



# ECONOMICS PREDICTIONS 2025

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## AVIATION

### 1. Calling time on grandfather rights?

Reform of UK slot regulations at Level 3 co-ordinated airports is on the cards for 2025. Proposed changes may call time on grandfather rights to slot allocations (take-off and landing rights) that are perceived to give an unfair advantage to incumbent slot holders and present challenges both to established carriers seeking to expand existing services and to new entrants. The UK's Department for Transport (DfT) seeks to make the UK's slot system "more efficient, dynamic and transparent". In August 2024, the Competition and Markets Authority, the UK's competition watchdog, endorsed the DfT's proposed changes. These include (i) a revision of the 'use it or lose it' rule, (ii) redefining the new entrant rule, and (iii) establishing a clear legislative framework for secondary trading of slots.

### 2. Airlines flying high from '24 to '25

The International Air Transport Association (IATA) predicts 10% growth in passenger numbers in 2024 - back to pre-COVID levels - but with changes in the connectivity provided by airlines globally. 2024 is predicted to be the first year to exceed unique city pair numbers seen in 2019 - rising to more than 22,000 - and with a mirrored increase in the overall value of trade carried. We predict increased connectivity in 2025, particularly for Asia-Pacific markets and Europe-APAC connectivity which has to date been hampered by the war in Ukraine. We also see continued improvements in the global safety profile of the industry. The International Civil Aviation Organisation (ICAO) 2024 Safety Report highlights the preceding year as the safest in the past five years in respect of global accident rate, number of fatal accidents, total fatalities and fatality rate. We anticipate continuing progress, notwithstanding the increase in flight and passenger traffic.

## BERMUDA MARKET

### 3. Momentum will continue to build in 'polluter pays' climate litigation

While activist litigation has been high profile across several jurisdictions in 2024, 'polluter pays' litigation based on contribution to harm caused by climate change will continue to progress. In the US, a series of claims have been issued by states and municipalities against fossil fuel companies, including in *City & County of Honolulu v Sunoco LP*, based on the defendant's allegedly deceptive marketing and its failure to warn of the climate change impacts of its products. A petition filed by the defendant arguing that the claim should be dealt with federally is outstanding in the US Supreme Court and, in June 2024, the Supreme Court invited the Solicitor General to file a brief expressing the views of the US. Other actions do not seek damages, but rather funds for remediation. Outside the US, we continue to watch similar cases brought by individuals (often from the Global South), such as *Lliuya v RWE*, which has now reached the evidentiary stage. This stage itself has the potential to effect substantial change and momentum as further information comes to light. If successful, these claims will result in significant damages awards against carbon majors and precedent for yet further classes of action.

### 4. London arbitration will become quicker, cheaper and more inclusive

Improvements under the Arbitration Bill were reintroduced in the King's Speech. Key proposals include a new general principle to disclose circumstances that might reasonably give rise to justifiable doubts about an arbitrator's impartiality; the governing law of the arbitration defaulting to that of the seat of the arbitration; and the inclusion of an explicit power for arbitrators to dispose of disputes summarily, where a case has 'no real prospect of success'. As a result, we are likely to see applications for summary disposal at an early stage, clarity over the applicable law, and a wider array of potential arbitrators. The key question that should be on all parties' lips when negotiating a contract should be: "what dispute resolution process should we choose? Is arbitration easier to enforce and better for this contract?" For those already facing arbitration, the improvements proposed by the Bill serve as a reminder that there is no 'one size fits all' arbitral procedure and early consideration should reap dividends further down the line.



## 5. COVID claims will progress to reinsurance markets

As the litigated claims for COVID-19 related business interruption losses complete their journeys through the Commercial Court and the appellate courts during 2025, insurers' attention will naturally switch to their own outwards reinsurance recoveries. As losses crystallise, an ever increasing flow of claims into the reinsurance and retrocessional markets will see a spotlight fall on claims presentations to excess of loss catastrophe contracts. Underwritten on a 'Named Perils' basis, the contracts only provide cover for loss caused by the perils specifically listed as covered (in contrast with 'All Risks' coverage, which applies to loss from all causes not specifically listed as excluded). Those contracts typically provide cover for "Natural Perils, including but not limited to..." and "Non-Natural perils as follows" and a key battleground will be whether COVID-19 is a Natural Peril where the list of Natural Perils is typically limited to seismic, flood, weather, and fire related perils (i.e. natural perils that arose by way of physical natural catastrophe).

