# REGULATION
## PREDICTIONS 2025

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# AVIATION

## 1. UK VTOLS are go!

The UK's regulatory framework for VTOLs (vertical take-off and landing aircraft) is promisingly taking shape. In September 2024, the Civil Aviation Authority (CAA) announced the establishment of two key working groups and it is now focused on introducing regulations that are in step with other regulators (principally the US and EU) but appropriate for the UK environment. In January 2024, the CAA consulted on (i) the handling rules for VTOL aircraft using battery power for propulsion and (ii) design proposals for vertiports at existing aerodromes. All this bodes well for the UK's ambitions to lead the way in this important sector of the aviation industry, while maintaining its usual high regulatory standards. As outlined in the UK's Future of Flight action plan (a Government-Industry Statement of Intent, published in March 2024), piloted eVTOL flights in the UK are identified as a key aim in 2026 "as a first step to scaled operations and a sustainable industry". The plan envisages a partnership between government, the CAA and industry to forge operational capabilities, physical infrastructure and the nurturing of associated manufacturing and technological development. As we look to the next 12 months, the UK's position of prominence in the VTOL space looks assured.

## 2. Old tech is still good tech

From 1 January 2025, it will be mandatory in the UK for a functioning carbon monoxide (CO) detector capable of alerting via aural and/or visual warnings to be fitted in certain piston-engine aircraft when operating with passengers. The aim is to restore "an acceptable level of safety". CO poisoning has been cited as a factor in multiple general aviation accidents globally. Under CAA Safety Directive SD-2024/001 (V2), which comes into effect from 1 January 2025, the Civil Aviation Authority (CAA) will recognise both aviation-standard and commercial, off-the-shelf CO detectors. As to the latter, there is a wide range of competitively priced, commercially available units intended for use in domestic environments. Although not specifically approved for aviation use, findings from the CAA's 12-month study suggest that these devices can function reasonably at typical recreational GA altitudes.

## 3. Regulating amateur ballooning

UK amateur ballooning looks set for regulatory oversight in 2025. Currently, the UK's Civil Aviation Authority (CAA) neither regulates nor publishes guidance for competition balloon flying in the UK. While guidance is published by the British Balloon and Airship Club (BBAC), the BBAC is a sporting body and not a regulator. A fatal balloon accident in June 2023 is seen as the catalyst for change. The UK's Air Accident Investigation Branch reporting in May 2024 made two safety recommendations to the CAA as regards the need for published safety guidance. On 9 August 2024, the Coroner published a Prevention of Future Deaths Report directed to the CAA and advocating for a review of the regulation of balloon flying in the UK, considering in particular whether there should be regulation of the design, construction, inspection and testing of amateur or home-built balloons, and of competition balloon flying.

## 4. 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.

# BERMUDA MARKET

## 5. 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.

# CASUALTY

## 6. Hillsborough Law duty of candour will be introduced by April 2025

Before any legislation for the proposed Hillsborough Law is introduced, there will be fundamental questions to be addressed, particularly over the implications of the planned duty of candour on the right to silence and the right against self-incrimination. Following the King's Speech and the Labour Party conference, Sir Kier Starmer promised that the Hillsborough Law will be introduced in Parliament before April 2025 to establish a legal duty of candour for public authorities in the aftermath of major public tragedies. Back in 2017 when the original Public Authority (Accountability) Bill was introduced by Andy Burnham MP, its aim was to "protect other families from going through what the Hillsborough families went through and from a similar miscarriage of justice." The Bill fell due to the general election in 2017 and there is currently no draft legislation before Parliament. It is anticipated that any future wording will closely align with that of the 2017 Bill.

## 7. Consultation on contempt of court will generate debate

The Law Commission consultation on contempt of court closed in November 2024, and its conclusions will lead to a longer term debate about the need for change in this area. The wide-ranging consultation reviewed the existing law on contempt of court, considering the need for reform to improve effectiveness, consistency and coherence. The Law Commission proposed that the two-year maximum sentence for contempt should remain. As an important tool for insurers when tackling fraudulent claims, our own response to the consultation agreed with that proposition. The maximum sentence should be applied more frequently if contempt is to be used as a true deterrent, although it is apparent that while Operation Safeguard (on prison overcrowding) remains live we are unlikely to see an increase in the number of or severity of contempt sentences being applied.

