

The CPD Questionnaire – The Voice issue 16

The FOIL questionnaire is designed to meet Solicitors Regulation Authority CPD requirements for England and Wales. It provides non-accredited distance learning which under SRA CPD rules may meet up to 75% of a solicitor's annual CPD requirement. The questionnaire can also be used by CILEX members: it should be listed as 'In-house training' in the logbook and, where appropriate, can provide CPD within a 'specialist area'.

The questionnaire is based on Update material and is therefore suitable for any solicitor or CILEX member working in the field of insurance law who wishes to keep abreast of current developments.

In order to take part in this month's CPD exercise you will need to read:

- Issue 16 2013, the Voice
- Issue 1 2014, the Voice
- FOIL Update: The Law Commissions consult further on draft insurance law legislation.

These materials have already been circulated and you probably have copies in your inbox. They are also available on the FOIL website in the members' section, under 'CPD materials'. You should then complete the following questionnaire.

You will need to make arrangements within your firm to have your answers marked. Some firms make arrangements for questionnaires to be marked centrally, by the training or PSL team. If this applies in your firm you will receive information internally. As an alternative you can work with a 'CPD buddy': **simply exchange questionnaires before 30 May** with another solicitor or another member of CILEX. On that date the answers will be circulated and you and your buddy can mark each other's questionnaire. If you have achieved a score of 16 out of 18 you have successfully completed the questionnaire and you are entitled to claim CPD for the time taken to read the material and answer the questions. FOIL's aim is for the process to take an hour.

Any comment or feedback on the CPD process is very welcome. Please contact Carmela Clarke on carmela.clarke@foil.org.uk.

The Questionnaire

Please read the Voice, issue 16

1. **Failure to respond to request for ADR is unreasonable**
Which one of the following statements about the case of *PGF II SA v OMFS Company 1 Limited* **is** correct?
 - a. A failure to respond to a request to mediate will always be considered unreasonable.
 - b. A failure to respond to a request to mediate will usually be considered unreasonable but only where a refusal to mediate would also have been unreasonable.

- c. If a successful party has unreasonably refused to mediate, following the Court of Appeal guidance in this case it can expect to be ordered to pay at least part of its opponent's costs.
- d. If a party believes that it has reasonable grounds for refusing to mediate it should provide those reasons at the time.

2. [HSENI consults on RIDDOR](#)

The consultation on RIDDOR published by the HSENI made a number of proposals for change. Which of the following was **not** proposed?

- a. Removal of the reporting obligations for tendonitis and occupational asthma.
- b. An increase in the period of incapacity before events become reportable from three days to seven days.
- c. Removal of the reporting requirements under the Electricity Safety, Quality and Continuity Regulations (Northern Ireland) 2012.
- d. Restriction of the duty to report gas incidents to those that lead to "death, loss of consciousness or taking to hospital".

3. [Asbestos claim allowed to proceed where tissue samples destroyed](#)

Which of the following statements about the case of *Matthews v Collins* is **not** correct?

- a. Mrs. Justice Swift distinguished this case from *Weaver v Contract Services* and *Currie v Rio Tinto plc*.
- b. Although the claim was allowed to proceed, the claimant was criticised for allowing the tissue samples to be destroyed.
- c. The defendant's application in this case was for strike out on the grounds of abuse of process.
- d. The judge advised claimant lawyers to inform their clients and the Coroner's Office that tissue samples should not be destroyed without their confirmation.

4. [Appeal judge rejects CFA naming the wrong defendant](#)

In the case of *Brookes v DC Leisure Management Ltd*, the claimant put forward a number of arguments to try to persuade the court that the CFA was valid despite naming the wrong defendant. Which of the following arguments was **not** put forward?

- a. A term could be implied into the agreement allowing the identity of the defendant to be changed.
- b. Estoppel.
- c. The agreement had been varied.
- d. On the facts, a claim could have been maintained against the named defendant.

5. [Report from the Law Society Civil Justice Committee.](#)

Which of the following statements based on information from the Law Society Civil Justice Committee Meeting is **not** correct?

- a. Even if the DBA regulations are re-examined by the MOJ the indemnity principle is likely to remain in place.
- b. The courts are looking at a system which would enable the data on time-recording systems to be pulled through to Precedent H.
- c. The MOJ will be conducting a brief consultation on whether the 10% increase in damages is being paid in practice.

