



SPOTLIGHT

In this edition, we explore themes relating to access to justice and dispute resolution. We also celebrate the 10th anniversary of the Serious Injury Guide.

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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

4 - FOIL AGM and President's Conference

5 - President's Page (Howard Dean, Keoghs)

8 – London Market FOIL: The Integration of AI and its Potential Impact on Dispute Resolution Models (Fleur Rochester & Isobelle White, Kennedys)

10- A word from a Sponsor: Access to Justice and Dispute Resolution Models (Kelly Stricklin-Coutinho, 39 Essex Chambers)

13 - Celebrating the 10th Anniversary of the Serious Injury Guide (Jeffrey Wale, FOIL and Alice Taylor, APIL)

17- Equity by Design: Integrating EDI into Digital Justice Frameworks (Steven Brownlee, FOIL)

22 – Why Diversity, Equity and Inclusion makes good business sense (Rohana Abeywardana, Hill Dickinson)

24 - Regulating Mass Redress Litigation (Paul Finn, FOIL)

26 - FOIL Northern Ireland: Access to justice in Northern Ireland (Cathal O'Neill, Carson McDowell LLP)

28 - FOIL Ireland: Irish Commercial Court - Facilitating Efficient and Effective Access to Justice (Rachel Halligan & Fiona O'Connell, Dillon Eustace LLP)

33 - Tomorrow's FOIL (Rebecca Barton, Forbes)

34 - Trade and Industry Partner (Baker Tilly)

35 - Operations Update (Ian Thornhill, FOIL)

37 -FOIL in the media

Welcome to the November 2025 edition.

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

Welcome to the November edition of the Voice. In this edition, we explore the themes of access to justice and dispute resolution. We also celebrate the 10th anniversary of the Serious Injury Guide on pages 13-17 with a joint article from FOIL and APIL.

The ripple effects of the *Mazur & Stuart v Charles Russell Speechlys LLP* judgment continue to reverberate across the legal services market. Despite the recent publication of a Law Society Practice Note, there is continuing uncertainty about future satellite litigation and regulatory activity. Members are already reporting inconsistent judicial activity that is triggering and amplifying these concerns. There remains a question about whether a regulatory 'red line' will be drawn and the extent to which regulators will be focusing on investigating past litigation activities. FOIL has been communicating with regulators and interested stakeholders about the judgment with a view to identifying common ground and specific areas for action. FOIL intends to report to members again following a key stakeholder meeting which is taking place on the 5 November 2025. The key FOIL priorities are securing regulatory certainty and reducing escalation in the market.

On a more positive note, we look forward to the FOIL AGM and President's Conference on 27 November 2025. There are some important resolutions being discussed/voted upon at the AGM this year. Members are therefore encouraged to attend so that their voice can be heard and counted.

To close, his presidency, we have reflections from Howard Dean on how we might balance reform in the dispute resolution landscape. In our London Market slot, we have an article from Fleur Rochester and Isobelle White considering the potential role and impact of AI in the context of dispute resolute models. We have a word from a sponsor by virtue of an article from Kelly Stricklin-Coutinho, Barrister at 39 Essex Chambers and Chair of the Civil Mediation Council. She reflects on recent cultural changes in the dispute resolution arena and the opportunities arising.

We also have articles from Paul Finn about the regulation of mass redress litigation and reflections from Cathal O'Neill on the Enabling Access to Justice reform programme in Northern Ireland and Rachel Halligan & Fiona O'Connell on facilitating access to Justice in the context of the Irish Commercial Court.

On the topic of Diversity, Equity and Inclusion, we hear from Steven Brownlee about the possibility of achieving equity by design in the context of the Digital Justice Frameworks. We also learn from Rohana Abeywardana why Diversity, Equity and Inclusion makes good business sense.

We also have all the usual content, including a spotlight on Baker Tilley, a FOIL Trade and Industry Partner for over 10 years. We hope that you enjoy reading the articles 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



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FOIL Annual General Meeting and President's Conference

The **FOIL AGM** will be held on **Thursday 27 November 2025** at 14:00 at **DoubleTree by Hilton Tower of London, 7 Pepys Street, London EC3N 4AF**. This will be immediately followed by the President's Conference.

If you would like to attend the AGM, please [click here](#) to add the event to your diary. Some important resolutions will be voted on this year, and it is essential that the **AGM** is well attended to make sure the voting outcomes represent the views of the greatest possible number of member firms.

AGM Agenda

(Law Firm Members Only)

14:00 - Welcome.

14:04 - Approval of the AGM 2024 minutes.

14:05 - Treasurer's report

- o Approval of 2024 accounts,
- o Projection for 2025,
- o Reappointment of accountants,
- o 2026 Membership Subscriptions.

14:20 - Secretary's report

- o Constitutional amendments/resolutions,

- o Election of officers for 2025.

14:30 - Incoming President's address.

14:35 - FOIL Structure 2026 onwards.

President's Conference 2025

Agenda

"The future risks for the insurance industry"

15:00-15:10 Welcome and introduction – Howard Dean, FOIL President

15:10-15:35 The Future Political Landscape – James Marshall CBE, MHP Group

15:35-16:00 Fraud risks and the future of fraud – John Davies, IFB

16:00-16:30 Future reforms panel discussion – Natalie Larnder (Keoghs), Lee Watts (Allianz), Mark Shepherd (ABI) and Nick Kelsall (Munich Re)

16:30-16:45 Tea / Coffee / Networking Break

16:45-17:00 Artificial intelligence – Matt Kuznik

17:00-17:20 The Insurance Museum

17:20-17:30 Closing remarks – Howard Dean, Keoghs

17:30-18:00 Drinks reception

Please register your details for the President's Conference by clicking [here](#).

The President's Page

Access to Justice and Dispute Resolution Models: Balancing Reform and Reality



Howard Dean (Keoghs and FOIL President)

In Brief

As courts continue to struggle under the weight of unprecedented backlogs, the government and judiciary are increasingly turning to digitalisation and mediation as tools for reform. Howard Dean examines the promise and pitfalls of these models and reflects on how access to justice must remain at the heart of any change.

It is no secret that the civil justice system continues to labour under severe strain. The county courts, in particular, remain beset by backlogs that have persisted for years. Although the position has improved since the pandemic's start, the recovery is partial at best. Cases continue to wait months, and in some instances years, for hearings. Against that backdrop, the question of access to justice has taken on new urgency.

The government and the judiciary have limited levers to pull. Increasing judicial and administrative capacity - more judges, more courtrooms, more staff - is an obvious but expensive solution. With public finances tight, the emphasis has shifted toward structural reform: the digitalisation of claims processes and the introduction of mandatory mediation. Both are presented as mechanisms to ease the pressure on the court system and deliver justice more efficiently. Yet, as those working within these systems will recognise, the practical reality is more complex.

Digital platforms - promise and fragmentation

Digitalisation is widely regarded as a central pillar of civil justice reform. In theory, online platforms offer a streamlined process - one that moves parties through prescribed stages, encourages early engagement, and provides the digital infrastructure for settlement or adjudication. In practice, however, the system is fragmented.

There is not one "digital court", but several distinct online claim platforms, each governing different case types and values. The Online Civil Money Claims system, the Damages Claims Portal (DCP), the Official Injury Claim Portal, and others all operate separately. Each was designed for a specific purpose, but the cumulative effect is a patchwork rather than a coherent digital ecosystem.

Where a claim is issued on the wrong platform - perhaps because the value later increases - it is rarely possible to transfer it to the correct one. The result is inefficiency, duplication and, occasionally, injustice.

The DCP was intended to be a full end-to-end service, extending from pre-litigation through to enforcement. However, with funding for further development apparently paused, the project remains incomplete. Importantly, the

DCP is not yet compatible with the case management systems used by many insurers and law firms. The absence of integration creates duplication of effort and expense: the same information must be entered into multiple systems, eroding much of the efficiency that digitalisation is supposed to achieve.

There is no question that digitalisation remains the right long-term direction. But it must be done properly. Technology cannot, on its own, resolve structural inefficiencies - particularly when those systems fail to communicate with each other.

Mandatory mediation - the next frontier

If digitalisation is one lever for reform, mediation is the other. The rollout of mandatory mediation for small claims, excluding personal injury cases, marks a significant milestone. With the service only launched this summer, it is too early to judge success. However, the government has already signalled its intention to extend mandatory mediation to higher-value claims, beginning with those allocated to the fast and intermediate tracks.

The principle is attractive. Anything that helps resolve disputes more quickly, reduces cost, and alleviates pressure on the courts is welcome. But mediation cannot be a one-size-fits-all solution. Its success depends on context, timing, and the nature of the dispute.

In higher-value personal injury and casualty claims, mediation raises distinct challenges. These cases are shaped by lengthy evidence-gathering, evolving medical prognoses, and complex legal or procedural dependencies. In serious injury cases, for example, rehabilitation and recovery may take years, and the valuation of future losses cannot sensibly be fixed until the claimant's long-term prognosis is clear. Parties often cooperate

extensively before litigation - driven by rehabilitation needs and information sharing - but genuine settlement discussions usually occur much later, typically through Joint Settlement Meetings (JSMs).

In these circumstances, mandating mediation at a pre-action stage may simply increase cost and delay rather than reduce it. Formal mediation is already rare in such cases; experienced representatives on both sides generally achieve resolution through direct negotiation. Indeed, within the serious injury sphere, mediations tend to be reserved for multi-party disputes where facilitation is genuinely needed.