## 8. Harassment of bombing victims will prompt legislation

Proposals to establish legislation to deter and punish harassment of individuals through online misinformation campaigns will gather momentum. A recent High Court decision found that two victims of the Manchester Arena bombing in 2017 had been harassed by an individual who claimed that the attack had been staged, and that the victims were perpetrating a hoax along with others as 'crisis actors'. The claim was brought under the Protection of Harassment Act, and the Court concluded that the actions of the defendant represented a reckless abuse of media freedom. In response to the decision, one of the victims proposed a new law to deter individuals from publishing unfounded opinions and allegations in their efforts to challenge official accounts of serious incidents, causing further injury to and promoting harassment of victims.

# CONSTRUCTION AND ENGINEERING

## 9. Project insurance for main contractors will come under the spotlight

In Sky v Riverstone, it was held that the main contractor, who was appointed pursuant to a JCT contract, was not insured under an owner controlled insurance programme following practical completion, because it no longer had any rights or interests in the property insured. That decision has not been appealed. Consequently, main contractors (and their brokers) will need to review and carefully consider both their construction contracts and project insurance arrangements, to fully assess their coverage and joint insurance position in respect of post practical completion losses. Failure to do so could leave them exposed to subrogated actions by project insurers.

## 10. LEG 3 is unlikely to be 'improved'

LEG 3, one of the key defects clauses introduced by the London Engineering Group nearly 30 years ago, has come under scrutiny in two recent US decisions for its alleged ambiguity, particularly in relation to improvement costs. As a result, the LEG committee is being urged by some to revisit its wordings. We anticipate the committee will be more concerned (rightly, in our view) about the approach the US courts took in relation to the meaning of 'damage'. We predict the committee is more likely to address that issue rather than seeking to clarify what amounts to an 'improvement' or undertaking any wholesale redrafting.

# D&O AND FINANCIAL INSTITUTIONS

## 11. 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.

## 12. 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.

## 13. New duty on employers to prevent sexual harassment is likely to lead to an increase in claims

On 26 October 2024, a new positive duty on employers to take "reasonable steps" to prevent sexual harassment in the workplace came into force. Employers must now proactively implement measures to embed a respectful work culture through zero-tolerance policies, staff training on inappropriate conduct, and effective and sensitive complaints handling procedures. Neglecting to prepare for this new duty could lead to an increase in harassment claims and more compensation. If an employee succeeds with a claim for sexual harassment and the employer has breached the new duty, the tribunal can increase compensation by up to 25%. The Equality and Human Rights Commission (EHRC) can also investigate and take enforcement action. Action can be taken based on a suspicion of non-compliance; there does not need to be an incident of sexual harassment before the EHRC will consider exercising its enforcement powers.

## 14. 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.

# DATA, PRIVACY AND CYBER

## 15. Data processors will find themselves under increased scrutiny

Following the Information Commissioner's Office's (ICO) stated intention to issue the first fine to a processor for breach of its obligations under data protection law, processors will look to shift how they document their own compliance, including due diligence when appointing sub-processors in their supply chain. It will also result in many processors likely adopting a more robust position in contracts with controllers when negotiating liability caps for data breaches. Although the final penalty or enforcement notice has not been issued yet, the provisional decision has undoubtedly created a renewed focus and raised potential concerns for processors, reminding them of the importance of things like multi factor authentication. In the event that further fines are levied against processors in the coming year, the rationale behind these regulatory decisions will be awaited with great interest. Any fines issued to private sector or public sector controllers will provide additional understanding on whether the ICO will look to take a harsher line on processors who deliver software and services to the public sector only, or whether the ICO is adopting a wider remit of targeting processors across all sectors.

