InsureInsight

Insurance Sector Trends 2023

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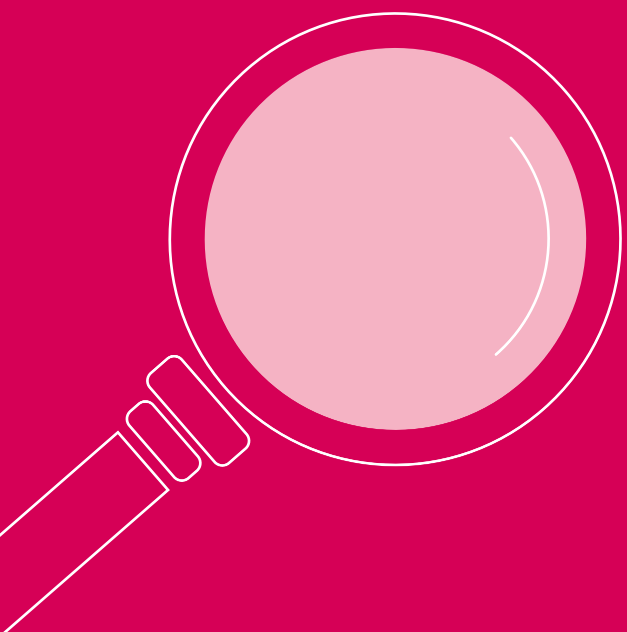
Introduction to insurance sector trends in 2023

In the last few years, the insurance industry has faced unprecedented levels of change and continuous new challenges. As we plan ahead for what 2023 has to hold, we delve in to some of the key trends that we expect to be high on the agenda for the industry this year.

Last year we were conscious that hope for a period of calm following the Covid-19 pandemic may have been optimistic, and so it has proven to be the case as political and economic volatility, not just in the UK but around the world, has followed in its wake, with heightened repercussions caused by the Russian invasion of Ukraine in late February 2022. Indeed there has probably never been a more challenging or uncertain period in our history for the insurance industry.

Many of the themes for the sector we highlighted in **last year's report** continue to be relevant, and indeed have intensified with the addition of new issues that come to the fore amid challenging economic conditions. Further, to compound matters, the challenges of the past two years are yet to subside, with Covid-19 and Brexit still having a significant impact across so many areas of the insurance industry.



With that in mind, the trends in this year's report fall into three key themes:

1. Strategic considerations

Finding the right balance between regulation and competitiveness in the insurance industry continues to be a major strategic theme in this report. Our experts examine recent activity from the industry regulators, further increasing regulatory standards and expectations, and they look ahead to the UK Government's proposals for the relaxation of regulation following Brexit. ESG commitments remain high on the agenda, dovetailing with regulatory requirements, and they must be embedded within the industry to avoid potential accusations of greenwashing. As well as leading the way on ESG reform within their own businesses, there is the opportunity to support policyholders in getting to grips with their own requirements.

2. Areas impacted by the macro-economic climate

Our experts consider a number of emerging issues arising out of the economic downturn. Inevitably there is a heightened risk of economic crime and fraud in such difficult times, and we look at the steps which can be taken to mitigate some of these risks. Further, as part of a general increase in litigation we are seeing a rise in class actions, both in the UK and the EU. We look at the factors behind this rise, the likely growth areas and some pratical steps to consider to protect your business. We also take a look at the fallout from the short-lived Truss/Kwarteng economic policy and the implications from the perspective of tax, investments and pensions.

3. Key business considerations

Finally, it is people who remain at the heart of our industry. Employees, already bruised by the pandemic, are now being hit by another wave of stress and anxiety from the cost of living crisis. Our experts examine the action that can be taken to identify well-being issues promptly and fully support employees. Similarly, customers' priorities and expectations have changed over the past year. Whilst these changes present challenges for insurers, there are also opportunities for those insurers who are agile and innovative in their approach.

Our contributing authors delve into these issues and more in the following pages, and we hope that you find their insights helpful for the decisions you have to make in your own business. We will continue to make all efforts to support you with existing challenges and help you prepare for those emerging.

If you would like to discuss any of the topics raised in this report further, please get in touch with the relevant team member or myself, and we will be delighted to engage in a further discussion or arrange any follow up with you.