Complexities of mediation in high-value and technical claims

There are also categories of claim that are inherently unsuited to early mediation. Credit hire disputes are one example. The recoverability of damages often depends on whether the claimant is "impecunious" — a question that requires detailed disclosure and analysis of financial evidence. Without that foundation, any mediation risks being premature and unproductive. The same applies to complex causation or liability disputes that turn on expert evidence still in development.

That is not to say mediation has no place in higher-value claims. It may be beneficial in certain multi-party or employer liability cases, where relationships between parties continue or where sensitive handling is required. But its introduction must be targeted and flexible. For mediation to add value, it must take place at the right time, with the right information, and under the right conditions.

The limits of reform

None of this is to argue against reform. On the contrary, progress is essential if the civil justice system is to remain credible and sustainable.

The backlog in the county courts is a structural problem that cannot be left to fix itself. Both digitalisation and mediation have potential to play an important role in modernising dispute resolution and improving efficiency.

But they must be pursued with care. The proliferation of disconnected platforms and the rigid imposition of mediation at inappropriate stages risk undermining rather than enhancing access to justice. For the insurance and claims sector, the challenge is to balance the pursuit of efficiency with the preservation of procedural fairness.

We must not lose sight of the core principle: access to justice is not merely about speed or cost - it is about ensuring that every party has a fair opportunity to have their case heard and determined. That includes the right, where necessary, to proceed to trial.

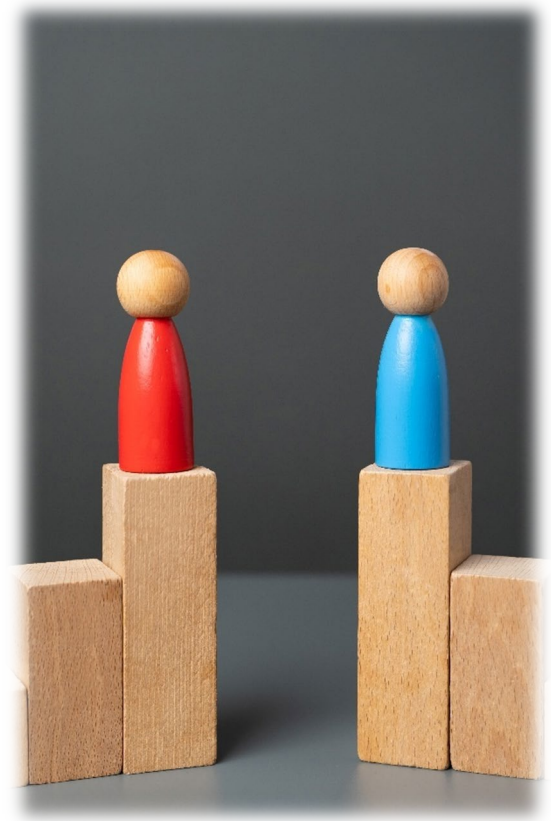
Looking ahead

The coming months will see continued debate about how far and how fast mandatory mediation should extend. Stakeholders across the sector - including insurers, claimant representatives, and the judiciary - will need to work together to design a model that reflects the realities of complex litigation. For mediation to succeed in the fast and intermediate tracks, the process must be proportionate, specialist, and properly resourced.

Similarly, the digitalisation agenda will only deliver its promised benefits if investment resumes in platform development and integration. The systems must be joined up, intuitive, and accessible to all users - insurers, solicitors, and litigants alike. Otherwise, you deprive those omitted from access to justice.

Reform of the civil justice system is a delicate task. Progress is welcome, but not at any cost. We must ensure that the pursuit of efficiency does not come at the expense of justice itself.

In a modernised, digital, and increasingly mediated environment, the courts must remain the ultimate safeguard - available to those who need them, when they need them.





Informing Progress - Shaping the Future

The Integration of Artificial Intelligence and its Potential Impact on Dispute Resolution Models



Fleur Rochester (London Market FOIL President and Kennedys & Isobelle White Kennedys)

The integration of Artificial Intelligence (AI) into the UK's legal dispute resolution models presents a number of benefits, challenges and questions. These benefits, where implementation is effective, could drastically alter access to justice as we know it.

Here, we explore the implications of this integration, specifically examining its potential impact on the traditional court system and online dispute resolution (ODR). The primary impetus for the use of AI in dispute resolution is the promise of enhanced efficiency and the ability to leverage data driven consistency

within established legal frameworks. However, implementing these tools ethically and effectively will be no mean feat. These forecasted benefits are entirely reliant upon the addressing of significant, complex challenges, including the threat of algorithmic bias, accountability, ambiguity and the need for qualitative judgement to uphold justice. While AI promises a more streamlined and efficient legal system, a cautious approach is necessary to effectively and fairly utilise it in all disputes. This, in turn, could significantly promote access to justice.

Pre-Litigation Assessment

Any dispute resolution process begins with the pre-litigation assessment of a claim, where AI is already proving itself useful. Predictive AI can analyse vast datasets of historical claims information, meaning that it can produce accurate early risk predictions. This enables insurers and lawyers alike to evaluate the likelihood of a successful claim, with objective precision. Additionally, AI systems are capable of sifting through enormous volumes of documents faster than any legal professional, isolating relevant information and expediting initial review processes. AI's use enables cost-saving intervention strategies such as the ability to accurately set early claims reserves.

On the other hand, the promise of efficiency is counterbalanced by a number of risks. If AI systems are inadvertently programmed using inaccurate or biased data, the risk of algorithmic error or bias is considerable, leading to unfair, illogical or even discriminatory recommendations. This concern creates a necessity for lawyers to regularly audit AI recommendation processes. This is further exacerbated by the "black box

problem," where the technology's reasoning is opaque, making it difficult for a lawyer to discern exactly how a conclusion was reached.

AI's Potential Impact on Traditional Court-based Litigation

For traditional court-based litigation, AI offers solutions to both lawyers and the courts themselves. For example, E-discovery can be drastically more efficient, with AI capable of reviewing voluminous documents in a matter of seconds. Furthermore, the adoption of AI for accelerated research allows the legal profession to rapidly collect and analyse the information required to advance a case. The utilisation of generative AI in drafting exercises can also enable quick production of initial drafts of pleadings, submissions and other necessary procedural documents. However, these promises of efficiency are, at least in the short term, undermined by the numerous hurdles. The risk of 'hallucination', where AI fabricates fictitious case law or legal principles, is rife. It can be argued that the time saved in drafting or researching may be counteracted by the mandatory burden of verification, where professionals will have to meticulously review and fact-check everything generated by AI. Similarly, data leak risks present liability concerns where non-in-house applications are used.

AI's Potential Role in Online Dispute Resolution

The utilisation of AI within ODR offers, arguably, the greatest promise of innovation. ODR platforms can utilise AI to automate negotiation processes based on historical datasets and objective settlement ranges. This can encourage early and realistic settlement,

helping to reduce and prevent further court backlogs. This automation can drastically decrease the time and costs incurred in settlement, providing access to justice to those who may have previously been priced out of making a claim. Moreover, predictive AI is built on consistency; claims with similar values and circumstances are more likely to have similar outcomes. Consequently, consistent precedent setting is promoted. While this has its benefits, this level of consistency can present a drawback where a case is unique and factually nuanced. Predictive AI is not sufficiently equipped to address considerations of emotional strain or other subjective issues that often arise in insurance claims (particularly in personal loss or injury). This results in a profound ethical conflict: the use of AI in improving efficiency and saving costs may directly conflict with a solicitor's duty to secure the 'best outcome' for their client. However, this is not to say that future advancements in technology will not correct this issue.

Practical Limitations

- Accountability – who is responsible for an erroneous or damaging outcome generated by AI (e.g. the programmer, the user, the platform owner, the AI itself etc.)
- Transparency – where explainability is required, professionals will struggle to explain why an AI system has come to a specific decision.
- Timescale – the effective nationwide implementation of AI within dispute resolution models will take an inordinate amount of time. The transition will require significant training and input from legal

professionals, all before the sector can reap any of the promised benefits.

Concluding Thoughts

While the integration of AI within the dispute resolution models of England and Wales carries countless forecasted benefits, users and programmers must act with extreme caution when promoting its effective and ethical use. Despite the inevitability of its inclusion, legal professionals must use AI in a balanced way to ensure that the principles of fairness and justiciability are upheld. Should AI be successfully and ethically implemented and utilised, access to justice within England and Wales could improve exponentially.



A Word from a Sponsor

Access to Justice and Dispute Resolution Models



Kelly Stricklin-Coutinho, Barrister at 39 Essex Chambers, Chair of the Civil Mediation Council

In Brief

Following recent developments, the culture for dispute resolution is changing, with less barriers to using methods of ADR which will achieve a more efficient resolution of a dispute. In practice this provides real opportunities to insurers who are able to design processes for the best outcomes.

A raft of significant recent changes mean that dispute resolution methods which go beyond traditional litigation now offer a wide range of ways for a resolution to a dispute to be reached. This is a step forward in terms of active and creative management of disputes, and puts the power in the parties' hands to choose the best method of dispute resolution for their dispute.

Recent Changes

In *Churchill v Merthyr Tydfil* [2024] EWCA Civ 1416, the Court of Appeal sat in a special constitution of the Lady Chief Justice, the

Master of the Rolls and the Deputy Head of Civil Justice, and considered whether unwilling parties could be ordered to engage in a non-court-based dispute resolution process, and if so, in what circumstances.

In the court below, Deputy District Judge Kempton Rees held that he was bound to follow Dyson LJ's (as he then was) statement in *Halsey v Milton Keynes General NHS Trust* [2004] EWCA Civ 576 to the effect that "to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court." The judge considered that he could not grant a stay of the proceedings before him to pursue an internal complaints process, on the basis of *Halsey*.