## 16. Approach to regulatory enforcement will increase divergence between the EU and UK

The approach of the Information Commissioner's Office (ICO) to enforcement, often favouring softer tools in the toolbox such as reprimands, will have a net effect of forcing businesses to take divergent approaches to data protection law compliance in the UK and the EU. We anticipate that this regulatory and commercial divergence will continue, creating both opportunity but also complexity for businesses. The UK's data protection regulatory regime has historically had a reputation as a more pragmatic, business-friendly regime, especially compared with some EU jurisdictions, where the enforcement of data protection law has been more dogmatic. The ICO has continued this more pragmatic approach as evident, for example, in its approach to consent or pay models and conducting transfer impact assessments following the Schrems II decision.

### 17. Cyber security laws will gather pace to keep up with technological developments and the evolving threat landscape

Digital threats are becoming increasingly common, more sophisticated and more impactful as society's digital transformation continues and there is an ever-increasing dependence on digital technology. As a result, cyber security laws will increase both in number and extent. At a UK level, we have already seen the Cyber Security and Resilience Bill introduced in the Labour government's first King's Speech. The Bill aims to "strengthen the UK's cyber defences [and] ensure that critical infrastructure and the digital services that companies rely on are secure" and will expand existing regulations to cover "more digital services and supply chains". In parallel, in September 2024, the UK government classified UK data centres as 'Critical National Infrastructure', a step designed to improve the security and resilience of these engines of the modern economy. Similarly, in the EU, the requirements of the revised Network and Information Systems Directive (NIS2) had to be implemented by EU members states by 17 October 2024, replacing the outdated laws implementing NIS1.

## EDUCATION

### 18. Martyn's Law will significantly impact the education sector in 2025

The aim of the Terrorism (Protection of Premises) Bill 2024 (also known as Martyn's Law) is to reduce/mitigate the risk of terrorist attacks. This will apply to the education sector. When the Bill becomes law it will impose 'standard tier' obligations on those responsible for buildings used for childcare or primary provision and secondary or further education. The government recognises that existing safeguarding policies and procedures mean much has already been done to reduce risk and consequently these types of premises will fall within standard tier regardless of maximum numbers of attendance. The Bill, as currently drafted, draws a distinction between these types of premises and those used for higher education. Higher education premises may well be freely accessible to members of the public, representing a greater risk profile. The sector will need to keep a watching brief on the Bill's passage through Parliament to ensure it is best placed to meet its obligations when it becomes law.

## INSURANCE ADVISORY

### 19. 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.

### 20. 2025 will be a busy year for regulators, carriers and insureds as they embed operational resilience frameworks

Resilience is not just a cyber security issue, but a broader and pervasive concern for all. Many insurers with EU-regulated entities will be in-flight with technology, controls, contractual and organisational compliance activity in readiness for the EU's Digital Operational Resilience Act's (DORA) application on 17 January 2025. DORA and related regulatory activity, such as the UK's Operational Resilience rules and proposed rules regulating Critical Third Parties, reflect concerns over operational resilience risks for the insurance sector, particularly where threat vectors are technology-enabled, as many are. A feature of the new rules is their interest in the mapping of adverse resilience impacts (and firms' impact tolerances to these), and how supply chains may be vulnerable – and not just at the tier 1 level, but all the way down the sub-contractor stack. The CrowdStrike outage in July 2024, which at one point grounded the major US airlines, showed how business-critical systems can be vulnerable to cascading failures originating not from threat actors, but from tech firms.

## 21. The FCA will actively police sustainability claims made by the firms it regulates

The Financial Conduct Authority (FCA) is under pressure from climate activists, like ClientEarth, calling for guardrails to combat the prevalence of 'transition-washing' (the provision of transition finance to entities not genuinely transitioning to align with the Paris Agreement) and the rise in 'greenwashing'. In 2024, the FCA produced a package of measures (widely known as the 'greenwashing rules') to improve the trust and transparency of sustainable investment products. The rules require firms to ensure their sustainability references are fair, clear and not misleading, and proportionate to the sustainability profile of the product and service. The launch of these new rules coincided with the FCA's confirmation that it had opened its first climate-related enforcement investigation against a company – a clear signal that the FCA is looking closely at sustainability claims by firms.