## CONSTRUCTION AND ENGINEERING

### 6. Construction insurance claims and costs will continue to rise

The number and value of construction insurance claims will continue to rise. While inflation may be slowing, building costs are still expected to increase by 15% over the next five years. Recurring themes include increased borrowing costs, skilled labour shortages and higher material costs. Coupled with rampant contractor insolvency, regulatory changes under the Building Safety Act and ever increasing plant and tool theft, construction insurers could be facing challenging times. With London retaking the top spot for the most expensive place to build globally, and multiple cities across the UK and Ireland filling the top 30, the domestic market will be particularly exposed.

### 7. Insolvency risk remains in the supply chain due to perfect storm of issues

The construction sector is currently susceptible to insolvency. This is due to an almost perfect storm of issues such as debts accrued over the years, repayments of COVID-19 loans, changes in taxation rules, inflationary pressures, increased labour costs, lack of working capital, falling cash flows and 'suicide bidding' to win work. We may also, once again, see an increase in speculative claims being 'shoe-horned' into professional liability policies and greater use of the Third Parties (Rights Against Insurers) Act 2010. That said, we will need to wait and see how the government will react, especially with its intention to meet huge new housing targets, the continued de-carbonisation of the energy sector and its plans around infrastructure. Whether the government will re-introduce a form of Private Finance Initiatives to achieve these aims remains to be seen - but this perfect storm will not be solved without real intervention.

## D&O AND FINANCIAL INSTITUTIONS

### 8. The increase in climate and ESG-focused corporate disclosures will fuel shareholder litigation

The 'anti-greenwashing' rules recently announced by the Financial Conduct Authority (FCA), aimed at ensuring that managers of UK based investment funds are correctly labelling their investment products, are a further example of the FCA's hardening approach to companies that make misleading statements to their customers. With a greater focus on climate and wider environmental, social and governance issues, corporate disclosures and statements are being closely scrutinised for accuracy and they are providing fertile ground for shareholder litigation in England and Wales. Claims are typically pursued under s90 and s90A of the Financial Services and Markets Act 2000, which provide a path to redress for shareholders of listed companies if they have allegedly suffered loss due to untrue or misleading statements. Activists are increasingly buying stakes in companies in order to use their shareholding to hold officeholders to account and challenge corporate behaviour. The increase in regulation, alongside an increasingly active investor population, will continue the growth of shareholder litigation.



## 9. The litigation funding market faces a long wait for clarification

The omission of the Litigation Funding Agreements (Enforceability) Bill in the King's Speech in July 2024 was surprising. The Bill would have reversed the Supreme Court's decision in the PACCAR judicial review and clarified the enforceability of litigation funding agreements (LFAs) by amending s58AA of the Courts and Legal Services Act 1990 and confirming LFAs are not damages-based agreements. The government is set to conclude its general review of the litigation funding sector, including the need for greater regulation and safeguards to protect claimants, by Summer 2025. Uncertainty over the enforceability of LFAs is therefore now set to continue for at least another year. Such a long wait is disappointing for the litigation funding industry and restricts the vital funding options available to individuals and small businesses, potentially preventing them from accessing justice and pursuing claims against better resourced corporations.

## 10. The Economic Crime and Corporate Transparency Act 2023 will put companies and directors under the microscope

Fraud offences in the UK are changing. The Economic Crime and Corporate Transparency Act 2023 (ECCTA) creates a new "failure to prevent fraud" offence, committed when an employee of a large organisation perpetrates a fraud and the organisation has failed to implement reasonable fraud prevention measures. ECCTA also reforms the identification principle, making it easier to attribute criminal liability to corporations for economic crimes committed by a 'senior manager' acting within the actual or apparent scope of their authority. This represents a substantial widening of potential liability, as the definition of senior manager is broader than the board of directors and may include any individual with substantial management authority. ECCTA brings a greater risk of corporate and D&O prosecutions, and therefore organisations must implement robust fraud prevention procedures and safeguards to oversee the conduct of their senior managers. The consequences of non-compliance will otherwise be severe.