In the event, the Court held that the passage referred to was not part of the essential reasoning in the case and did not bind the judge. It also held that the court could lawfully stay proceedings for, or order, the parties to engage in non-court-based dispute resolution processes, provided the order "did not impair the very essence of the claimant's right to proceed to a judicial hearing" and that it was proportionate to achieving the legitimate aim of settling the dispute fairly, quickly and at reasonable cost.

The Court decided not to lay down fixed principles as to how that determination should be made, but did refer to some criteria that had been laid down in *Halsey*.

That groundbreaking decision was then given effect in changes to the Civil Procedure Rules. The changes included the power added to the overriding objective for the court to order parties to engage with ADR, a costs sanction for failure to do so, and the power being included in specialist court rules and in relation to cases in the various tracks.

Shift in Dispute Culture

The effect of this change is profound, for at least two reasons.

First, the fact that the power is in the Overriding Objective means that the court and the parties must consider non-court-based dispute resolution at every moment in which the Overriding Objective applies. That means that the parties can and should consider it pre-action, during the first instance timetable, after judgment, in relation to costs and on appeal.

In one sense the mechanics for using mediation, say, at each of those stages has been in place for many years. But the effect of this being in the rules means that parties must consider whether there is a non-court-based dispute resolution way of resolving their dispute at all times.

Second, this change opens the door to using NCBDR creatively, whether that is in terms of timing, or more usefully in terms of strategy for managing the dispute. The judgment refers to "non-court-based dispute resolution" and, although the *Halsey* precedent it was dealing with referred to mediation, the judgment in *Churchill* and the changes to the CPR refer to ADR or non-court-based dispute resolution" more generally. This means that there is an opportunity to define the right method of NCBDR or ADR for the dispute that is being addressed.

Opportunities for Insurers

Strategically this is helpful because it removes the reluctance of parties to engage in case engaging with NCBDR is seen as a sign of weakness or doubt in one's own case. Instead, the parties can – and should – simply go ahead and use NCBDR whenever it is appropriate bearing in mind the options available. In practical terms that might mean

mediating early, mediating more than once, or using mixed methods of ADR, such as for instance having an Early Neutral Evaluation (ENE), which is followed by a mediation. In multi-party disputes, for example, it may be more appropriate to have something different than the one-day model of mediation.

Now that dispute resolution has become something which the parties should actively consider at all stages of their dispute, there is the opportunity for the parties to be pro-active in considering what model of dispute resolution is best for the dispute.

Dispute resolution specialists (and particularly mediators) are experts in process design; they can advise on what process would best suit a dispute, how that process could work and why, and then run the process that is proposed. But sophisticated lawyers will also have a view and will have experience of the dynamic between the parties that means the input of lawyers in this process will be invaluable.

It also means that areas in which insurers have traditionally been able to be flexible can become part of the process in a way that litigation cannot assist. Insurance lawyers will have a feel for when what is required is something not about the legal principles, but perhaps more personally motivated, such as a verbal, private apology without admission of liability, which may unlock settlement of the rest of the dispute.

Similarly, a straightforward commercial conversation between insurer and insured can often resolve matters without the need to delve into the legal merits. Other opportunities may involve insurers offering something of value to the other party that is not simply an award of money. That can be of real benefit to both the insurer and the insured.

Limitations

At present the power has not been expressly included in the rules for specialist tribunals, although many of those will have ADR processes in the relevant sector already. Tribunals may consider that they have the power to make such an order within their rules already, or could at least stay proceedings for a set period of time, but it is undoubtedly a different position than cases dealt with under the CPR, not least because the lack of costs sanction means that refusing to engage with ADR appears to be entirely without sanction in those tribunals.

There is the additional point that in some tribunals there may already be some form of ADR process, but there may be good reasons why the parties do not wish to use that particular method. That may be for a whole host of reasons, including what scope the process has, how the process is designed, and the attributes of the neutral involved.

Courts may also need to be persuaded of the benefits of the method of ADR chosen and why it is appropriate in the circumstances. This will be particularly so where there may be some form of scheme already in place in the sector, and where the parties prefer not to use it.

One way of approaching this is to see if a measure of agreement as to the process can be found with the other party; approaching the court with a mutually agreed proposal is much more likely to find favour, although the parties should recognise that they nonetheless need to persuade the court as to the merits of the proposed approach if litigation is already on foot.

Future Direction

When thinking about disputes from now, one key thing insurance lawyers may wish to

consider are assessing at each significant step whether ADR is possible, appropriate and what the best and worst outcomes might be for each of a) proceeding with litigation and b) a method of ADR.

Another way of thinking about this is to consider the wide range of options for settlement that could be put on the table, particularly including those which go beyond what a court has the power to order. Thinking about which of those is most likely to achieve a settlement and then thinking of the process to achieve that is likely to provide you with sensible options for a way forward.



Celebrating the 10th Anniversary of the Serious Injury Guide



Dr Jeffrey Wale (FOIL Technical Director) and Alice Taylor (Legal Policy Manager at the Association of Personal Injury Lawyers)

In Brief

On the tenth anniversary of the Serious Injury Guide, Alice Taylor (APIL) and Jeffrey Wale (FOIL) look at the benefits realised through the Guide, and its importance for the future.

The Serious Injury Guide is the gold standard for working collaboratively on claims. The guide sets out the best practice process for efficient resolution of claims valued over £250,000, through collaborative working which aims to centre around the injured claimant. The guide currently has 103 claimant firm signatories, and 14 major insurer/indemnifier signatories. The aims of the Guide, and information on how to sign up, can be found at www.seriousinjuryguide.co.uk

Benefits of the Serious Injury Guide

Early notification

The Guide provides for early notification of claims to defendants and insurers where known. Claimant signatories are provided with a list of the “early notification points” for each participating insurer, so that correct channels of communication are opened from the outset, and there is a clear intention to proceed with the claim under the Serious Injury Guide.

Following our third stakeholder workshop in February this year, we invited signatories to the Guide to share their views on its best parts. David Sears from Hudgells Solicitors commented “It is hugely beneficial to have a named contact to direct new claims to, and to know they will be responsive to early notification.”

Ongoing dialogue and collaboration

Time frames and action plans within the Guide help to keep parties talking and the case moving forward. Regular contact, even as simple as one party emailing or speaking to the other to agree an action to move the case forward, will be beneficial for both sides. Time and again, signatories raise the importance and effectiveness of route planning meetings under the Guide. In a 2024 survey of participants, 93 per cent said that they either agreed or strongly agreed that route mapping meetings are useful, and this sentiment was shared by those who attended the third stakeholder workshop. Route mapping can be useful for establishing common ground, building relationships and setting timescales. Disagreements can be parked while other substantive issues can be progressed, to the benefit of both parties.

To preserve the collaborative and open nature of the working relationship which the Guide

aims to promote, it sets out that there should be no Part 36/Calderbank offers unless or until parties have tried to agree an issue through dialogue and negotiation but are unable to do so. Route planning meetings are designed to help the parties to agree issues through dialogue and discussion.

The collaborative framework of the Guide assists with:

- Early discussions around rehabilitation, and a willingness to make early and continuing interim payments of damages in cases where liability has been admitted. Those participating in the Guide also recognise the benefits of making interim payments of disbursements and base costs relating to liability once that issue is resolved.

- Prompt disclosure of relevant documents, including liability documents, police reports in road accident cases, medical notes and case manager records. Parties are encouraged to communicate to avoid duplication of effort and cost, with only one party needing to apply for certain documents, then sharing them with the other party.

The power of collaborative working under the Guide was demonstrated in a case study delivered by Stephanie Clarke from Stewarts and the Motor Insurers’ Bureau’s Tanja Neuhoff at this year’s Serious Injury Guide stakeholder workshop. Their case involved a three-year-old girl who suffered a traumatic brain injury after being hit by a moped. Both sides were able to work together to put the claimant and her family at the centre of the process, maximise rehabilitation, and narrow the issues. Collaboration allowed for without prejudice interim payments to relieve financial hardship, and the securing of timely disclosure of evidence and medical records. The claim was settled two years post-injury, via an offer presented with no costs or time pressure attached.

Another example of the benefits of collaborative working under the Guide was provided by one of the Guide's insurer signatories. The claimant in that case suffered significant multiple orthopaedic injuries in a road traffic incident, complicated by family members coming across the scene. The parties engaged fully under the Serious Injury Guide and Rehabilitation Code to put the claimant at the heart of the process and secure a mutually beneficial settlement within 12 months. The Guide provided a structure for both parties to work collaboratively to provide interim payments, rehabilitation, and support for the claimant's family. The defendant insurer said, "This was a great example of both teams working together in putting the claimant at the heart of the process".

Methods to overcome difficulties

Despite a commitment to on-going dialogue, there will inevitably be cases where issues cannot be resolved through discussion. The parties should consider and agree, if possible, how they will approach such disputes. The Guide encourages consideration of alternative dispute resolution but does not prevent the parties from starting legal proceedings if required.

Should issues arise from use of the Guide, signatories are encouraged to use the built-in escalation procedure. This requires the case to be referred to a nominated escalation point within the organisation to consider the issues. Aneta King, of George Ide solicitors provided an example of how the escalation procedure helps to keep claims on track. The claimant, a woman in her late twenties, was involved in a single-vehicle road traffic collision while commuting to work. As a result, she sustained life-altering injuries, including post-concussion syndrome, functional neurological disorder following a mild traumatic brain injury, chronic migraines, cognitive dysfunction, dizziness,

PTSD, depression, and auditory hallucinations. The case proceeded under the Serious Injury Guide, and the claimant was able to obtain several modest interim payments which enabled them to appoint a case manager on a single instruction basis and proceed with an immediate needs assessment. Although the defendant admitted primary liability four months after the letter of claim was received, they continued to allege contributory negligence on the basis that the claimant had not been wearing a seatbelt. However, no supporting evidence was provided for several more months. Consequently, the Guide's escalation procedure was triggered seven months after the letter of claim had been sent. This prompted an immediate response and a constructive telephone conversation, during which it was revealed that the allegation was based on an engineer's report held by the defendant. This information, in turn, allowed the claimant's legal team to obtain relevant witness evidence. Following its disclosure, the defendant ultimately made a full admission of liability. The matter concluded at a joint settlement meeting, with damages agreed in the sum of £400,000.