## 22. The FCA will act against firms it thinks are not delivering good customer outcomes

With the passing of the 31 July 2024 deadline for the first Consumer Duty annual report, the FCA will continue to scrutinise insurers and intermediaries to ensure that they are delivering good consumer outcomes as mandated by the Consumer Duty. Key to this is being able to monitor for and evidence good outcomes, rather than relying on an absence of evidence of poor outcomes. With the FCA noting that it continues to see "substandard service levels across insurance sectors", we expect the FCA to continue to keep a close eye on insurers and intermediaries and their compliance with the Consumer Duty. The FCA has also flagged significant concerns about failings on the part of both insurers and intermediaries with their product oversight and governance obligations, finding many examples where firms appear not to be meeting regulatory requirements. We expect to see several insurers and intermediaries being required to appoint skilled persons under s166 of the Financial Services and Markets Act, to assess their product oversight and governance frameworks and identify possible harms that may have resulted from non-compliance.

## 23. IRFS17 - Far from done and dusted

The changes to accounting standards driven by the International Accounting Standards Board (IASB) are far from settled. Insurers are still not happy with the new regime, especially as it imposes a more relaxed regime on banks. The collection of International Financial Reporting Standards (IFRS) has been a long time in the formulation but the changes are now beginning to bite, imposing more demands on the financial and technical resources of insurers. After nearly a decade of arguments between insurers and the IASB, from January 2023 IFRS17, and its cousin IFRS9, imposed new rules requiring the profit on long-term policies to be accounted for evenly across their lifetime. For many insurers used to accruing the profit on policies immediately they are taken out this has required a huge trawl through legacy data and a major adjustment to their balance sheets, not always favourably. For insurers, there are still issues around how alternative assets are treated and the failure to deliver some of the promises around dynamic risk management, especially the restrictions on linking hedging instruments to liabilities. We expect some vigorous lobbying by insurers – led by pan-European trade body Insurance Europe – to get some movement on these points.

# INSURANCE WORDINGS

## 24. COVID-19 decisions will prompt insurers to review policy wordings

In light of decisions addressing the application of various policy wordings to the COVID-19 pandemic, insurers may look to rework policy wordings. Decisions such as the recent Court of Appeal judgment in the London International Exhibition Centre case have thrown a renewed focus on the impact that uninsured perils operating in the wider area around a policyholder's premises can have. While the old Orient Express principle that the policyholder cannot claim for losses which would otherwise have been insured, but for the occurrence of wider area damage, has been consigned to judicial history for three years now, the London International Exhibition Centre case has highlighted the most extreme ramifications of this. Notably, insurers have become liable under clauses which require the peril (in that case, occurrence of disease) to occur at the policyholder's premises, for losses which were essentially brought about by government restrictions imposed at a national level in response to disease across the country. Underwriters may well wish to consider altering their wordings to limit the risk of business interruption coverage being triggered in circumstances not intended to be covered.

## 25. Terrorism definitions invite renewed scrutiny

The recent publication of the Terrorism (Protection of Premises) Bill may prompt a reconsideration of insurance-adjacent issues related to terrorism, including the definition of terrorism currently used by Pool Re. The Bill uses the definition of terrorism as contained within the Terrorism Act 2000, which is materially different from the definition in the Reinsurance (Acts of Terrorism) Act 1993 which set up Pool Re. Clarity and consistency on this topic remain essential if coverage disputes are to be minimised, especially as there are different definitions of terrorism in operation across various jurisdictions.

## 26. Impacts of potentially scaling back the Consumer Duty

Despite continued scrutiny on insurers affected by the Consumer Duty, the FCA is considering possible opportunities to streamline the scope of insurance regulation to reduce the burden of regulation on firms, as set out within the regulator's recent discussion paper DP24/1 on the regulation of commercial and bespoke insurance business. The proposals would also aim to support growth in the commercial general insurance market. The British Insurance Brokers' Association (BIBA), as part of its response, suggested that the removal of larger small and medium-sized enterprises from the scope of the Consumer Duty would help improve the burden of regulation. Although the outcome of the discussion paper is not yet clear, insurers should take time to consider the paper, published in July 2024, and how it might influence their own product development processes themselves, including a continued focus on clear product design, and wordings in particular.