## 11. Insolvency practitioners will continue to target directors of failed companies

High levels of corporate failure in the UK mean that claims against directors remain prevalent. Insolvency practitioners seeking to recoup funds for creditors continue to review the actions of directors prior to the insolvency process. The high-profile court decision in 2024 against former directors of BHS was notable for the liquidators succeeding with a novel claim of trading misfeasance in addition to their wrongful trading claim. This decision will give liquidators encouragement and potentially opens a new avenue for recovering assets from directors of insolvent companies and their D&O insurers.

## DATA, PRIVACY AND CYBER

### 12. CrowdStrike incident will prompt system and supply chain cyber incident discussions

Representing one of the most significant global technology outages since NotPetya in 2017, the CrowdStrike incident will act as a poster child to prompt policyholders and insurers to review their policy wordings and coverage where a systemic or supply chain cyber incident has the potential to cause a massive financial impact. Coverage for non-malicious cyber events, including 'system failure' cover, is not always available or purchased by policyholders, and the CrowdStrike incident highlights its need. The CrowdStrike incident acts as a useful case study to review appropriate interruption periods, 'waiting periods' and retentions for non-physical damage BI cover, if purchased. It also prompts future discussion as to where the line is drawn between a policyholder's software and systems, and a managed services provider. Policyholder reliance on systemically important and vulnerable systems is continuing to increase beyond infrastructure and the cloud, challenging insurers to determine appropriate coverage limits and value appropriate premiums.





### 13. Data claims will need to evolve

In the absence of a more generous approach by the courts when assessing quantum and costs, the pursuit of data breach claims on behalf of individuals will prove to be a question of financial risk for claimant representatives. Recent decisions have demonstrated the difficulty in succeeding in data breach actions where minimal distress or loss has been caused to a claimant. Alternatively, claimant representatives may look to pursue actions on behalf of numerous individuals in a class action. However, these actions are by no means a guaranteed route to success. The decision in *Farley v Paymaster* saw a significant percentage of data breach actions in a mass claim dismissed for not meeting the appropriate threshold of seriousness, and *Adams v Ministry of Defence* demonstrated the challenges of using an 'omnibus' Claim Form, where multiple claimants are added to a single claim. The Civil Procedure Rule Committee is considering this method of pursuing multiple claims, and this route may be closed off or narrowed significantly upon further guidance. Nonetheless, we still expect that claimant practitioners will explore other avenues to pursue data breach actions in response to judicial guidance and other pressures, as they have done in the past.

## EDUCATION

### 14. Financial pressures will impact the education sector

We expect to see increased financial pressure on independent schools, colleges and universities, with the possibility that this will lead to some closing, contracting or merging. We are already seeing steps being taken by some universities to cut costs to deal with these pressures and mitigate the reduction in applications from UK and international students. While the government has confirmed that the new Finance Bill will bring in changes to the VAT status of independent schools on 1 January 2025, legal challenges have been launched, along with political pressure to delay any changes until the next school year. These financial pressures and uncertainties will also likely result in an increased number of student complaints, including about the standard of course delivery and withdrawal of courses, as well as employment claims and third party contractual claims.

## INSURANCE ADVISORY

### 15. Proposals to develop a UK captive market will progress in 2025

The new UK Labour government has signalled that it could be receptive to establishing a UK-domiciled captive regime. The London Market Group (LMG), with the backing of brokers, captive managers, insurers and AIRMIC, is calling for a consultation over the coming months to advance a framework to establish London as a leading captive centre, attracting international business and promoting growth. London's existing expertise in insurance creates a trusted and stable environment for new captive formations by UK companies and non-UK multinationals, as well as a skilled workforce, provided that the fiscal and regulatory conditions are favourable and competitive. France has seen significant growth in its captive market in recent years and the UK will need to act swiftly if it wants to avoid being left behind.

### 16. Focus will intensify on neurodiversity in 2025

As the ESG focus swings from environmental and governance issues towards social concerns, and in particular diversity and inclusion, the spotlight will intensify on neurodiversity in the year ahead. This is not just as a matter of social responsibility but as a key opportunity to access fresh ideas and untapped talent for the industry. The Buckland Review of Autism Employment published its report in February 2024, highlighting that 1 in 70 people are autistic and that autistic people face the largest pay gap of all disability groups. There is a wide range of potential barriers to work for autistic people; poor preparation by employers, unfair hiring practices, unclear processes and outdated attitudes all play a role. No wonder only around 35% of autistic employees are fully open about being autistic, with 1 in 10 not disclosing to anyone at work. The report provides recommendations on: initiatives to raise awareness, reduce stigma and capitalise on productivity; supporting autistic people to begin or return to a career; and appropriate recruitment practices and career progression. In order to reap the benefits, a supportive and inclusive environment will need to be provided but tapping into this talent pool is clearly something insurers should continue to work on into 2025 and beyond.