Recognition of the Guide

Recent judicial and public body recognition helps demonstrate how far the Guide has become an embedded part of the culture and processes for the handling of serious injury claims. The Court of Appeal offered their tacit endorsement for the Serious Injury Guide in their decision in *Hadley v Przybylo* [2024] EWCA Civ 250, describing it as 'useful guidance' in the context of rehabilitation and collaboration (para 43). In that case, the Guide (and the Rehabilitation Code) helped the Court decide whether solicitor attendance at rehabilitation meetings was in principle a recoverable category of costs (para 57).

The Civil Justice Council (CJC) also cited the Guide in their Phase 2 review of Pre-Action Protocols (PAP) in November 2024. The CJC noted that the PAP for Personal Injury Claims began life before introduction of the low value Protocols and was designed mainly for fast-track claims. However, this PAP is now in reality the only Protocol covering higher value personal injury claims and this fact needs to be made clear in any future revision. Of specific note is the recommendation that the rehabilitation section in the PAP should signpost the Serious Injury Guide for damages claims valued more than £250,000 (with application to lower value injuries with an element of continuing future loss by agreement). One of the real advantages of keeping the Guide separate from the Protocol is that it enables users' greater control over the contents of the Guide and its associated escalation process.

We asked Colin Ettinger and Andrew Underwood, who were involved from the very outset in the development of the Serious Injury Guide and its predecessor the Multi-Track Code, to share their views as the Guide reaches its 10th year in operation.

Colin Ettinger said "The Serious Injury Guide enables parties to work collaboratively in respect of claims for damages for people sustaining very serious injuries. This should facilitate early rehabilitation to maximise recovery and improve the quality-of-life. I was involved with and aware of many cases where this was achieved by following the Guide.

It is fantastic that the Serious Injury Guide is so well established. I am sure that this will continue. That opposite sides in civil litigation disputes should work cooperatively must be unique. It has resulted in improving the lives of hundreds of people who have suffered life changing injuries."

Andrew Underwood said "To reach the 10th Anniversary of the SIG is a marvellous achievement for both sides of the industry. It should not be overlooked that the launch of the SIG was the culmination of around 10 years hard graft and negotiation (and copious coffee). It is all too easy to disagree along "tribal" lines, but much harder to find compromise through dialogue and discussion. To see this initiative working after 20 years is testament to the perseverance of APIL, FOIL and the insurance industry. This can only be good news for seriously injured Claimants and Insurers alike. When Colin and I began the journey in 2005 we could not have dared to hope for this level of progress 20 years later."

Future Evolution of the Guide

The strength of any process or guide is the ability to evolve and to adapt over time so that it aligns with reasonable stakeholder needs and expectations. To that end, there are regular meetings of the Steering Committee, which is made up of nominated APIL, FOIL and Insurer representatives. It provides a forum for regular/open dialogue and an opportunity to address problematic areas. For example, the challenges associated with police related disclosure has featured on the agenda in recent meetings and facilitated a joint approach with the National Police Chiefs' Council. The Committee also provides a helpful avenue for escalation where problems arise in the daily application of the Guide.

The Committee is also the mechanism by which the Guide seeks regular feedback from users and signatories – whether via annual survey or stakeholder workshop. We held our last stakeholder workshop in February 2025, providing a great opportunity for legal representatives and insurers across the claims spectrum to come together to explore common ground and solutions for frictional issues that facilitates the currency of the

Guide in the contemporary claims landscape. One of the key objectives of the Committee is to encourage and promote the uptake of new signatories to the Guide. It is also to ensure that all those working for existing signatories are fully aware of the benefits and details of the Guide. There is still an education piece that needs to be done to ensure new handlers seize the benefits that the Guide brings as they move into this area of claims work.

What next for the Serious Injury Guide? There will be plenty for us to discuss with the Ministry of Justice's planned reforms around the law of apologies in civil proceedings in England and Wales. There are also expected and associated changes around duties of candour and the Guide is well placed to facilitate continuing dialogue in this space. Clearly, it has an important role in facilitating and responding to future developments around dispute resolution in the serious injury space. The Steering Committee aims to continue working together to ensure that the Guide remains relevant and beneficial for seriously injured parties, insurers and legal representatives in the years to come.

Claimant firms and insurers wishing to sign up to the Guide should contact Alice Taylor, alice.taylor@apil.org.uk

Equity by Design: Integrating EDI into Digital Justice Frameworks



Steven Brownlee (FOIL Technical Author)

In Brief

The shift to digital justice risks intensifying existing inequalities, making Equity, Diversity, and Inclusion (EDI) central to the design and governance of justice systems. FOIL supports the Online Procedure Rule Committee's (OPRC) Inclusion Framework and pre-action model, which sets out the ambition to embed Equity, Diversity and Inclusion (EDI) in digital justice. However, it cautions that implementation must find a balance in key areas to ensure genuinely accessible online justice for all.

In the digital age, the justice system is transforming to reflect the reality that courts, tribunals, advice services, and online dispute resolution are increasingly delivered or supported via digital platforms. While such developments promise greater access, efficiency and consistency, they also carry the risk of intensifying existing inequalities or

creating new barriers for those already marginalised.

To be effective, Equity, Diversity and Inclusion (EDI) must be central to the design, implementation and ongoing governance of developing digital capabilities to ensure justice is accessible to all. The Online Procedure Rule Committee (OPRC)'s draft Inclusion Framework outlines an ambition to ensure that, as the justice system becomes increasingly digitised, it remains accessible, fair and transparent for all users and provides a valuable model for embedding EDI into digital justice in England & Wales.

While FOIL welcomes this ambition, it raises important concerns about how it will be delivered in practice. In its consultation response, published in September 2025, FOIL's views align with and diverge from the OPRC's position and outline a pragmatic perspective shaped by the realities of implementing digital systems at scale.

Why EDI Matters in Online Justice

Ensuring Fairness and Legitimacy

Procedural fairness is an important element of justice; it is not just about the outcome of legal processes. If groups, such as older people, people with disabilities or non-native English speakers, find themselves systematically disadvantaged by digital procedures due to inaccessible technology, obscure rules or lack of support, the legitimacy of online justice systems risks being undermined. Fairness demands that everyone has a reasonable chance to understand, engage with and use digital justice services.

Avoiding Exclusion

Digital exclusion remains a reality, as not everyone has equal access to devices, reliable internet, digital knowledge, or stable environments that facilitate engagement with

legal processes. EDI ensures recognition that people have different starting points and that, without inclusive design, non-digital options or assisted digital support, the shift to online justice might leave behind those who already struggle with the traditional justice system.

Supporting Vulnerable Users

Many groups face overlapping or interconnected forms of disadvantage, such as poverty, language, physical, cognitive, or mental health impairments, location, literacy, or lack of legal knowledge. Unless diversity is considered and Inclusion is proactively incorporated, digital justice systems can make outcomes worse; for example, disregarding how a person with poor literacy navigates online forms or how someone with poor internet connectivity joins an online hearing.

Trust, Transparency and Accountability

All justice systems rely on public trust, and ensuring Inclusion, transparency, and meaningful feedback mechanisms will help build confidence and belief in their effectiveness. Moreover, EDI demands accountability, so by tracking who is being excluded and why, services can improve, adapt and be held responsible.

Efficiency and Better Outcomes

In addition to being a moral or legal obligation, Inclusion also offers practical benefits. In general, systems become more efficient when services are accessible to more people and have fewer errors or misunderstandings. When this happens, and dispute resolution pathways are clearer, drop-off rates are reduced, and users have a positive experience. Early resolution of disputes, fewer repeated applications, lower operating costs and more confidence in decisions come as part of an inclusive system.

Justice For All

At the centre of both the OPRC's framework and FOIL's response lies a shared commitment to access to justice for all, recognising that digital transformation cannot lead to a deepening of existing inequalities. FOIL fully supports the OPRC's objective to "harness the potential of digital technology" to improve access and efficiency.

The OPRC's Inclusion Framework identifies Inclusion as a "justice imperative", grounded in user-centred design, accessibility by default and continuous improvement through user feedback and data transparency. Furthermore, it calls for digital justice services that remove "physical, cognitive, linguistic and psychological barriers" and make allowances for factors such as data poverty, device limitations, language and trauma.

FOIL echoes these sentiments, with its response endorsing the ambition of universal access and agreeing that system design must have digital Inclusion at its core. FOIL's membership, which is drawn from solicitors and in-house lawyers engaged in complex civil litigation, recognises that fair access underpins the legitimacy of the entire justice process.

FOIL and the OPRC both recognise that Inclusion not only relates to accessibility standards but also ensuring digital systems function effectively for real users, with both emphasising the need for designs grounded in authentic user experience and iterative improvement. Beyond this, however, FOIL cautions that Inclusion cannot be pursued in isolation from the broader practical, structural, and financial realities of digital justice delivery.