# INTERNATIONAL CASUALTY

## 27. Algorithms and addiction - Action against social media platforms will gather pace

The first bellwether trial against social media companies for addictive product design and other allegations will potentially upend traditional principles on product liability, design of digital products and corporate responsibility. The trial is part of US multi-district litigation brought on behalf of children and scheduled to take place in late 2025. The action alleges intentional creation of products with addictive engagement, driving compulsive use and algorithmic manipulation, resulting in various physical and emotional harms, including death. European regulators, rather than litigators, are challenging social media platforms with the European Commission opening formal proceedings under the Digital Services Act. While we do not expect civil claims to necessarily follow in Europe, the impact of the Representative Actions Directive may alter perceptions on pursuing these types of claims.

## 28. 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.

## 29. Glyphosate resolution may be found in the Supreme Court

Recent successes in strategic glyphosate litigation may prompt Bayer to push for a US Supreme Court ruling that federal law supersedes conflicting state law requiring glyphosate-based products to carry warnings of cancer risks on their labels. During the registration of Roundup weedkiller, the Environmental Protection Agency approved product labelling omitting a cancer warning under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Bayer accepts that current claims may be settled where there is an economic advantage. However, the company publicly states that "a favorable [sic] ruling by the US Supreme Court on the federal pre-emption question could largely end the Roundup litigation".

# LEGAL INDEMNITIES

## 30. The market for legal indemnity products covering leaseholder risks will change

The Leasehold and Commonhold Reform Bill is one of the centrepieces of the government's legislative programme, intended to modernise leasehold tenure and replace it in due course with a new framework of commonhold ownership. Legal indemnity insurers need to consider carefully the risks that will arise from commonhold ownership and design products to cover them.

# MEDICAL MALPRACTICE

## 31. Claims fraud reduction will be an ever greater focus

We continue to encounter incidents of claimants exaggerating their injuries when making claims and in the past year we have secured contempt of court convictions against several claimants in the medical malpractice sector, one of whom was imprisoned for eight months. While convictions do deter dishonesty, more needs to be done. The Law Commission is consulting on whether the law on contempt should be changed. Ideas being considered include allowing convictions based on recklessness rather than full intent, and increasing the maximum sentence cap to more than its current two years. These measures, if adopted, should help reduce claims fraud but there are still many steps to be taken between the consultation and the law being changed

### 32. Hopes continue for fixed costs regime to address disproportionate legal costs awarded in low value claims

A small number of medical malpractice claims do now benefit from fixed costs, these being claims which fall into the intermediate track (broadly, claims where the incident date is on/after 1 October 2023, a full admission of liability is made in the protocol letter of response, and the claim value is up to £100,000). A more comprehensive fixed costs scheme is awaited, which is intended to apply to most pre-action cases valued up to £25,000. Drafting was put on hold during the election. Lord Darzi's recent report on the NHS has commented on the high level of clinical negligence costs, and the political will is probably there still for the introduction of this scheme. Our best estimate is it will apply to cases where a letter of claim is served after April 2025.

## MOTOR

### 33. The Automated Vehicles Act will drive a number of consultations in 2025

The Automated Vehicles Act 2024 passed into law in May. Full implementation, though, will require passing numerous regulations relating to operator licensing, marketing restrictions, information gathering, investigatory and monitoring powers, policing and adjustments to existing vehicle legislation. Many of these regulations will require consultations, starting with one on the foundational safety principles. Expect the publication of the statement of safety principles consultation in early 2025, with other consultations on regulations relating to authorisation, operator licensing and marketing restrictions to follow. Given the importance of insurers having a voice in how the UK's motor fleet and road network adapt to these new technologies, insurers should be prepared to offer detailed and considered responses to the consultations.

### 34. 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.

## PRODUCT SAFETY, LIABILITY AND RECALL

### 35. Product liability reform will become necessary in the UK

The need for product liability reform in the UK is becoming critical. As EU reforms deal with product safety and liability, it highlights the risk of UK legislation becoming inadequate to deal with technological developments. The UK Product Regulation and Metrology Bill, if passed, will represent a significant update to the product safety framework in the UK. However, the draft Bill does not address amending the current product liability regime under the Consumer Protection Act. The 2023 consultation preceding the draft Bill paid lip service to the question of updating the UK's product liability framework when compared to the updated EU Product Liability Directive, which widens liability to include software and digital processes. The need to update UK legislation to reflect technological advances such as products with non-physical elements is a pressing issue. The current absence of specific regulation in the UK for AI generally also creates a legislative gap within product liability, to be addressed sooner rather than later. Again, the lack of clarity invites unfavourable comparison with the European Union where the renewed Product Liability Directive will amend the definition of 'product' to include software, which includes AI systems. We expect steps will be taken this year, which could take a number of forms, such as a consultation with draft legislation further down the line.