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Surveying the regulatory horizon

Regulatory change, and the pace of that change in the UK, is increasingly being driven by a combination of new technologies, continually emerging failures and the result of Brexit.

The last six months have seen a flurry of regulatory activity from the Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA) and HM Treasury. Recent initiatives in the areas of Appointed Representatives, Financial Promotions and the Consumer Duty will have particular relevance and impact in the consumer insurance markets during 2023, although the impact will also be felt across commercial insurance markets.

> The key regulatory changes arise from a desire to protect consumers from activities that may have been ambiguously on the edge of the regulatory perimeter, or represented unfair terms for certain consumer groups.

The collapse of Greensill Capital (amongst other failures) led to scrutiny of both the Appointed Representatives and Financial Promotions regimes, which were found to be lacking.

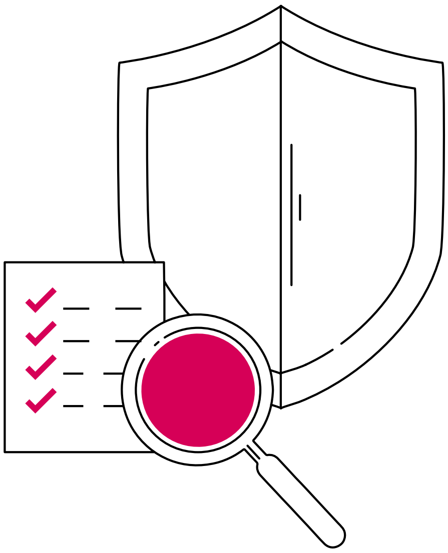
With regard to the Appointed Representatives regime, from December 2022 the widespread use of Appointed Representatives (ARs) in the distribution chain of consumer insurance policies will be impacted. Amongst other new requirements, under the new rules there is an advanced FCA notification process before the appointment of a new AR giving the regulator more opportunity to review and challenge the appointment of new ARs. Further, Principal firms are now required to report both complaints and revenue data relating to their ARs to the FCA on an annual basis, using this reporting as the foundation for determining the level to which the Principal firm should be capitalised to meet the risks presented by its ARs.

Enhanced rules are not limited just to ARs; Introducer Appointed Representatives (IARs) are also affected, meaning that many firms will need to consider whether using IARs remains cost-effective as an introduction channel when trying to have greater oversight over non-financial services firms and staff introducing financial and insurance products.

Financial Promotions changes from February 2023 will place greater control around authorised firms approving financial promotions on behalf of others and will see a range of increased requirements under the regime, including the introduction of a Gateway through which firms must be authorised to approve third party financial promotions. The new rules will also introduce greater restrictions to the nature of how and to whom some financial promotions may be marketed.

Lastly, the Consumer Duty is set to be one of the most impactful pieces of regulation seen in the UK since the inception of twin-peaks regulation. It will have far reaching implications for providers of both new business and those with closed-books. Many are perturbed by the likely cost of meeting the evidential standards expected by firms under the Duty, particularly in how to demonstrate one of the Four Outcomes relating to Price and Value.

> By contrast while the tone of the regulators to date has been to further increase regulatory standards and expectations, that of the UK Government, in the wider context of financial services, has been a message of relaxing regulation in a number of areas.



Early announcements communicated changes to aspects of the Solvency II regime that should benefit insurers and the UK economy as a result of the UK no longer following EU insurance regulations. This is one of a number of areas where the government has announced its intention to on-shore regulation and diverge from Europe.

It has been sign-posted that in 2023 HM Treasury, the FCA and the PRA will be considering further devolution from EU rules post-Brexit. In recent weeks announcements have been made in respect of the potential relaxation of further UK regulatory requirements, such as those under the Senior Managers & Certification Regime (SMCR), in a bid to enhance the competitiveness of the UK and help the nation to reclaim its previous status as being one of the leading places in the world for financial services and insurance.

The year ahead certainly looks eventful from a regulatory perspective and while much of what is on the horizon is clear, there are a number of developments yet to come into sharp focus.

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The sector through a regulatory lens: Governance, misconduct and greenwashing

As the Prudential Regulation Authority takes a closer look at governance across carriers, Lloyd's of London step up their enforcement investigations into non-financial misconduct, and the FCA looks to prevent "greenwashing"- market participants should prepare for some form of scrutiny.