Practical Constraints of Implementation

Ambition versus Deliverability

FOIL raises concerns around the scope and deliverability of the OPRC's proposed standards, warning that, while the Inclusion principles are credible, the ambition the framework sets out risks setting a very high bar for successful delivery.

The OPRC sees a system in which public and private service providers align with the same Inclusion standards. Still, FOIL challenges the 'one-size-fits-all' approach, highlighting that the Inclusion of private innovators and niche providers will be essential to digital justice's success, but placing identical obligations on those without the scale or resources of public bodies could perhaps deter innovation and participation.

The OPRC acknowledges this risk, noting that "the extent to which providers may fall away if they are expected to meet these standards... is a dimension to the debate". FOIL amplifies this concern, suggesting that striving for perfection might "deter the good" and that a phased approach allowing providers to progressively build inclusivity into their services may lead to better outcomes in the long term.

Balancing Inclusion with Functionality and Cost

FOIL underlines that Inclusion cannot significantly advance without clarity on funding and integration. The OPRC's framework does not specify how new Inclusion standards will be financed, or whether users might bear some of these costs through fees. FOIL warns that imposing mandates on providers without a clear plan on where funding originates could jeopardise sustainability and affordability, ultimately

undermining the core objective of enhancing access.

Drawing on experience with existing systems such as the Claims Portal, the Official Injury Claim (OIC) platform, and the Damages Claims Portal, FOIL highlights that even well-resourced public digital initiatives have struggled to meet expectations around API integration, user-centred design and data transparency; the level of implementation complexity will determine success.

While the OPRC expects Inclusion to lead to the removal of all barriers, FOIL highlights that this comes with substantial costs; services such as the OIC Help Hub and the Traffic Penalty Tribunal's customer service model demonstrate effective accessibility measures but depend on significant funding. FOIL suggests that similar support models may be unsustainable across multiple, diverse digital justice services without a clear financial strategy.

Assisted Access and Community Support

The OPRC's framework advocates for services that are directly usable by all, regardless of individual capability or resource. FOIL, however, challenges this, highlighting that many users, particularly those with limited digital literacy or access, rely on assisted support from family, community groups or legal professionals. FOIL's perspective is that acknowledging and facilitating this ecosystem of assistance may offer a more realistic model of Inclusion than expecting every user to interact independently with digital platforms.

In this context, FOIL favours a relational model of access, where Inclusion is achieved through support networks and flexible routes, rather than one based on universal self-service. The OPRC framework recognises assisted digital support, but places greater emphasis on designing for independence, potentially

underestimating the value of third-party assistance in real-world access to justice.

Governance, Representation and Consultation

In its Inclusion framework, the OPRC emphasises transparency, accountability and stakeholder engagement. However, FOIL contends that the Committee's current structure, with only a single legal practitioner representative, limits genuine two-way communication between the regulatory process and the legal profession. It recommends establishing a Legal Practitioner Stakeholder Group to provide a formal channel for feedback and ensuring a balanced representation of the claimant and defendant communities.

Although this proposal aligns with the OPRC's principle of inclusive governance, it highlights a practical gap between stated intentions and operational mechanisms. FOIL's position underscores the importance of procedural Inclusion in both user experience and policymaking, ensuring those implementing and navigating digital systems have a voice.

The Challenge of Proportionate Regulation

FOIL and the OPRC both recognise the delicate balance between inclusivity and proportionality; the OPRC's framework calls for "proportionate requirements that support fairness while enabling innovation", whereas FOIL questions whether this balance is achieved in the current draft, given the obligations on providers under both the Inclusion Framework and the draft Pre-Action Model.

In particular, FOIL signals that the Pre-Action Model imposes heavy responsibilities on providers of legal advice and dispute resolution services, potentially beyond those placed on in-person practitioners. Without calibration, these obligations could discourage

private sector participation and constrict the diversity of available services, ultimately limiting user choice.

In contrast, the OPRC positions these responsibilities as safeguards against misinformation, bias and poor user experience. For the OPRC, robust provider standards are the foundation of public trust in digital justice, whereas FOIL's view is that excessive front-loading of responsibility could have the opposite effect and reduce innovation, thereby potentially delaying progress.

The Way Forward

To harness digital justice in a way that genuinely improves access for all, EDI cannot merely be a 'nice-to-have'; it must be an intrinsic element reflected across rule writing, technology, user experience, governance, and outcomes. A well-defined roadmap that sets out clear principles and mechanisms for accountability and transparency will encourage feedback and drive continuous improvement.

FOIL's response to the OPRC Inclusion agenda does not represent opposition, but rather a reframing through a lens of practical deliverability and proportionality. Frameworks must provide strong foundations to ensure that digital justice expands its reach and does so in a way that respects, empowers and includes all members of society.

The OPRC sets out an aspirational framework that introduces universal accessibility, rigorous oversight and transparent data, where FOIL's commentary reflects the experience of legal practitioners with first-hand experience of the challenges implementation can bring.

There is shared recognition that Inclusion must be built into digital justice by design and an endorsement of transparency, user testing and accountability. The differences lie in the

pace, scope and mechanisms by which Inclusion can be achieved. FOIL urges the OPRC to consider a more iterative, collaborative pathway to inclusive digital justice and for early, broad engagement on policy principles before the framework is finalised. Such an approach would embed Inclusion in service design and in policymaking itself.

The OPRC's framework emphasises that Inclusion must be "a living process, tested, refined, and improved" In this regard, FOIL's response is consistent with the ethos of adaptive governance. Where FOIL's emphasis on practical feasibility meets the OPRC's vision for universal fairness, there is the potential for a balanced model of digital inclusion that is ambitious and achievable.



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Why Diversity, Equity and Inclusion makes good business sense



Rohana Abeywardana (Hill Dickinson and FOIL ESG D&I Working Group)

Diversity, Equity and Inclusion (DE&I) are more than buzzwords, they represent a commitment to fair treatment and opportunity for all, both in and outside the workplace. Diversity means to recognise and value someone's differences, equity ensures no individual is disadvantaged by systemic barriers and Inclusion guarantees that everyone, no matter their background, feels welcome and respected.

These ethical pillars of fairness aren't simply moral obligations but serve a very strategic purpose in the professional world, none more so than in the legal sector where upholding the principle of justice and earning public trust is fundamental. At Hill Dickinson, we are committed to building a diverse workforce that offers equal opportunities, enables people to be themselves, and celebrates individuality through education and allyship. Why do we do it? Because we care, because it's the right thing to do, and also because it makes good business sense.

The business benefits to DE&I in a law firm are well established. While the legal sector has made progress, it still doesn't fully represent the diversity within society and ultimately the communities it serves. A representative and diverse workforce offers greater choice, deeper understanding and a better experience to the client. Our commitment to having 20% of our colleagues from ethnic minority backgrounds by 2028 reflects our desire to close this gap. We've already seen progress, from 11.5% in 2023 to 12.1% and while we acknowledge that progress is not as fast as we'd like, we recognise that a longer-term view is needed when looking to make real change. Nevertheless, we are heading in the right direction.

Diverse teams are more effective. Our target of 40% female representation in leadership roles by 2028 (currently at 36.7%, up from 31% in April 2023), reflects our belief in the strategic significance of an equitable workplace. McKinsey's Diversity Wins report found that companies with higher gender diversity are 25% more likely to outperform their less diverse peers in profitability. Where we have achieved a distinct improvement is in female representation among our senior leadership – as an example, our executive board now has a female majority for the first time in its history.

We also recognise that diversity extends beyond gender and ethnicity. In 2024, we partnered with Strawberry Field, a Liverpool-based charity supporting people with learning difficulties in getting into work. Their input has proven invaluable in guiding improvements to our own recruitment practices and provision of in-house support to those with barriers to employment. Through this collaboration, we welcomed an intern into the firm, initially on a 12-week placement who, with tailored support, thrived and went on to accept a

permanent role, adding unique strengths to our workforce.

Recruitment is another area where DE&I clearly benefits. Embedding and embracing a culture free from bias, of tolerance and care, and showcasing that culture externally and internally, both retains and attracts top talent. Through our work with the 10,000 Interns Foundation, Bright Network and Aspiring Solicitors, we recruited 40% of our 2024 trainee cohort from diverse backgrounds. This work earned us recognition from the Chambers Student Guide and a commendation at the Aspiring Solicitors All Star Awards, strengthening our appeal to the next generation of legal professionals. In 2025, we will look to build new university partnerships, particularly with non-Russell Group institutions, to widen access and opportunity even further.

In today's fast-paced world, balancing family life with work can be challenging. Supporting colleagues in achieving a healthy work-family life balance is essential. We're proud to be ranked in the top 10 for family-friendly working practices under the Working Families benchmark. Our enhanced parental leave policies have contributed to an astounding 95% maternity returner rate, and 22% of partner promotions have been made on flexible schedules. Looking ahead, we'll be further enhancing our family-friendly policies, strengthening our existing support groups, and exploring the introduction of fertility benefits and support.

Celebrating our people is one of the most powerful yet perhaps overlooked aspects of DE&I. Recognising and valuing our colleagues' differences and backgrounds is key to embedding a positive, inclusive culture. We've established six networking groups, focused on gender, LGBTQ+, multiculturalism, social mobility, life stages and health. Each Group is

led by a partner, and their aim is to educate, foster allyship, and provide support. Through their work, we have delivered 'lunch and learn' sessions on topics ranging from resilience and neurodiversity to transgender allyship and men's health. We also work with experts in their fields with lived experience to share their stories. All of our sessions have been incredibly well received, achieving an average Net Promoter Score (NPS) of 74, well above the benchmark of 67, with multiple colleagues reporting how powerful and eye-opening these resources have been.

