

## **D&O and Financial Institutions Predictions 2026**

### **AI is transforming the financial services industry but its rapid adoption is not without risks**

AI is increasingly being used by financial services companies to drive operational efficiencies through automation and advanced analytics. It has fundamentally changed loan and investment decision-making by enabling the rapid analysis of vast amounts of data about a particular sector, supporting swift, robust and informed decisions. AI has also revolutionised fraud detection, customer service, risk management, and regulatory compliance. While AI delivers significant efficiencies and innovation, its widespread adoption raises concerns about overreliance. Where investors suffer a loss, this can lead to claims against financial institutions that deploy these technologies (as seen in *Tyndaris v WVM*). Oversight and ongoing monitoring are essential to mitigate these risks and ensure responsible use of AI in the financial sector.

### **Climate risk and ESG regulation will continue to drive increased D&O liability in 2026**

Environmental and climate-related risks will remain a central threat to companies and their directors and officers. Regulatory scrutiny is intensifying, driven by evolving environmental, social and governance (ESG) frameworks, mandatory climate disclosures, and enforcement in Europe of the EU Corporate Sustainability Due Diligence Directive. Directors face growing personal exposure to claims alleging mismanagement of climate risks, misleading sustainability statements, and breaches of fiduciary duty. Litigation funders are increasingly backing climate-related actions, including greenwashing claims and shareholder claims. Regulatory bodies are also expanding their remit, targeting boards for inadequate oversight of environmental impacts. As climate risk becomes embedded in financial and operational decision-making, we anticipate a rise in complex, cross-border claims. For multinational companies, getting the balance right will be a challenge. Directors will need to ensure robust governance, transparent reporting, and proactive risk mitigation to avoid claims and exposure.

### **Directors must navigate geopolitical challenges and ongoing volatility in global trade**

Global tariffs, sanctions, energy insecurity, high inflation and supply-chain disruption have created the most challenging trading and economic conditions for many decades. Our interconnected world means company directors need to be aware of the different geopolitical forces at play, and how critical they are to corporate decision-making. Investment and growth strategy, employment, and legal and regulatory compliance are all potentially impacted. Diversity in the composition of the board will broaden knowledge and understanding on how best to guide companies through these economic and geopolitical uncertainties. Investment in renewable energies, AI and innovation may create silver-lining opportunities, as well as enhance corporate strength and resilience in an ever-changing world.

### **The biggest shake up of employment law for a generation will raise significant challenges for UK businesses in 2026 and beyond**

The Employment Rights Bill is a key priority for the UK government and reflects many of its manifesto commitments to strengthen workers' and trade union rights. The first changes will be introduced shortly after Royal Assent (expected late 2025) but there are more significant changes happening in April and October 2026, followed by a raft of changes in 2027, including the abolition of two years' service to bring an unfair dismissal claim, which will inevitably increase claims. In 2026, all businesses will need to deal with trade unions having the right to access their premises as well as having digital access too. They will also have to increase steps to prevent sexual harassment, as well as facing potential liability for the harassment of employees by third parties such as customers, clients and suppliers. Large employers will be expected to produce gender equality action plans in 2027, even though there may be a roll-back on diversity, equity and inclusion in the United States. All these changes are significant and, when coupled with the doubling of employment tribunal time limits from three months to six months, mean the exposure to claims is equally increased.

### **UK government evaluation of class action and litigation funding will seek to balance consumer justice and business impact**

The effectiveness of the UK's opt-out class action regime in the Competition Appeals Tribunal (CAT) is under the spotlight. A decade on from the introduction of the opt-out collective actions regime in competition law, the government has launched a review of its operation. Concerns exist that consumers are not obtaining meaningful redress and businesses are being disproportionately burdened. These have been heightened by the nine year legal battle in *Merricks v Mastercard*, which settled for just 2% of the pleaded claim value, and the CAT's dismissal of its first consumer trial (*Le Patourel v BT Group PLC*) which found that BT's pricing was not unfair or an abuse of dominance. The government is now exploring alternative dispute resolution and voluntary redress schemes to better balance consumer justice with business impact. This review comes swiftly after the Civil Justice Council (CJC) recommended in June 2025 that legislation be introduced swiftly to clarify litigation funding agreements are not damages-based agreements, reversing the impact of the Supreme Court decision in *PACCAR* and the significant uncertainty created. The CJC also recommended the 'light-touch' regulation of the litigation funding market with enhanced regulation in consumer claims. The CJC proposals are likely to lead to continued growth of litigation funding in the UK and provide for a more stable, regulated environment in which funders have confidence in the enforceability of funding agreements.



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