Governance controls

Appropriate governance, oversight and risk management controls are the bedrock of regulated firms and are a means for senior management to manage and mitigate the risks facing the business, as well as their own regulatory obligations under the Senior Managers regime.

The Prudential Regulation Authority's recent investigation of a carrier into the governance and oversight of underwriting, underwriting controls, management information, data quality, and risk management strategies highlights that governance remains a key topic for regulators. It also demonstrates that the PRA are prepared to flex their own investigative and enforcement powers. Dual-regulated firms need to ensure that their governance systems and controls are proportionate to the assessed risks facing the firm, open to effective challenge and allow for commercial decision making.

Non-financial misconduct – it is not the intent, but the impact

Lloyd's is likely to remain active in investigating and commencing enforcement action against market participants for non-financial misconduct, in particular behaviours including discrimination, harassment and bullying (following in the footsteps of the FCA). Such investigations will consider the behaviour of senior individuals as well as the overall culture of firms to 'police' poor behaviour, and create working environments where all staff feel respected, safe at work and valued.

A number of current investigations look at historic misconduct, but Lloyd's has also shown itself to be proactive, and has been known to commence instant investigations in response to allegations.

Firms should consider how staff, in many cases relatively junior employees, can report misconduct through whistleblowing hotlines as well as providing welfare support networks. Training remains key, so all levels of staff can understand how their behaviours may impact on others, as it is not the intent but the impact that should be the focus.

Greenwashing - managing the regulatory risks

Greenwashing is the process of making exaggerated, misleading or unsubstantiated claims about ESG credentials in products. The FCA wants to ensure that consumers and firms can trust that products have the sustainability characteristics they claim to have.

The FCA considers themselves to be raising the bar by setting robust regulatory standards to protect consumers in line with its business strategy. So, what does this mean for insurers?

While ESG presents opportunities for corporates it also brings with it a number of regulatory risks that should be properly considered and managed.

Following the introduction of the FCA's proposals in June 2023, there will inevitably be an increase in regulatory enforcement against both corporates and individuals for non-compliance with ESG rules and a greater volume of claims made under existing Directors and Officers policies.

Insurers should speak to their policyholders about ESG issues and encourage them to take steps to stay ahead and manage risks effectively.

There are a number of steps that corporates and senior executives can take, including:

- Due diligence: Develop an understanding of what ESG means and map incoming changes across the business, as well as identifying where potential risks may arise.
- Appropriate risk management and internal governance: Conduct a risk assessment and establish policies and procedures, specifically relating to ESG issues and risks.
- Training: Ensure that adequate training is delivered internally at all levels, including in relation to regulatory expectations regarding ESG issues and the associated risks.
- Developing effective responses to ESG complaints, concerns and issues including a suitable remediation programme.
- Tone from the top: Senior executives should develop sufficient knowledge to help better inform their decision making on ESG matters and should take suitable steps to evidence that analysis has been conducted as part of the risk management process.
- Investigate and remediate: Should a potential or actual regulatory breach be identified, corporates should conduct an investigation to establish whether a breach has occurred and determine whether improvements need to be made to its existing systems and controls.

In summary, there has been no shortage of enforcement action and investigations over the last year, and the same will be true of the year to come. Governance, non-financial misconduct and greenwashing are likely to be key issues for insurers in 2023 and beyond as the PRA, FCA and Lloyd's demonstrate their interest in all three.

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Data protection and cyber security risks: Ransomware, reforms and reprimands

In 2023 data protection and cyber security will continue to represent a key area of business risk for insurers. The legislative landscape is changing, the regulator has changed its enforcement strategy and ransomware is evolving.

Beneath a surface layer perception of data protection and cyber security being in a relatively stable state of 'business as normal', there are in fact several issues threatening to bubble up during 2023 and beyond that represent new and changing areas of risk for insurers.

There are three key areas of importance for insurers to understand and consider in more detail:

1. Ransomware and cyber risk

The first area of risk that is particularly worthy of highlighting is ransomware and cyber risk more broadly. The fact that ransomware has been a present risk for some time only serves to underline its criticality. The persistence of ransomware as a significant threat, particularly for the financial sector, brings with it a danger of complacency. The key point here is that the threat is not static and resilience to the strains of ransomware from 18 months ago may result in a false sense of confidence when considering current variants.