## 36. 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.

## 37. 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.

## 38. The MHRA will pave the way with AI Airlock

AI will continue to make a significant contribution to the way healthcare is delivered in the UK in the coming year. The transformative potential of AI is discussed daily but is usually accompanied by the caveat that it must be designed, developed and deployed safely. To deal with these issues, the Medicines and Healthcare products Regulatory Agency launched its AI Airlock project to address the challenges involved in regulating AI as a medical device (AIaMD). The regulatory sandbox model is a recognised mechanism to help address novel regulatory challenges and the AI Airlock applies this to healthcare. The objective is to identify the issues posed by AIaMD and to work collaboratively to understand and mitigate any risks that are uncovered while ensuring the viability of the devices in the pilot. The findings from this partnership between government, regulators and industry will then inform future projects and feed into future UK and international AIaMD guidance. Other sectors will watch with interest.

## 39. 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

## 40. 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.

## 41. Accounting regulation will come to encompass directors

The jurisdiction of the Financial Reporting Council (FRC) is currently restricted to those who audit accounts (the auditors) and does not extend to those who prepare them (the directors). The FRC has long argued for this to be rectified but political lethargy has prevented the necessary legislation being passed. With the change in government, 2025 may see a move to change this situation, with directors being brought within the remit of the body replacing the FRC, namely the Audit, Reporting and Governance Authority (ARGA). The impact this would have on accounting investigations and corporate governance more generally cannot be overstated, and will play out in profound ways over the coming years.

# PROFESSIONAL LIABILITY: CONSTRUCTION

## 42. Dwelling on the past – a rise in claims under the Defective Premises Act

The rise in claims under the Defective Premises Act 1972 (DPA) over the past 12 months is set to continue with more disputes reaching trial as clarification over the parameters of such claims is sought. The resurgence has largely been due to the extended retrospective 30 year limitation period under the Building Safety Act 2022, which has thrust the rarely used legislation into the spotlight. Claims which have long since been time barred are now being pursued based on allegations that defects rendered a property unfit for habitation. There remain relatively few reported decisions on the DPA, leaving construction professionals, their insurers and legal advisors grappling with thorny issues such as whether a property is 'unfit for habitation' on completion and whether liability under the DPA is strict, as opposed to requiring a finding of negligence. A further likely battleground is the definition of 'dwelling' and specifically whether this (and therefore the DPA) applies to properties such as student accommodation and holiday lets.

# PROFESSIONAL LIABILITY: FINANCIAL ADVISERS

## 43. Ongoing services and charges will face further scrutiny

Prompted by the introduction of the Consumer Duty in July 2023, advice firms will face closer scrutiny from the Financial Conduct Authority (FCA) about the ongoing service they are providing in return for the charges they are making. Since the Retail Distribution Review in 2012, financial advisers are only allowed to charge customers an ongoing advice charge if they provide an ongoing service. In February 2024, the FCA commenced a survey seeking information on this from a range of firms. The FCA also raised concerns about the issue when it published its thematic review on retirement income advice in March 2024 and again in its Dear CEO letter in October 2024. In response to this increased scrutiny, and in the face of high levels of claims management company activity in the area, firms are having to consider how to approach ongoing charging in the future and also whether their approach was justifiable in the past. The likely result is going to be reviews of past business and claims seeking repayment of charges.

