proposed cuts to apprenticeship funding. (29 April 2025)

Catriona McCorry, Professional Indemnity SFT (NI Representative) of DACB Beachcroft explored the implications of the reinstated Victoria Square High Court case for PI insurers in **Construction Law.** (6 May 2025)

Kelvin Farmaner, Cross-border SFT of Trethowans, analysed the impact of personal injury reforms on accident claims **in Insurance Day**. (7 May 2025)

Cathal O'Neill, President of FOIL Northern Ireland and Partner at Carson McDowell, examined Northern Ireland's Enabling Access to Justice Reform Programme **in Insurance Post**. (20 May 2025)

Tom Pelham, Technology and Cyber Liabilities SFT and Global Head of Cyber and Data at Kennedys, commented on business responses to cyber-attacks in **City A.M**. (26 May 2025)

Pete Allchorne, Former FOIL President and Head of Strategic Advisory at DAC Beachcroft, was interviewed on the insurance implications of ADAS on **BBC Radio 4**. (26 May 2025)

Tom Pelham, Technology and Cyber Liabilities SFT, was quoted in **Mail Online** on the risks facing individuals and businesses in the aftermath of a cyber-attack. (27 May 2025)

Tom Pelham, again writing in his capacity as Global Head of Cyber and Data at Kennedy's, explored lessons from the Legal Aid Agency cyber breach in **Emerging Risks**. (18 June 2025)

Helen Bourne, Technology and Cyber Liabilities SFT and Clyde & Co, shared practical cyber-attack guidance for lawyers in **Infolaw**. (30 June 2025)

Jeffrey Wale, Technical Director at FOIL, discussed delays to the proposed Hillsborough Law and its implications for justice reform in **Solicitors Journal**. (3 July 2025)

Finally, **Tom Pelham** provided expert cyber commentary in **New Law Journal**, focusing on what legal practitioners need to know when a cyber breach hits. (11 July 2025)

Latest News

Dr Jeffrey Wale (FOIL Technical Director)

Open Justice

In the Open Justice space, the Transparency and Open Justice Board has now published their Key Objectives: link. You can also find the Board's response to the consultation submissions at the following link. There are no real surprises but the Board is clear that the burden is always on the person seeking the derogation from open justice to persuade the Court or Tribunal by sufficiently cogent evidence that the restriction sought is necessary and proportionate. This signifies a clear direction of travel from the Board.

We should see a draft pilot PD for non-party access to court documents rolled out in the Commercial Court shortly. Pending wider rollout, members are encouraged to review the recent Court of Appeal decision in ***X & Y v BBC (In Re HMP)*** **[2025] EWCA Civ 824**. At paragraph 21, the Court said '*The court in Dring thus identified two main purposes of the open justice principle, namely: (i) to enable public scrutiny of the way in which the courts decide cases so as to provide public accountability and secure public confidence; and (ii) to enable public understanding of the justice system. Whilst the court recognised that its identification of these purposes might not be exhaustive, the core aim is to ensure appropriate transparency for the work of the courts and tribunals and the judges who sit in them.*' The Court said at paragraph 23 '*The Supreme Court in Dring made clear that* ***a non-party has no right of access to the court file; the court's permission is required. It is incumbent on the person seeking access to documents under the open justice principle to explain (i) why he seeks access and (ii) "how granting him access would advance the open justice principle": see [45].***' The Court of Appeal accepted that facilitating incidental scrutiny of litigants or their decision-making is not a purpose which requires or justifies disclosure under the open justice principle.