In 2023 we can expect to see further examples of Threat Actors evolving their tactics to bypass controls, such as Multi Factor Authentication bombing and increasingly sophisticated social engineering. This is against the backdrop of an increasingly complicated patchwork of new legislation* and regulations that include cyber security obligations and which may impact data controllers including insurers, if not directly then indirectly, via claims against policyholders.

2. Data protection legislation

The second area is the proposed reform of data protection legislation by replacing the UK General Data Protection Regulation (GDPR). The Data Protection and Digital Information Bill still awaits its second reading in the House of Commons following a period of significant political upheaval. However, the government has signalled that it remains committed to the removal or reform of EU Regulations, including the GDPR, by the end of 2023. If the reforms as currently drafted (or similar) come into force, then although one of the touted benefits is a reduction in the compliance burden, there are a number of areas of potential additional risk, including:

- Aligning the maximum level of monetary penalties under the Privacy and Electronic Communications Regulations (PECR) with the GDPR. This would mean increasing the current maximum of £500,000 for direct marketing or cookies breaches to £17,500,000 or 4% of total annual worldwide turnover.
- Providing the ICO with increased investigatory powers, including the power to commission its own technical reports and to compel witnesses to attend for interview.

In addition, the implementation of the proposed reforms will not alleviate the requirement for UK data controllers processing personal data of EU citizens to continue to comply with the EU GDPR as well.

3. ICO enforcement strategy

The third area of potential risk concerns the recent perceived changes to the ICO's enforcement strategy. There are two points worth considering in relation to this shift in approach:

- Until recently, data breach notifications submitted to the ICO that do not result in corrective or enforcement action have been kept confidential. This has changed and the ICO now publishes data on its website, naming organisations who have submitted data breach notifications. The publication of this information will be an additional risk factor for data controllers to consider.
- The ICO has also adopted the policy of now publicising any reprimand that it issues. A reprimand will state that the ICO considers that an organisation has not complied with its data protection obigations and will include recommended actions, which might also require the organisation to report back to the ICO on the progress of those actions. Whilst a reprimand might appear a less severe penalty than, for example, a sizeable fine, the publication of potential failings may bring with it reputational risk and increased litigation risk.

In conclusion, whilst there are areas of data protection risk such as low value data breach claims where the the outlook for insurers this year is comparatively positive (in light of recent case law), there are other evolving risk areas such as those highlighted above that warrant an increased level of understanding and preparedness.

*Including:
Product Security and Telecommunications Act 2022
Data Protection and Digital Information Bill
Digital Markets Act
Digital Services Act
Digital Operations Resilience Act 2022
EU Artificial Intelligence Act
Network and Information Systems Regulations 2.0
Telecommunications Security Act 2021
Financial Services and Markets Bill

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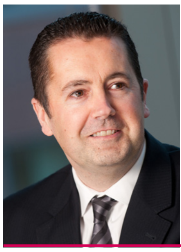

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Diversity and inclusion during a cost of living crisis

Insurers, as employers of large workforces, should be encouraged to consider the cost of living crisis through a diversity and inclusion lens, with mental health, disability and ethnic minorities particularly in the spotlight. We explore practical and inexpensive suggestions on how to help colleagues in particular need.

Costs are rising faster than wages, weekly shops and energy bills are taking up larger proportions of people's incomes and inflation is running at over 11% (at the time of writing).

As employers of extensive workforces insurers, now more than ever, need to look at the impact of the cost of living crisis through a diversity and inclusion lens, and specifically upon mental health, employees with disability and ethnic minority employees.

In terms of mental health, the cost of living crisis can result in feelings of fear, frustration and sadness in colleagues. Paying staff more may not always be possible but employers can still have a positive impact and can, by way of one simple example, provide quiet rooms for employees to take urgent calls (many financial advice centres only open between 9:00-17:00) and accommodate more flexible/remote working which has become the norm since the Covid-19 pandemic in any case. There is also the issue of culture; avoiding late night emails, allowing staff to take breaks (and making sure they are taking breaks), checking in on staff in private, providing managers with training to spot when people are struggling with their mental health, making sure there is recognition for good work and proper workplace mental health support.

Colleagues who have previously been through challenging economic difficulties themselves might be encouraged to share practical advice and tips.

> Employers must be prepared to offer support to everyone, not just the people that you think obviously need help, and do so regularly as situations can change quickly.