## INTERNATIONAL CASUALTY

### 17. Regulation of litigation funding will increase in the EU and US

Litigation funding in the United States and European Union will face growing regulatory pressures as increased use is balanced with demands for transparency. The long-awaited introduction of minimum standards for funders operating in the EU remains an ongoing task for the European Commission. Although the Representative Actions Directive includes a safeguard against funding agreements compromising the interests of consumers, the need for clear regulatory structures remains necessary. Measures such as disclosure of funding sources and structures are currently jurisdiction-specific, creating the risk of forum shopping. In the United States, an increasing number of states have placed additional controls on the use of funding. We expect this to continue, with measures likely to include licencing funders and increasing transparency of funder identities, agreements and structures. Efforts to introduce federal legislation, such as the proposed Litigation Transparency Act of 2024, have so far been limited.

### 18. The line will blur between moral damages and punitive damages

The growing number of nuclear verdicts will prompt further lobbying by defendant organisations to progress tort reform in the US at state and federal levels. Civil juries continue to award multi-million and billion-dollar verdicts, arguably aimed at punishing defendants rather than compensating claimants. These awards are often significantly reduced on appeal, creating uncertainty for defendants, their insurers and plaintiffs. One such instance saw a reduction in a glyphosate-related cancer claim from \$2.25 billion to \$400 million. Any efforts to reduce awards for punitive damages may prompt reconsideration of other tortious concepts including moral damages. Although punitive damages in civil cases are largely limited to the US, there has been a move towards awarding increased moral damages to reflect serious cases of negligence and the protection of human rights in Latin America, particularly Mexico. In the event of tort reform limiting punitive damage awards, US plaintiff representatives may look to develop a similar concept of moral damages in order to maximise compensation for their clients.

## MARINE, ENERGY AND TRANSPORT

### 19. Technology and data is key to supply chain resilience

Critical supply chains relying on marine transportation in key hubs around the world may face logistical challenges similar to those encountered at the Port of Baltimore earlier this year (when the Francis Scott Key Bridge partially collapsed after being struck by a container ship), causing major disruptions and economic ripple effects on global supply chains. Revisiting guidelines and putting into place robust emergency plans will increase the resilience of supply chains internationally and in turn prevent an increase in ocean freight container shipping rates. Data sharing and the use of AI for managing the inflow of information when redistributing the affected cargo will reduce any negative effects on global supply chains.

### 20. 2025 will see energy being put into arbitrations

COVID-19 and the invasion of Ukraine have disrupted the global energy market and in turn caused several countries to invest in their own oil and gas industries. This threatens walking back on policies to support and grow renewable energy. Such actions have already led to numerous disputes (often subject to 'confidential' arbitration), for example between joint venture partners, and we are likely to see a sharp increase in 2025. For insurers, there is still a risk of price volatility arising from the ongoing invasion of Ukraine, which would have a knock-on effect for energy producers and their insurers, in turn increasing the cost of their policy programmes in respect of critical oil and gas facilities across the globe. While the insurance market - especially the marine and political violence arenas - have stepped up to ensure Ukrainian-linked risks can, where possible, benefit from continued insurance provision, this potential knock-on effect has more wide-reaching consequences.



## MEDICAL MALPRACTICE

### 21. Healthcare reforms will see an ever greater role for the private sector in NHS provision

While details of the government's 10-year plan for the NHS are awaited, the Secretary of State for Health in his speech at the 2024 Labour Party conference gave some insights into his vision, saying that "where there's capacity in the private sector, patients should be able to choose to go there too, free at the point of use, paid for by the NHS". As NHS healthcare provision comes to involve an increasingly diverse range of providers, a treatment error by one sub-contractor could have significant ramifications not only for the injured patient but also for the various parties involved in their care. Private sector providers will need to ensure their contractual and insurance indemnity provisions are robust and that they have good risk management arrangements in place.