# PROFESSIONAL LIABILITY: LEGAL

## 44. Compliant onboarding will be a focus for lawyers and the SRA

The Solicitors Regulation Authority (SRA) will continue to focus on anti-money laundering breaches by law firms in the year ahead, but there will also be some new areas of interest. In particular, the SRA has reminded lawyers of their obligation when acting for claimants in group litigation to ensure that they have obtained each individual client's authority to litigate. In response to concerns that lawyers have failed to do so in certain recent high profile litigation, the SRA has issued guidance in this area. While the guidance is aimed at claims relating to financial services products, we predict that it will be applied in any case involving multiple claimants. Given the SRA's proposals to increase its fining powers, lawyers practising in this area will be well advised to heed the guidance and ensure that all clients are onboarded properly and systems are in place to ensure that they receive the same high standard of advice as any other client.

# PROFESSIONAL LIABILITY: MEDIA AND LAWYERS

## 45. Ongoing scrutiny of SLAPPs (Strategic Lawsuits Against Public Participation)

There will continue to be scrutiny on the conduct of claimants and their solicitors in litigation, given the ongoing political and regulatory focus on SLAPPs (Strategic Lawsuits Against Public Participation). The new government has reiterated its support for further SLAPPs reforms (which have cross-party support), following the introduction of the early dismissal mechanism to address SLAPPs in economic crime proceedings under the Economic Crime and Corporate Transparency Act 2023 (with new Civil Procedure Rules awaited to bring the mechanism fully into effect). The Solicitors Regulation Authority - which has joined the government's taskforce on SLAPPs - is also continuing its focus on solicitors' conduct in cases that might be deemed to be SLAPPs, following its thematic review on this issue in April 2024 and its updated Warning Notice to solicitors and law firms in May 2024.

# PROFESSIONAL LIABILITY: PENSIONS

## 46. 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

## 47. The Renters' Rights Bill will impact property managers and valuers

The Renters' Rights Bill will reform the private rented sector, improving rights and conditions for tenants. Abolition of no fault eviction (and revision of the other possession grounds) will make it harder for landlords to obtain possession, which may impact lenders' appetite across the sector, and therefore prices. Valuers will also need to take into account the proposed new minimum safety and maintenance standards, which will affect whether a property can be used for letting purposes. These proposed new home standards will also impact property managers, who will want to avoid exposing landlords to fines and penalties for letting non-compliant property. Risk exposure may be mitigated through appropriate caveats in a property professional's terms and conditions. On a brighter note, it remains to be seen if the Private Rented Sector Landlord Ombudsman scheme results in a decline in litigated claims brought by tenants against agents

# PROPERTY

## 48. Martyn's Law will impact underwriting and coverage

"There will be ongoing discussions on understanding the implications of Martyn's Law." So says the Impact Assessment accompanying the Terrorism (Protection of Premises) Bill which was introduced into Parliament on 12 September. This development may have caught some unawares, despite the efforts of Figen Murray, the mother of Martyn Hett (after whom the Bill is named), to keep the proposed legislation in the limelight. While the Bill's main impacts are likely to be on liability, including public liability and D&O, insurers, brokers and insureds will need to consider the detail of the Bill and its impact on coverage and exclusions in existing property and terrorism policies as well. These could be positive (for example, a reduction in premiums where it is recognised that premises represent a better rated risk as a consequence of having public protection procedures in place) or negative (for example, where there have been identified failings). Certainly, where available for enhanced duty premises and events, underwriters should be obtaining the information prepared for the Security Industry Authority as part of the presentation of the risk. Additionally, the greater awareness of the threat of terrorism could result in more property owners applying for terrorism-related insurance policies.

## 49. 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.

## 50. Insurers will be encouraged by the Insurance Act decision in MOK Petro Energy

The positive decision for insurers in MOK Petro Energy will see section 11 of the Insurance Act 2015 being given a broad interpretation, it not being necessary in that case to establish a direct causal link between the breach of a policy term and the loss, for cover to be limited. Section 11 requires the breach of a policy term to be relevant to the actual loss if it is relied on to limit cover. MOK breached a warranty requiring a surveyor to inspect and certify shore lines connecting to its vessel. Although inspection occurred, certification did not. Insurers sought to rely on this breach to refuse the claim. MOK argued that the failure to certify was immaterial to the loss. It was decided (obiter) that it was necessary to look at the warranty as a whole. Non-compliance could have increased the risk of loss that actually occurred (water contamination). This provided grounds for insurers successfully to refuse MOK's claim.

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