- d. There is a suggestion that the acknowledgment of service form is to be abolished.
6. [Court of Appeal upholds decision on credit hire agreement signed at home](#)
Which of the following statements on the case of *Salat v Barutis* is **not** correct
- a. The claimant was still able to recover hire charges under *W v Veolia*, as the charges had already been paid.
- b. A cancellation clause is still required in a contract even where the home visit has been expressly requested by the consumer.
- c. The 2008 Regulations still apply where the hire arrangement has been set up on the phone prior to the home visit.
- d. The Court of Appeal declined to decide if a claimant with an invalid agreement could affirm the agreement, rendering himself freshly liable to pay to create a recoverable loss.

Please read the Voice, issue 1, 2014

7. [Tackling fraud in Ireland and Northern Ireland](#)
Which of the following statements best describes the effect of Section 26 of the Irish Civil Liability and Courts Act 2004?
- a. Applying the statute, a court must dismiss the claim if there is any taint of fraud on the part of the plaintiff.
- b. Section 26 is not applied in quite as draconian a manner as is suggested by the wording of the statute but courts are willing to dismiss genuine claims tainted by fraud, on the basis that this does not necessarily create injustice.
- c. In practice, Section 26 operates in exactly the same way as the decision of *Summers v Fairclough Homes* in England and Wales, with the courts very reluctant to create injustice by dismissing a genuine claim.
- d. Despite the tough wording of the statute in practice it is almost unknown for a court to dismiss a claim on the basis of false and misleading evidence.
8. [Costs limited when the claimant fails to use the portal \(even with a consent order\).](#)
Which of the following statements best describes the decision in *Davies v Greenway*?
- a. The Part 7 proceedings commenced in this case had been caused by the claimant's mistakes at the outset. Therefore the proceedings should be treated as if they were, in fact, in the portal with costs limited accordingly.
- b. The consent order in this case allowed for "*The defendant to pay the claimant's costs*". On the basis that this case was within the financial limits for the portal the claimant should have been aware that in agreeing to pay costs the defendant was referring to fixed costs under CPR 45.36, and costs should be awarded on that basis.
- c. Although there was an agreement in this case that the defendant would pay the claimant's costs on the standard basis if not agreed, the 'standard basis' in this case was taken to mean those recoverable under Stage 1 and Stage 2 of the RTA protocol.
- d. The claimant in this case was entitled to a detailed assessment, taking into account all the circumstances. In this case the costs claimed were not reasonable: the appropriate award in the detailed assessment was costs limited to those recoverable under Stage 1 and Stage 2 of the RTA protocol.

9. [Paddling pool tetraplegic injury claim rejected as no duty of care.](#)
Which of the following statements on the case of *Risk v Rose Bruford College* is **not** correct?
- a. The court found in this case that the principles of *Woodland v Essex County Council* did not apply.
 - b. The court found that the concept of a 'protective' duty of care has no application in English law.
 - c. The college did owe a duty of care to the claimant under the Occupiers' Liability Act 1957.
 - d. The claim fell to be decided under the principles in *Tomlinson v Congleton Borough Council*.

10. [Mesothelioma Bill completes Commons stages](#)
What is unusual about the arrangement to pay costs under the scheme set up by the Mesothelioma Bill?
- a. The costs will be a percentage of the tariff payment obtained.
 - b. Fixed costs will be paid using a similar sliding scale to that which applies to cases which exit the portal despite the fact that the sums payable under the tariff will usually be far in excess of the £25,000 limit for RTA, EL and PL claims which have exited the portal.
 - c. The claimant will be able to recover a success fee.
 - d. The claimant will recover a fixed sum of £7,000 regardless of the amount spent on legal costs.

(The Mesothelioma Bill has now received Royal Assent and the Government has announced that tariff payments will be increased to 80% of average civil damages).

11. [Tax changes for LLPs](#)
From 6 April 2014, for an LLP member to be treated as self-employed he or she will have to meet one of three conditions set out in the Finance Bill 2014. Which of the following is not a condition in the Bill?
- a. A substantial part of the individual's remuneration (at least 20%) is based on the financial performance of the partnership as a whole.
 - b. The member has significant influence over the affairs of the LLP.
 - c. The member has the authority to bind the LLP.
 - d. The member's contribution to the capital of the business is at least 25% of their 'fixed pay' and 'performance related pay'.