DE&I makes good business sense. It benefits the client, provides law firms with a strong foundation on which recruitment, retention and employee satisfaction are built, and it sets the tone for ingraining a positive culture across the organisation. At Hill Dickinson, we're proud of the progress we've made in diversifying our workforce, but we know there is more to do. The most important lesson we have learned is that patience is key. Reaching our goals is vital, but doing so in the right way, and bringing our colleagues along on that journey, is perhaps even more significant than the end goal itself. It's about living and breathing that commitment and truly practising what we preach.

If you'd like to learn more about DE&I at Hill Dickinson, please contact

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Regulating Mass Redress Litigation: Challenges and Prospects for Effective Access to Justice



Paul Finn (FOIL Technical Author)

The landscape of mass redress litigation in England and Wales has evolved rapidly in recent years, with far-reaching implications for access to justice and the integrity of dispute resolution models. The proliferation of group claims, particularly in financial services and motor credit, has exposed significant regulatory gaps and procedural tensions. Recent legal developments, including the motor credit challenge before the UK Supreme Court, and a consultation by the Financial Conduct Authority (FCA) and Financial Ombudsman Service (FOS), spotlight the urgency of modernising the redress framework.

The Growth of Mass Redress Litigation

Mass redress litigation commonly arises where large groups of consumers seek resolution for systemic breaches, often involving financial products, insurance, or consumer rights. The mechanism typically involves group actions under CPR Part 19,

representative actions, and claims aggregators leveraging digital platforms to facilitate participation. Whilst such litigation enhances claimant access to justice, it also amplifies regulatory scrutiny over fairness, efficiency, and transparency.

Recent Motor Credit Litigation: UK Supreme Court Focus

A pivotal moment in this area was the recent motor credit litigation escalated to the UK Supreme Court, challenging established principles of consumer redress. At issue was whether large-scale group claims in the motor finance sector—centred on unfair commission arrangements in PCP and HP contracts—could proceed efficiently within the existing regulatory and procedural architecture. The case underscored:

- The ambiguity in FCA principles, notably the **Consumer Credit Act 1974** and **CONC (Consumer Credit Sourcebook)**, as they pertain to aggregated complaints and compensation mechanisms.
- Judicial concerns about the management of common issues, eligibility criteria, and the proportionality of mass remedies as outlined by case precedents such as **Lloyd v Google [2021] UKSC 50**, which set important parameters for collective actions in data and consumer law.

FCA/FOS Consultation

The FCA/FOS Consultation on ‘**Modernising the Redress System**’ (2024-2025) aims to address these challenges by proposing:

- Streamlined complaints handling, with clearer guidance on group and systemic complaints.
- Enhanced transparency and accountability in compensation

schemes, drawing upon statutory powers under FSMA 2000 (**Financial Services and Markets Act**) and the **Financial Services Act 2012** for regulatory oversight.

- Recommendations to further empower the FOS to adjudicate mass disputes more efficiently, utilising alternative dispute resolution provisions in **s.225 FSMA and s.404 (Redress Schemes)**.

This (closed) consultation invited input from stakeholders on how to balance consumer access, cost controls, and insurer certainty, recognising the risks of regulatory arbitrage and forum shopping that can undermine system coherence.

Statutory and Caselaw Framework

The statutory underpinnings of mass redress litigation derive from:

The Consumer Credit Act 1974:

Governs consumer lending and unfair relationships, forming the substantive backbone for redress claims in motor finance and related contexts.

Financial Services and Markets Act 2000

(FSMA): Empowers the FCA and creates the architecture for redress schemes and regulatory interventions.

Civil Procedure Rules (CPR) Part 19:

Sets out the parameters for group litigation orders and representative actions.

Relevant Caselaw:

Lloyd v Google [2021] UKSC 50 (collective actions), Merricks v Mastercard [2020] UKSC 51 (certification of class actions), and Smith & Others v Lloyds TSB Bank plc EWCA Civ 418 (consumer redress in banking).

FOIL Update: Mass Litigation Trends

The Forum of Insurance Lawyers (FOIL) in its 27 June update highlighted several trends:

- Continued expansion of mass claims in motor finance, consumer insurance, and financial products.
- Evolving tactics by claims management companies and litigation funders, raising regulatory concerns over claimant protection, cost escalation, and possible abuse of process.
- Calls for statutory reform to clarify the interface between individual complaints, group actions, and the FOS jurisdiction, especially given divergent approaches in recent caselaw.

Regulatory Challenges and Recommendations

Key challenges that persist in regulating mass redress litigation include:

- Harmonising procedural rules and substantive rights to prevent inconsistent outcomes and regulatory layering.
- Ensuring proportionality in remediation - balancing systemic remedies with individual justice.
- Managing insurer exposure and consumer expectations in the wake of evolving regulatory and judicial standards.

Proposed recommendations are as follows:

- Legislative amendment to CPR Part 19 to specify criteria for group litigation in financial products.
- Statutory guidance on the exercise of FOS powers in mass disputes, with explicit thresholds for systemic intervention.

- Periodic review of FCA principles and handbooks, incorporating stakeholder feedback from consultations.

in conclusion, redress litigation is a critical tool for access to justice but presents complex regulatory hurdles. The UK Supreme Court's ongoing scrutiny, coupled with the FCA/FOS consultation, provides an opportunity to recalibrate the redress system to support fairer, more efficient outcomes for consumers and insurers alike. Further reforms should focus on enhancing procedural clarity, maintaining regulatory consistency, and safeguarding claimant protection within the evolving dispute resolution landscape.



Informing Progress - Shaping the Future

Access to justice in Northern Ireland: where things stand and what's on the horizon



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

Access to justice in Northern Ireland is in a period of ongoing change. The Department of Justice (DoJ) has set out a wide-reaching Enabling Access to Justice (EAJ) Reform Programme, with the aim of making services more accessible, proportionate, cost-effective and transparent. The Programme, announced in December 2024 and accompanied by a Delivery Plan consulted on in early 2025, centres on five main themes: improving access, ensuring quality, securing value, managing public funds, and strengthening oversight and assurance.

Observations have been raised that the programme's objectives, though welcome, need more operational detail, timeframes, and funding clarity to translate into measurable impact. This is particularly so

when the policy aims are considered within the environment of tight departmental budgets.

Public legal aid funding

Northern Ireland's legal aid framework has long been a pillar of access to justice, administered by the Legal Services Agency (LSA) on behalf of the DoJ. Recent figures illustrate both the scale and pressure of publicly funded legal services. In 2023–24, 63,881 cases were granted legal aid in Northern Ireland—69% criminal and 31% civil—with total authorised expenditure of £114 million. [Legal Aid in Northern Ireland - Annual Statistics to March 2024 | Department of Justice](#)

Operational strain has been amplified by recent industrial action among criminal barristers in the Crown Court and by case backlogs. While the EAJ programme proposes simplifying eligibility and promoting early dispute resolution, the detail of such measures (such as income thresholds) will require considerable review and as with all public funding, resourcing is an ongoing consideration.

The Role of Alternative Dispute Resolution (ADR)

A critical component of the EAJ reform agenda is embedding Alternative Dispute Resolution (ADR), to include mediation, conciliation, and arbitration, into mainstream justice pathways. ADR has been put forward as offering faster, less adversarial, and often less costly routes to resolve disputes, particularly in family law, housing, and small civil claims. The Department's Delivery Plan signals an intent to expand pre-action protocols and mediation services, supported by legal aid where appropriate, to divert cases from court where settlement is feasible and safe. [Long publishes](#)

[delivery plan for justice reform | The Northern Ireland Executive](#)

The Enabling Access to Justice Programme: Architecture and Ambitions

The EAJ sets out a coherent architecture for reform. On access, it prioritises high-quality information and advice alongside representation; on quality, it stresses standards and accreditation; on value, it seeks models proportionate to case complexity; on public funds, it targets transparent, sustainable spending; and on oversight, it frames stronger assurance of outcomes.

ADR is positioned as a core mechanism for proportionate resolution, with pilots proposed in family and housing disputes during 2025–26.

Digital transformation is a cross-cutting theme: the Department aims to utilise technology to reduce stress, support earlier resolution, and tailor services to need. This potentially includes online mediation portals and secure document exchange systems, ensuring ADR is not confined to physical settings.

Equity, Vulnerability, and ADR Safeguards

The requirements of the justice systems are of course by their nature complex and wide ranging. ADR is not viewed as a suitable forum for all matters. For cases involving domestic abuse, coercive control, or significant power imbalances, mediation can risk harm if safeguards are weak. The EAJ programme commits to screening protocols, opt-out rights, and specialist mediator training to ensure ADR enhances—not undermines—justice for vulnerable users.

Outlook

Northern Ireland's access-to-justice agenda has, a clear narrative, and a consultation-backed delivery plan. Success,

however, will hinge on execution: publishing clear eligibility reforms, sequencing deliverables transparently, establishing funding (including ADR) and measuring outcomes that matter to users of the justice system; speed, fairness, simplicity, and dignity. If the EAJ programme can turn its high-level commitments into tangible improvements it could reset the justice system toward earlier resolution and more equitable access. If not, the risk is reform fatigue amid unrelenting demand and constrained budgets. The next 12–18 months before the next Assembly elections (on or before 6th May 2027) will be crucial.



Informing Progress - Shaping the Future

Irish Commercial Court: Facilitating Efficient and Effective Access to Justice



Rachel Halligan (FOIL Ireland & Partner, Litigation and Dispute Resolution, Dillon Eustace LLP & Fiona O'Connell, Knowledge Lawyer, Litigation and Dispute Resolution, Dillon Eustace LLP)

In Brief

The Irish Commercial Court is tasked with facilitating the efficient resolution of commercial disputes in Ireland. Increased high value and complex cross jurisdictional cases mean its role within the Irish judicial landscape is more important than ever. Its strengths include specialist judges, active case management and procedural efficiencies. The recent Russian aviation cases demonstrate its capabilities in dealing with high stakes international litigation.