### 22. A positive forecast for the Personal Injury Discount Rate?

The Personal Injury Discount Rate (PIDR) review in England and Wales will be complete by 11 January 2025 (and possibly sooner). This will either see no change to the discount rate, a rate change, or more radical changes such as different rates for different periods of loss or different types of loss (e.g. different rates for care and for earnings). Many in the market anticipate the retention of a single discount rate which will be at a positive level compared to the current -0.25%. Support for this view has been taken from the decision (November 2023) in the Isle of Man to adopt a 1% discount rate, based on advice provided by the Government Actuary's Department (GAD) for the UK. The GAD's advice assumed a continuation of favourable gilt yields (which at the time were, and still are, around 1.5% to 2% higher than the GAD's 2019 analysis) and a fall in inflation, economic trends which have continued. Further support for this view can now be found from the 26 September 2024 announcement that the discount rate in Scotland and Northern Ireland will increase (from -0.75% and -1.5% respectively) to +0.5%.

## MOTOR

### 23. Focus on hire and repair costs will continue

The costs of vehicle hire and repairs continue to rise beyond the level of inflation. With the Labour government launching its taskforce to look into the cost of motor insurance, these are two areas that are likely to be a focus. The General Terms of Agreement group has recently announced new rates and work will continue into looking at how the Agreement works and how it can be improved to remove cost and friction. Further progress is anticipated on this in 2025.

### 24. Fraud tactics will continue to evolve

We expect to see continued growth in 'exaggerated loss' frauds, across both injury and damage claims. This expansion goes hand in hand with the layering of claim related costs. There remains a small, but significant, cohort of claims companies and associated enablers who are deploying a business model concerned only with maximising cost generation, regardless of legitimacy or claimant need. Furthermore, insurance application fraud is growing significantly, explained in part by the ever increasing ease of access to software used in the creation of shallow-faked documentation, which can be created using basic photo editing platforms such as Photoshop.

### 25. Appropriate index for inflation changes for next discount rate review?

The reviews of the discount rate in all three jurisdictions began in July 2024, and it is clear that further work will be required to establish the appropriate index for inflation in Scotland and Northern Ireland before the next series of reviews commence in 2029. In Scotland and Northern Ireland the rates, which remain single, were announced on 26 September 2024 as +0.5% for both jurisdictions after the regulations were aligned prior to the review. In England and Wales, the announcement is due on or before 11 January 2025. This is the first review in which the expert panel has been involved and it is yet to be seen where their advice has landed and whether the Lord Chancellor will adopt it.





## 26. Pressure will increase to make motor insurance more affordable

The new Transport Minister continues to push for motor insurance policies to become more affordable, and has launched its taskforce to “identify the factors behind rapidly rising premiums” and “agree solutions to keep costs down”. The Association of British Insurers has already published its ten-point roadmap aimed at tackling costs for all drivers, and insurers are committed to better explaining how premiums are calculated and steps policyholders can take to reduce costs. The move to lower costs will pick up speed next year, especially if inflation continues to sit at around 2% per annum.

## POLITICAL RISK, TRADE CREDIT AND POLITICAL VIOLENCE

### 27. Cold War resurgence will lead to increased focus on insurance cover

Shifts in global alliances may increase the need for and exposure of many insurance lines. A recent joint article by the heads of MI6 and the CIA noted that the world order was currently under a scale of threat not seen since the Cold War. While nations differ on the degree to which Russia is excluded from the global economic and trade system, it is not just the war in Ukraine that has heightened global risk. Ongoing events in the Middle East, together with the resurgence of Islamist extremism in the form of Boko Haram and a resurgent Islamic State, mean the risks faced around the world are numerous and multi-faceted. Insurance plays a huge role in managing these risks to enable trade, commerce and safety to continue and we predict the insurance industry will continue to develop innovative means of cover across the spectrum.

## 28. Organised crime in Latin America will intensify the need for policy wording clarification

As organised crime evolves, insurers need to adapt quickly to address potential legal ambiguities and the growing risk landscape. Certain states within Latin America continue to experience a rise in organised crime, fuelled, in certain instances, by drug trafficking, economic hardship and corruption. Many countries must grapple with cartel-related violence, extortion and kidnappings, further destabilising the region. The political violence insurance sector will, no doubt, have to grapple with the consequences of this rise in organised crime. Insureds often seek cover for organised crime within specialist PV cover; regrettably, these policies often lack precise definition of terms like ‘organised crime’, which can lead to inconsistent interpretations, in particular by the local courts. Greater attention to even standard wordings at the underwriting stage can avoid unexpected results when it comes to these complicated coverage assessments.