12. [Legal Ombudsman "increasingly concerned" about CFAs](#)
Having expressed concerns at some of the complaints it is receiving regarding CFAs, the Legal Ombudsman has called for changes and improvements to the CFA regime. Which of the following has it **not** called for?
- a. The introduction of a statutory framework for CFAs, as exists for DBAs under the Damages-Based Agreements Regulations 2013.
 - b. Greater consistency.
 - c. Standard CFAs.
 - d. Re-consideration of use of the term "no win, no fee".

13. [FOIL responds to the Proposed Inquiries into Deaths \(Scotland\) Bill](#)

Which of the following statements **is** correct?

- a. The proposed Bill would introduce a requirement that FAIs are commenced within 12 months of a death.
- b. The consultation has been launched by SNP MSP, Patricia Ferguson.
- c. The proposed Bill sets out that FAIs should be heard by the new Specialist Personal Injury Sheriffs.
- d. The Bill has already been introduced in the Scottish Parliament.

Please read the FOIL Update: The Law Commissions consult further on draft insurance law legislation**14. [The Law Commissions consult further on draft insurance law legislation](#)**

The issues of broker's liability for premium under Sec. 53 of the Marine Insurance Act 1906 and insurable interest are not included in the draft Bill. What is the position on these issues?

- a. The Law Commissions have decided that reform is not required and will take no further action on either issue.
- b. There is a possibility that one or both may be included in the Law Commissions' 12th programme of reform.
- c. There was significant divergence of views in the consultation on these issues and the Law Commissions will be undertaking further work on both before putting forward proposals.
- d. There was insufficient time to finalise the draft wording on these issues prior to the publication of the draft Bill and they will be included in the final draft to be published in June or July.

15. [The Law Commissions consult further on draft insurance law legislation](#)

Which of the following statements on the duty of fair presentation in business insurance is **not** correct?

- a. Under the new provisions insurers will have an obligation to pick up on information provided by the proposer, to make further inquiries where necessary.
- b. A provision is included in the draft Bill to tackle data-dumping.
- c. Under the Bill proposers would be expected to reveal any particular concerns which have led to insurance cover being sought.
- d. One of the most radical changes under the Bill is the new definition of "*material circumstance*".

16. [The Law Commissions consult further on draft insurance law legislation](#)

The draft Bill aims to clarify whose knowledge is relevant in providing information to the insurer. Together with the knowledge of those responsible for the proposer's insurance, who else's actual knowledge will be relevant where the proposer is not an individual?

- a. The CEO and the Board of Directors.
- b. Senior management.
- c. Anyone who has any decision making role within the organisation.
- d. All permanent employees where consultation with them is reasonably practicable.

Informing Progress - Shaping the Future

17. [The Law Commissions consult further on draft insurance law legislation](#)
Under the new proposals what will be the position where a genuine loss is suffered after a fraudulent claim by the insured, before the insurer has taken action to terminate the policy?
- a. The insurer will be liable for both the fraudulent claim and the genuine claim as the policy has not been terminated.
 - b. The insurer will be liable to pay the genuine claim only.
 - c. The insurer will be entitled to treat the policy as having been terminated from the date of the fraudulent act and will therefore not be liable to pay the genuine claim (nor the fraudulent).
 - d. The insurer will be liable to pay the genuine claim only and, unless there are exceptional circumstances, the policy will continue in place until it expires.
18. [The Law Commissions consult further on draft insurance law legislation](#)
On the issue of damages for late payment which of the following statements is **not** correct?
- a. The current legal fiction of "*to hold harmless*" will be abolished under the new proposals
 - b. Under the proposals, factors outside the insurer's control may be argued as a good reason for extending the time for investigating and assessing a claim.
 - c. The proposals will only apply to policyholder claims, not to third party claims
 - d. In non-consumer contracts insurers will be able to contract out of the late payment provisions provided they meet the statutory requirements for doing so.

Name:

Date completed:

Marked by:

Mark:

A pass mark of 16 out of 18 on the questionnaire will be required to obtain CPD.

If you have any queries about the questions and the issues raised please contact your firm's FOIL main contact who will give you contact details for FOIL CPD.

LASPO consultation,
Court cases, Multi-track code, Whiplash claims
Law reform, Golf day, Lord Jackson,
Clinical negligence, Jackson review, Buffer orders,
Costs budgeting, County Court, Practice direction