There are certain red flags that employers ought to be aware of; requests for overtime or additional hours, employees opting out of the company's pension scheme and employees declining social invitations (like drinks after work). Other red flags might be requests to work from home permanently, or staff coming into office locations more frequently - perhaps to avoid having to pay the cost of heating their own home.

People with a disability may be more adversely impacted. The specialist equipment that some disabled people use can consume a lot of electricity and for carers there may be increased travel and heating costs. Employers should be encouraged to think more about the adjustments that they are offering colleagues with disabilities and carers, such as permitting working different hours, working from home and from different locations, and making sure that disabled employees have the right equipment, ergonomically designed chairs, etc.

Other things that employers can do to assist:

- signposting debt advice services;
- offering pension surgeries;
- make sure that domestic abuse help is available and made known to employees;
- subsidised canteens and free hot drinks;
- open door policy with line managers so employees can share their difficulties;
- discount vouchers for eyesight and dental check-ups;
- workplace swap schemes for clothing and children's school uniforms;
- if possible, additional paid hours; and
- fundraising work for local charities.

Employers should also recognise that the cost of living crisis affects everybody but does not affect everybody equally, and research shows that the challenging economic environment disproportionately affects people from ethnic minority backgrounds. Research has further shown that people working from ethnic and diverse backgrounds are twice as likely to have been told they will not be getting a pay rise this year (19% compared to 10% of white professionals).

People from ethnic minority backgrounds are also more likely to experience stagnant wages and therefore greater economic hardship. There is a call to make businesses accountable for pay disparity. We have already had monetary gender pay gap reporting, which has helped with balancing pay between men and women, but there is now growing demand for monetary ethnic pay gap reporting on the grounds of race.

In these challenging times for both businesses and their employees, understanding and being pro-active in considering the above issues is worthwhile to ensure a supported and engaged workforce.

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A year on...what has changed for insurers and ESG?

In last year's Insurance Sector Trends report, we provided our thoughts on what the future of ESG looks like for insurers. Here we will look at what has developed over the last 12 months and what is coming down the track.

To start where we left off in **last year's report**, much of the focus of our update was on the Net-Zero Insurance Alliance (NZIA), an initiative led by 15 leading insurers and reinsurers to take charge and accelerate the transition to a net zero economy.

So how is it going?

The NZIA opened a public consultation period on 31 October 2022 for Version 1.0 of the Target-Setting Protocol – the first ever for re/insurance portfolios which will be a huge step forward. The NZIA now has over 29 members representing over 14% of the world's premium volume globally. So clearly things are taking shape and it will be interesting to see how this progresses throughout 2023. The insurance industry continues to lead on the net zero agenda and key organisations are determined to drive higher ambition and effect action across their scope of influence.

Climate and nature – one agenda

Whilst the shared global imperative is to reach net zero carbon emissions by 2050, with many companies focussing on reducing emissions across Scopes 1, 2 and 3, the importance of biodiversity loss and the lack of similar focus on this agenda has come into stark focus in the last 18 months. By not considering the importance of nature in helping mitigate and adapt to climate change we have an incomplete approach. At COP27 this year, that was very much the message on Biodiversity Day.

There is likely to be more emphasis on insurers and other financial institutions in 2023 to reflect the value of nature within their targets and commitments. This will only pick up more momentum by the introduction of the Taskforce on Nature-related Financial Disclosures (TNFD) which follows similar recommendations to the Taskforce on Climate-related Financial Disclosures (TCFD), which focusses on nature as opposed to climate.

Various consultations have been taking place throughout 2022 and will continue into 2023, with the aim to formally launch the framework in September 2023. The initial thoughts are that financial institutions will be the first who will need to disclose.

Whilst the TCFD has been in place for around 7 years, it has only really started to get traction in the last couple of years since it was mandated (in April 2022 a further 1,300 companies became mandated). We expect the trajectory of the TNFD to move at a far greater pace and companies would do well to prepare and consider their impact on nature alongside climate in readiness for reporting, but primarily due to the critical point we have reached on both climate change and biodiversity loss.

SMEs call for help

UK SMEs represent 52% of UK turnover, and 60% of UK employment. SMEs globally represent 90% of businesses. They are therefore responsible for considerable emissions worldwide, yet are particularly challenged by effecting and understanding low carbon transition and the role they play.