## PRODUCT SAFETY, LIABILITY AND RECALL

### 29. Representative actions will find fertile ground in products claims

Both domestic and cross-border class or collective actions across Europe will grow in number in the coming year, with product liability likely to be at the forefront of growth. The gradual and varying transposition of the provisions of the Representative Actions Directive across member states will mean that certain jurisdictions will be identified as more favourable locations for litigation. Those locations with a pre-existing and mature collective redress system may be the initial jurisdiction of choice. For example, the Netherlands has a history of collective redress actions and in 2024, permission was granted for 60,000 women to pursue an action against a breast implant manufacturer. Further significant impact on the risk of national and cross-border representative actions will be felt in 2026 as the updated Product Liability Directive also takes effect in member states. By widening liability to include software and digital processes and reducing the burden of proof on consumers seeking compensation, the prospect of collective redress measures involving product liability will only grow in the coming years.



### 30. Online marketplaces will face increased scrutiny under proposed legislation

Online marketplaces will face increased scrutiny over the coming year as authorities look to prevent the sale of defective, harmful and possibly illegal goods. Despite the obvious attraction of inexpensive products, there are significant concerns over the safety of many items sold. A current lack of clarity over the responsibilities resting with online marketplaces has prompted calls for regulation. In the UK, the Product Regulation and Safety Bill will seek to address this issue, identifying 'online marketplaces' as services on websites, mobile apps or other platforms used to market products, highlighting the varied nature of eCommerce. The draft Bill provides that regulations may impose product safety requirements on persons who control access to or the contents of online marketplaces, or those who act as intermediaries for those persons. The successful passing of this legislation should result in greater equity between physical and online retailers, as well as the expectation of greater enforcement and corrective measures to prevent the sale of unsafe products.

### 31. Cost benefit assessments of new drug treatments on the NHS will continue

The National Institute for Health and Care Excellence (NICE) will continue to be faced with more cost-benefit assessments regarding innovative drugs, following the recent rejection of Lecanemab for use on the NHS. In August 2024, the Medicines and Healthcare products Regulatory Agency approved a product licence for Lecanemab for use in slowing disease progression in the early stages of Alzheimer's disease, after a thorough review of the benefits and risks. Subsequently, NICE ruled out offering the drug on the NHS, finding that the benefits were not of sufficient value to the taxpayer to justify the significant cost of making such drugs readily available on the NHS. In this instance, NICE estimated about 70,000 adults in England would have been eligible for treatment with Lecanemab were it approved. The rejection of its use on the NHS means only a small number of patients will likely access the drug in the UK, and will need to do so privately.

## PROFESSIONAL LIABILITY: ACCOUNTANTS

### 32. There is a risk of mistakes with the evolving and increasing tax burden

The hard choices that the new government said it faced were self-evident in its first budget on 30 October 2024. We saw the manifesto commitments to raise revenue via taxation be implemented in areas such as VAT on private school fees, abolishing the non-dom regime, carried interest (Private Equity) and the Energy Profits Levy. We also saw new taxes, some of which had been trialled and others which were unexpected, including increases in employers' NI, inheritance tax on pensions and agricultural property, increases in capital gains rates, increases in business asset disposal relief and stamp duty on second homes. To balance these additional liabilities against the manifesto's overriding objective to grow the economy, there was greater clarity on the business tax roadmap which includes capping corporation tax at 25% and maintaining the expensing policies. Whether the right balance has been struck between giving businesses enough certainty to have confidence to invest while maintaining flexibility to deal with the inevitable political and economic shocks can only be judged in hindsight. In the meantime, it is the tax advisers who are having to navigate an increasingly complex system to advise their clients on effectively managing and mitigating their tax burden, both in respect of the actual legislative changes and those that are signposted in the roadmap. It is trite but true to say some of these advisers will get it wrong while the new changes bed in.



## PROFESSIONAL LIABILITY: INSURANCE BROKERS

### 33. Underinsurance will continue to plague the insurance market

The problem of underinsurance and the application of average is worsening and professional negligence claims against insurance brokers (for the shortfall in claims payments) are expected to increase. Indeed, a recent survey found that a staggering 46% of commercial properties were likely to be underinsured, with the average shortfall in cover being 40%. There has been significant inflation in rebuild and repair costs (labour and materials) and delays are extending periods of business interruption. Claim payments are being reduced, often significantly, due to such underinsurance. A broker is not a surveyor or valuer, but is under a duty to advise clients on the need to keep the adequacy of building sums insured under regular review, as well as warning of the potential consequences of average being applied where there is underinsurance. Further, the broker must advise on an appropriate length of business interruption insurance for a client's business. Without such clear advice, clients facing shortfalls in claim payments are likely to look to their insurance brokers for compensation.