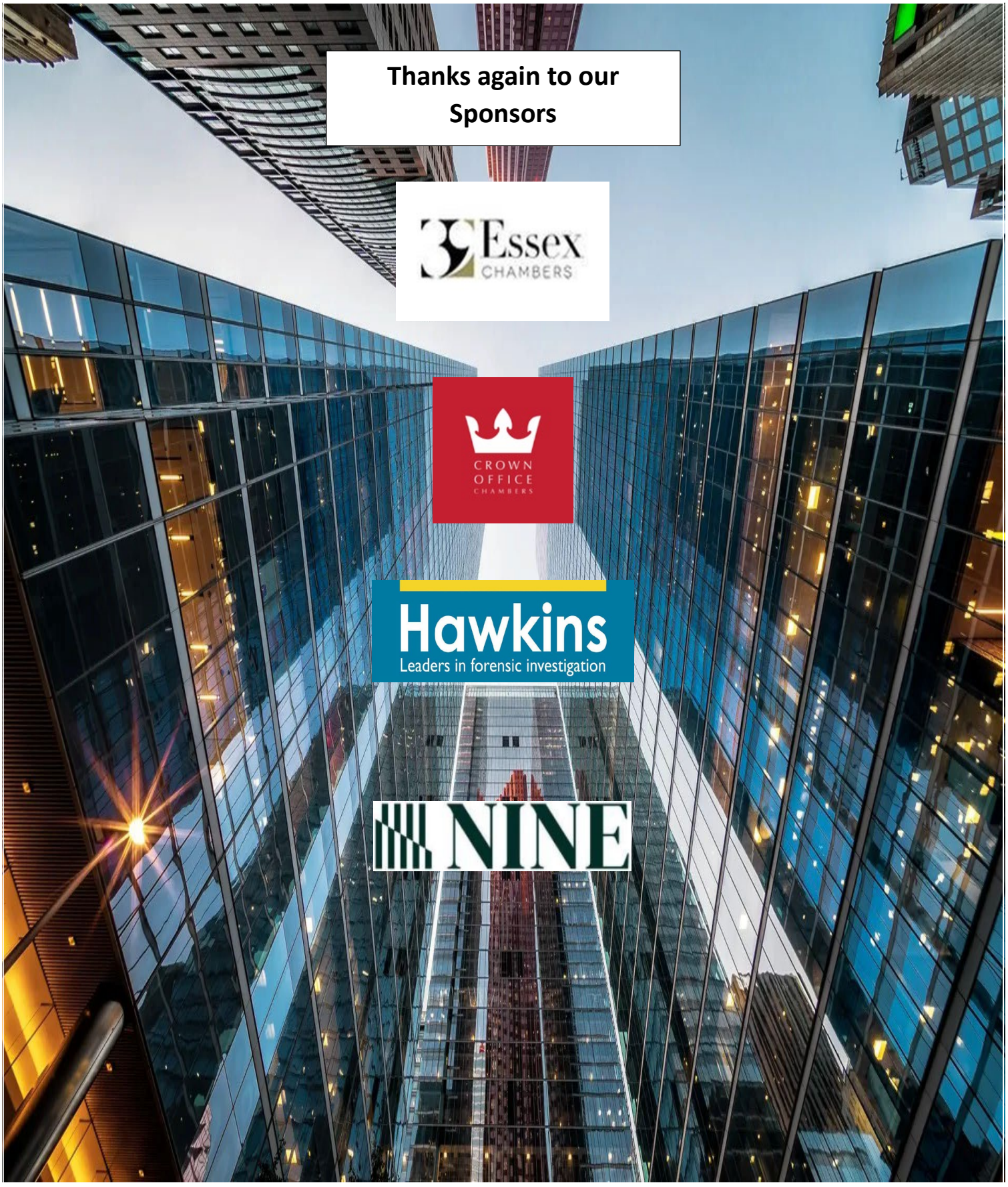
FOIL is hosting an Apologies and Duties of Candour event touching on the broader issues of transparency at the offices of Browne Jacobson, Birmingham on 30 September 2025. Registration is available via this link.

Consultations

FOIL is currently working on the following consultations:

- **Financial Ombudsman Service/FCA Consultation Paper – Modernising the Redress System** (deadline 8 October 2025).
- **CPRC Electronic Service Consultation: proposed amendments to CPR Part 6/PD 6A** (deadline 12 September 2025)
- **Department of Transport Call for Evidence: Automated Vehicles: Statement of Safety Principles** (deadline 1 September 2025).
- **OPRC Consultation on the draft Inclusion framework and Pre-action Model** (deadline 19 September).
- **Justice Committee Access to Justice Call for Evidence** (deadline 30 September 2025).

If you have feedback on any of these consultations/calls, please let the FOIL technical team know.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