The Commercial Court, a division of the Irish High Court, was established in 2004 with the aim of facilitating the efficient resolution of commercial disputes. Over 20 years on from its inception, in a post Brexit world with increased high value and complex cross jurisdictional cases, its role within the Irish judicial landscape is more important than ever.

Landmark insurance disputes, including the Covid-19 business interruption claims and Russian aviation cases, have come before the Commercial Court in recent years, providing the litigants with an effective dispute resolution forum to resolve highly consequential cases.

HOW THE COMMERCIAL COURT OPERATES

The proceedings that can be admitted to the Commercial Court are defined in the Rules of the Superior Courts (RSC) (Order 63A RSC). Broadly, these are cases of a commercial nature where the value of the claim is not less than €1million. Cases are only admitted if one of the parties makes an application for entry to the list and the presiding judge admits the case.

The Commercial Court has broad powers to give directions on the conduct of proceedings (Order 63A Rule 5 RSC) and the court consistently avails of these procedures by overseeing early case management, imposing tight timetables and granting early trial dates.

FRAMEWORK IN WHICH THE COMMERCIAL COURT OPERATES

Besides offering strict case management processes and specialised expertise, the Commercial Court operates within a legal framework that supports the efficient resolution of international disputes. In addition to Ireland being the only common law-based, English speaking, legal jurisdiction in the EU, it also benefits from streamlined procedures for efficient cross border service of documents and enforcement of foreign judgments on account of its membership of the EU and other international treaties, such as the Lugano and Hague Conventions.

RUSSIAN AVIATION CASES

These factors have enabled the Commercial Court to progress cross border, document heavy disputes within a relatively short timeframe when compared with other court lists.

A recent illustration of the Commercial Court's capabilities in dealing with multi-national, multi-party and multi-billion-euro claims can be seen from the proceedings issued by aircraft leasing firms, known as the 'Russian aviation cases'.

Six separate sets of proceedings, which ran parallel to related proceedings in London, concerned a total of 88 aircraft and 2 aircraft engines, with values claimed in the region of €2.5 billion. The proceedings involved allegations that aircraft had been detained in Russia and lost for the purposes of their insurance cover following the Russian invasion

of Ukraine and the subsequent imposition of sanctions against Russia. Novel and complex issues of insurance policy interpretation, the Russian and Ukraine geopolitical situation and the Russian aviation sector stood to be adjudicated in the proceedings.

The six sets of proceedings were case managed together in the Commercial Court and were listed for trial and heard on a concurrent basis. As noted by the court itself, there was an unprecedented number of legal teams involved, reflecting the number of parties, the range and complexity of the legal issues and the monetary amounts at stake.

While five of the six proceedings ultimately settled on confidential terms in advance of a judgment being handed down, in [CDB Aviation Lease Finance DAC & ors v Lloyd's Insurance Company S.A. & ors \[2025\] IEHC 243](#), there remained a dispute over legal costs between the plaintiffs and certain of the defendant insurers (the remaining All Risks insurers) against whom the plaintiffs had discontinued the proceedings after the conclusion of evidence in the trial. The default position is that a party who has a claim discontinued against it is deemed an entirely successful party and, as such, is entitled to an order for its costs, unless the court exercises its discretion to direct otherwise having regard to factors set out in the Legal Services Regulation Act 2015 Act. Despite arguments made inter alia in respect of the conduct of the defendants prior to the proceedings, the maintenance and pursuance of inappropriate points during the hearing (arguments which were strongly resisted by the defendants), and the unusual nature of the aviation proceedings, the court was not persuaded that they justified departure from this default position. Costs were awarded on a party and party basis, to be adjudicated in default of agreement. The court also refused to impose a cap or otherwise limit the costs as it would

trespass on the expertise of the Legal Costs Adjudicator who is statutorily charged with assessing the quantum of costs recoverable on foot of court orders.

Global disputes of this nature will often involve related proceedings being conducted in multiple jurisdictions. Effective access to justice is a key consideration with courts having to balance the right of a plaintiff to have their actions heard and determined expeditiously as against ensuring that scarce court resources and the resources of the parties are not inappropriately wasted by an unnecessary duplication of litigation. These issues were to the fore in [WWTAI AIROPCO II DAC & anor v Global Aerospace Underwriting Managers \(Europe\) SAS & ors \[2025\] IEHC 452](#), another case which involves claims arising from aircraft allegedly lost following the Russian invasion of Ukraine.

Having considered an application by the defendant insurers for a stay in the proceedings in circumstances where related cases are progressing before the English High Court, the Commercial Court, in its judgment in August 2025, declined to stay the Irish action. It held that the default position is that plaintiffs are entitled to progress their case to trial and this would be unduly prejudiced by the fact the Irish court would lack any ability to control, case manage or in any way influence the manner in which the English proceedings progressed. Further, while there was overlap in terms of the equipment and policy documents at issue in the proceedings, it did not follow that the legal consequences would be the same, given the different laws governing the claims. These factors, along with the existence of a choice of law and exclusive jurisdiction clause in favour of Ireland, all contributed to the finding that the plaintiffs were entitled to progress their case to trial without having to await the determination of the English proceedings.

LANDMARK INSURANCE CASES

In addition to the Russian aviation cases, the Irish Commercial Court has also adjudicated on major insurance disputes, with significant consequences for the sector.

In [Flatley v Austin Newport Group Limited & ors \[2024\] IEHC 359](#), the Commercial Court considered provisions of the Consumer Rights Act 2022 for the first time, determining that the arbitration clause in the insurance policy in question was not an unfair term in the consumer contract. The dispute between the parties centred on whether the cost of property damage and alternative accommodation, which arose in respect of alleged defective works carried out on the plaintiff's home, were covered by an insurance policy. The insurer applied to the Commercial Court to refer the proceedings to arbitration, as allowed for under the terms of the policy. Given the importance of arbitration clauses for insurers in terms of managing disputed claims within available dispute resolution models, the judgment was instructive, rejecting arguments that the clause in question was not transparent or lacked clarity. The Commercial Court interpreted the Consumer Rights Act 2022 by applying what it deemed to be the plain and literal meaning of certain provisions and so ensuring the viability of appropriate arbitration clauses in consumer contracts.

The Commercial Court has also dealt with multiple highly complex proceedings relating to business interruption claims following the Covid-19 pandemic. This included a series of judgments in proceedings issued against FBD by four public house plaintiffs in respect of losses suffered following imposed closure under government measures introduced to combat Covid-19. The individual judgments determined inter alia that the relevant peril included imposed closure following Covid-19

on or within a 25-mile radius of the insured premises and that the word “closure” in the policy extended to both a closure of the entire premises and also, to a closure of part of the premises. The judgments also dealt with wider concerns for the insurance sector, including the entitlement of the insurer to deduct payments made to the plaintiffs under government support schemes and the methodology used to calculate the plaintiffs’ losses.

The consequential nature of these Commercial Court decisions was evident in the case [Marlin Apartments Limited t/a Marlin Hotel Dublin v Allianz plc \[2024\] IEHC 550](#), which saw a [second supplemental judgment](#) being delivered after the defendant insurer sought guidance from the court on issues relating to the application of the primary judgment in determining the defendant’s wider liability to other insureds. In the primary judgment, the Commercial Court held that the plaintiff, the operator of the Marlin Hotel, could rely on an extension of its policy to cover losses related to restrictions imposed on 24 December 2020, but the policy was not triggered in respect of two other specified time periods. The findings were fact specific, particularly in terms of the wording of the policy but was nonetheless a consequential decision from the Commercial Court.

HIGH PROFILE AND NOVEL CASES

The Commercial Court’s continued role as Ireland’s court of choice for commercial disputes has been particularly evident this year, with 2025 seeing high profile and novel actions come before it.

a. In [Petersen Energia Inversora S.A.U & ors v The Argentine Republic \[2025\] IEHC 463](#), proceedings were issued seeking the recognition and enforcement in Ireland of a judgment granted by a court in the United States for over \$17 billion against the

Argentine Republic, the largest claim ever sought to be recognised and enforced by the Irish courts. The proceedings in the United States related to a breach of contract claim which arose following the defendant State’s decision to nationalise an Argentinian oil and gas company, of which the plaintiffs were then minority shareholders. The Commercial Court ultimately held that it did not have jurisdiction, finding, inter alia, that the plaintiffs did not demonstrate a solid practical benefit for proceeding in Ireland.

b. Another dispute before the Commercial Court this year, which attracted significant media attention, was the suite of litigation in connection with Web Summit. These cases involved alleged breaches of director’s fiduciary duties and misrepresentation, declarations of shareholder oppression, breaches of a profit share agreement and withheld profit share payments. The proceedings were case managed by the Commercial Court and were scheduled to run for several weeks before ultimately settling shortly after the hearing began.

c. The first case under the Representative Actions for the Protection of the Collective Interests of Consumers Act 2023 (legislation which introduced a new legal framework to enable a ‘qualified entity’ to bring representative actions in Ireland on behalf of consumers), Irish Council for Civil Liberties CLG v Microsoft Ireland Operations Ltd, is currently before the Commercial Court. The case involves claims of unlawful processing of personal data and it potentially will have major implications for future consumer redress in Ireland, particularly in the context of big tech.