## PROFESSIONAL LIABILITY: PENSIONS

### 34. Changes are needed to make pensions fit for purpose in the future

Pensions are to fund the cost of living in retirement, they are not savings vehicles to pass on to the younger generation, was the clear message in the first budget by Rachel Reeves. There are three things to take away from this, even before the consultation on the proposed changes is undertaken. Imposing inheritance tax on remaining pension benefits and maintaining the current imposition of income tax will lead to an effective tax rate of around 67%, resulting in wealthier pensioners almost certainly looking to 'spend the kids' inheritance'. This will be a significant shift from the more usual financial advice on this issue. Then, there is the administrative burden and complexity on providers and executors of the new regime and the inevitable mistakes and claims that will emanate from such a significant change. Finally, we can be confident this will not be the last change we will see. The longer-term benefit in tax revenues of imposing IHT on pensions must be in doubt given that the Institute for Fiscal Studies recently concluded that the assumption, that future pensioners will be in the same position as today's pensioners, needs challenging. Although automatic enrolment has helped more people save for retirement than ever before, it leaves the individual investor bearing all the risk, for example on poor investment choices, insufficient contributions and withdrawing too much too early. The current system also does not meet the needs of those unable to work until they reach the currently escalating retirement age or address the unaffordability of the triple lock on the state pension in the longer term or the worrying low levels of the self-employed saving in a pension plan. It is a long list and some of these are issues that the government may well grapple with during the course of this parliament.



## PROFESSIONAL LIABILITY: SURVEYORS AND VALUERS

### 35. The future looks bright for residential surveyors, from a lender claim perspective

Recessions usually cause property values to fall and lender claims to rise. Yet despite fallout from Brexit, COVID-19 and the now infamous mini budget of October 2022, values held firm. Should the recently announced budget changes coupled with falling interest rates, higher stock levels, a relaxation in capital requirements (through the latest Basel guidance), and softening lender lending criteria (loan-to-value ratios and affordability criteria) raise concerns that the benign claims environment enjoyed for the last decade is about to change? Pleasingly, the answer appears to be a firm 'no'. Unemployment levels remain low, first time buyers (50% of the transactional market in the last 12 months) still have the 'Bank of Mum & Dad' and upsizing home-movers are returning, but with prudent caution. Some private landlords or second home owners may be leaving the market due to impending tax changes (both national and local) and ever greater regulation, but they are doing so by choice, not compulsion, and not in sufficient numbers to impact values.

## PROPERTY

### 36. Watch out for further COVID BI activity

The forthcoming year is likely to see further satellite litigation of some importance around COVID-19 business interruption claims. The Court of Appeal is due to hear arguments as to whether the broad approach to causation adopted in the FCA test case (where a single case of disease within a set radius of a policyholder's premises is to be regarded as the effective cause of a lockdown imposed at national level) is translatable across to certain denial of access clauses. This will be a significant point in the evolving litigation surrounding the pandemic, as it should give the industry greater clarity as to whether what the Supreme Court decided in the FCA test case about causation is of broader application outside the ambit of disease clauses, with the potential to have unforeseen consequences for other parts of the policy unconnected with disease losses. Similarly, the Court of Appeal will decide in 2025 whether policyholders must give credit against their business interruption claims for furlough, an issue which could have a very significant financial impact across the industry.

## TRANSACTIONAL LIABILITY

### 37. Transactional risk insurers will continue to evolve their products and claims response to steal a competitive edge


The difficult market conditions mean competition among insurers remains fierce. There are fewer deals but there are still high value premiums to be won as deal makers look for certainty in these uncertain times. We continue to see brokers and insureds press insurers to provide wider, US-style cover. Insurers will need to remain vigilant with their policy wordings to avoid giving more cover than intended. As a result of the broader cover offered, many insurers can expect to see an increase in the number of claims notified, although frequency may not be coupled with severity. On the claims side, insureds and brokers demand almost instant responses and insurers can differentiate themselves by retaining experienced and knowledgeable legal and expert advisers.





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