WHAT NEXT FOR THE COMMERCIAL COURT

The Commercial Court's strengths include specialist judges, active case management and procedural efficiencies resulting in reduced timelines, which make it an attractive forum for dispute resolution.

While an increase in complex cases as result of, in part, Ireland's growing economy and global commercial activity, as well unforeseen events, can pose challenges in terms of pressure on the court system and its finite resources, steps have been taken to protect the efficiencies of the Commercial Court. These steps include the establishment of other specialised lists (for example, the Planning and Environment List in December 2023, which removed planning and environment cases from its remit), thus reducing the incoming matters, the increased use of court technology, and the appointment of additional judges to the commercial list (the number of resolved cases in the list increasing 18% in 2024). These are positive developments as a properly resourced and well-functioning Commercial Court helps ensure access to the courts and access to timely justice for parties to complex commercial disputes in Ireland.

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



Informing Progress - Shaping the Future

**Rebecca Barton (Tomorrow's FOIL President & Forbes)**

Two years ago, I was asked to take on the role of Tomorrow's FOIL President, this was meant to be a role that would be for a one year seat to help the Executive Group think of ideas as to how we could reach out to the next generation of people and gain an interest in Insurance Law. This, however, became a two-year post and I have enjoyed the role immensely.

I have met new individuals, created new ideas and even played roles in Mock Trials which put me out of my comfort zone. The post has taught me more about the other roles in Insurance Law and that it is not just the legal experts that are involved in this process, there are also many more roles that have a part to play. From this role I am now involved in the Costs Focus Group within FOIL and I became involved in the Equality and Diversity Sub Focus Group, which I am happy to report I will

continue to be a part of even when my time in Tomorrow's FOIL ends.

During the two years myself and the Tomorrow's FOIL executive committee have created further videos for the "So you want to be a partner" podcast that the previous Presidents created. Sarah Davidsworth, my colleague from Forbes Solicitors spoke about her career and how she became the first CILEX Fellow to become a partner. David Mayor also spoke about his career in Sports Law.

I have also had the opportunity to talk about my career and how much I enjoy working in Insurance Law. I didn't start out wanting to join Insurance, my whole time doing my LLB and LPC all I wanted to do was crime. However, since joining Forbes and the Insurance Team I cannot see that I would want to do anything else but Insurance Law; there are so many areas to explore that I find myself working on different matters on a daily basis. I am pleased I have been able to show case insurance law in a better light.

I have been a part of two Mock Trials created by the Immediate Past President Amy Birchall, one took place in Manchester and one in London. This then sparked my idea to host a different one in Manchester; and along with Nine Chambers this was hosted on 9 October 2025. With the help of the barristers at Nine we created a "Tale of two Defendants" showing a trial involving a man falling in the road and trying to claim for compensation, however, on the day the Defendants were victorious. The event was well received, and this has created more ideas for future events that the new President may be able to explore further, so keep an eye out for future events.

I have also attended an event in London called Unlocking Neurodiversity. I have to say that the event has been my favourite out of all of them. Neurodiversity is a big passion of mine due to family circumstances. I am always

willing and ready to learn about how people are assisting others in obtaining work and this event explored this in so many ways.

Sadly, the two years is at an end, and I will miss the role, however I will continue to work with the Tomorrow's FOIL executive committee as Immediate Past President. Continue to look out for future events from the executive committee, I am sure the new President will enjoy the meeting just as much as I have done.

Trade and Industry Partner Spotlight



Baker Tilly's Forensics, Litigation and Valuation Services (FLVS) team is a multidisciplinary forensic accounting and consulting practice:

"Bringing experience and expertise in a broad range of sectors to our clients on every engagement, Baker Tilly's investigative accounting and financial consulting services deliver clarity in the most complex situations."

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In any legal dispute where money is a factor, Baker Tilly's FLVS team possess sector-specific knowledge across a wide range of industries and work closely with legal professionals to determine the financial strengths and weaknesses of a case. These include sufficiency and reliability of evidence, economic assumptions, methodologies, and application of facts.

Our forensic accountants are supported by our forensic technology colleagues who, with computer-assisted audit tools, can extract and examine large amounts of financial data. Where non-financial scrutiny is required, we work closely with our investigation team to provide background research, intelligence gathering and asset tracing / recovery.

Baker Tilly provides lawyers with forensic accountancy support throughout the claim process, from the initial review stage and assessment, document collation and analysis, to reporting for settlement negotiations, as well as the preparation of CPR compliant reports, liaising with Counsel and opposing experts and providing expert witness testimony at trial.

To learn more about what we do and how we work, contact Amanda Fyffe, Principal, at amanda.fyffe@bakertilly.com, or visit www.bakertilly.com.

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Operations Update



Ian Thornhill (FOIL Ops Manager)

Social Media Momentum

FOIL's digital footprint continues to expand, with our main LinkedIn account climbing from 1,238 to 1,316 followers over the last quarter. Tomorrow's FOIL and London Market FOIL also saw encouraging growth, now standing at 74 and 68 followers respectively. This steady rise reflects the growing interest in our work across the legal and insurance sectors.

To mark the 10-year anniversary of the Serious Injury Guide, originally launched in October 2015, we ran a week-long promotional campaign on FOIL's LinkedIn page. The initiative, which coincided with APIL's own anniversary celebration, featured quotes and photographs from key industry figures—highlighting the guide's enduring impact.

Mock Trial Spotlight

While summer brought a lull in events, Tomorrow's FOIL delivered a standout moment with a mock trial hosted in collaboration with Forbes Solicitors and Nine Chambers in Manchester. The case—a gripping injury claim—kept attendees riveted until the judge's final verdict: dismissal.

Special recognition goes to Tomorrow's FOIL President Rebecca Barton of Forbes Solicitors, whose meticulous research and organisation

made the event a success. Thanks also to our participants from Nine Chambers and Forbes Solicitors for bringing the courtroom drama to life, and to Nine Chambers for their generous hospitality. Feedback was overwhelmingly positive, and we're already exploring ideas for future mock trials in 2026.

FOIL Ireland: Upcoming Events

Two FOIL Ireland events are already confirmed:

- 13 November 2025 – Case Management and Pre-Trial Protocols in Non-Personal Injury (Online)
- 4 December 2025 – In-person event at RDJ's Dublin offices, featuring Lisa Kelly BL speaking on Tenders, Calderbanks, and the implications of failure to mediate

More events are in development—watch this space for updates.

Charity Quiz Night: Fun with a Purpose

On 11 September, we hosted our second charity quiz night at 39 Essex Chambers in support of the President's chosen charity, The Insurance Museum. Paul Miller from the Museum served as quizmaster, delighting attendees with a set of quirky, insurance-themed questions. Here's a sample—see how many you can answer before peeking at the answers below:

1. In the 1950s, a ginger cat was insured against risks such as flying boots and fast cars. He played Holly Golightly's pet in which film?
2. Which eight-time Olympic gold medallist insured his legs for \$200 million before the 2012 Games?
3. Which actor took out insurance due to concerns about health risks from weight gain for his role in Raging Bull?

4. A stolen artwork was recovered just before auction at Sotheby's. The artist, known for portraits of Marilyn Monroe and Elizabeth Taylor, was...?

5. Which footballer, famed for the "Hand of God," nearly signed for Spurs—but the £10,000 monthly insurance cost scuppered the deal?

Teams from MDD, DAC Beachcroft, DWF, Keoghs, Kennedys, Baker Tilley, Crawfords, Hailsham Chambers, and FOIL joined the fun. Congratulations to **DAC Beachcroft** for taking home first prize!

Thanks to 39 Essex Chambers for hosting and providing refreshments, and to everyone who attended and donated. Together, we raised an impressive **£1,800** for The Insurance Museum.

Quiz Answers – Well done if you got 5 out of 5!

1. Breakfast at Tiffany's
2. Usain Bolt
3. Robert De Niro
4. Andy Warhol
5. Diego Maradona

Photos from the Charity Quiz



FOIL in the Media (August 2025 – October 2025)



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

Angela Hanmor and Petty Abrams, FOIL Members, of DWF, discussed calls from insurers for further regulation for electric cars in **The Legal Diary**. (1 August 2025)

Mark Huxley, FOIL Member, of Huxley Advisory, discussed turning neurodiversity conversation into action in **Insurance Day**. (1 August 2025)

Laurence Besemer, FOIL CEO, discussed whether insurers can meet the regulator's expectations on climate risk in **Emerging Risks**. (1 August 2025)

Angela Hanmore and Petty Abrams, FOIL Members, of DWF, discussed calls from insurers for more regulation of electric vehicles in **Insurance Post**. (6 August 2025)

Georgia Milton, FOIL Member, of DWF, discussed what councils should know about pothole claims in **LocalGov**. (18 August 2025)

Laurence Besemer, FOIL CEO discussed the PRA climate consultation in the **Solicitors**

Journal and how it raises the stakes for law firms. (21 August 2025)

Laurence Besemer also discussed what the UK's mass litigation boom means for insurers in **Insurance Day**. (26 August 2025)

Laurence Besemer discussed regulators looking to change management of climate risks in **Insurance Day**. (5 September 2025)

Laurence Besemer discussed what the US mass litigation boom means for insurers in the **Modern Insurance Magazine**. (17 September 2025)

William Balfry, Motor SFT, of DWF discussed the Court of Appeal ruling enabling courts to issue directions requiring a claimant to comply with Stage 2 of the RTA Small Claims Pre-Action Protocol in the **Solicitors Journal**. (22 September 2025)

Sarah Cartlidge, Motor and Credit Hire SFTs, of Weightmans LLP, discussed premium hikes exposing cracks in claims handling in **Insurance Day**, following increased pressure from the FCA. (2 October 2025)

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