Without SMEs committing to reducing their emissions a net zero future is very unlikely and it is incumbent on larger organisations, especially those that support SMEs such as insurers, to support in transition. Companies that work with a large number of SMEs (insurers being one of them) are urged to lead by example and help others to understand what they need to do.

Whilst insurance organisations such as the NZIA are leading the way on ESG reform and action, many others still have a hill to climb on their own efforts. However, given the level of influence that they could have and the increasing regulation they are subject to, insurers are more equipped than others to rise to the challenge and need to do so. Insurers are fairly unique in their ability to drive change but in doing so will have to ensure they account for their own footprint. In 2023 it is likely there will be more focus on what insurers are doing to support SMEs.

The “S” Factor

Insurers are now rethinking their social impact in terms of underwriting and investment decisions, coverage for underserved populations and emerging risks throughout the supply chain, which includes human rights violations. It is likely social value will be further dovetailed into ESG throughout 2023.

It is estimated that insurers globally contribute $5-5.5 trillion per year to financial resilience through insurance claims and benefit payouts, so clearly this is something that the industry will be keen to get right.

A report from The Geneva Association in November 2022 has suggested insurers follow a similar approach to carbon disclosures for greenhouse gas emissions but to assess “social footprint” instead:

- Scope 1 – an insurer’s social impact on its employees.
- Scope 2 – an insurer’s social impact on communities.
- Scope 3 – an insurer’s social impact across businesses.

Trust in big businesses, including in insurers, remains a challenge. Both affordability and trust has led to an increasing gap in coverage as the gap between rich and poor rises globally. It is estimated that the global protection gap will be $1.86 trillion by 2025, which could be catastrophic. The hope is that if insurers can demonstrate their social impact, as well as environmental impact, there is a possibility that trust can be rebuilt and the gap reduced. This is an agenda of increasing importance to all businesses, but one where insurers can and should lead the way.

What else should insurers be looking out for in 2023:

- The UK is planning to adopt a Green Taxonomy, which is expected to incorporate principles similar to the EU Taxonomy. It is anticipated that this will take effect in 2023.
- There is likely to be continued pressure on how insurers are aligning their supply chains to their own values and more emphasis on double materiality (measuring the impact).
- Whilst considered strong in Governance, insurers still have work to do in terms of executive pay, pay gap reporting, controls over third parties and appropriate tax strategies. We can expect to see further focus in these areas.
- An increase in government insurance schemes to support the least sustainable businesses and households which traditional insurers would now consider too high risk.
- Increases in premiums for property and casualty for large weather-related claims.
- Sustainable, ESG-linked investments and how insurers are incorporating them into their portfolios but, more importantly, ensuring that they are fit for purpose.
- The role of underwriters in helping to develop new products, services and diversified pricing.
- Finally...more regulation, more data and more metrics.

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Economic crime and fraud: Helping insurers and their insureds to navigate the approaching storm

The economic downturn means cases of economic crime and fraud are likely to reach an all-time high. This approaching storm will mean more claims and financial risk for insurers and intermediaries, and losses for their insureds. How can this risk be mitigated?

A potential law change that will have far reaching impact

The Law Commission published its proposals on reforming corporate criminal liability in England and Wales last June (2022). If implemented, these proposals will change the "failure to prevent" landscape by extending corporate criminal liability, which currently include bribery and tax evasion, to also include fraud.

It is proposed that corporates should be able to use a defence to any failure to prevent fraud offence by having procedures in place that are "reasonable in all the circumstances".

Increased investigations and prosecutions

Economic crime investigations are often complex, costly and long running and a change in the "failing to prevent" landscape will lead to enforcement agencies bringing more prosecutions, or corporates agreeing to more deferred prosecution agreements than before under other economic crime legislation. The other alternative is to prosecute the corporate for a primary offence as opposed to the failure to prevent offences that have been pursued to date, with the clear difficulty of proving corporate knowledge.

The crux

There will be increased pressure on corporates who identify economic crime issues to self-report those issues to enforcement agencies. With self-reporting comes the likelihood of enforcement action and a potential conflict between the corporate and individuals who work for them. That conflict will result in more claims for insurers.

Navigating an increase in claims and minimising financial risk

It is essential that corporates ensure they have reasonable policies, systems and controls in place to prevent economic crime and fraud from occurring in the first place. Where they do not and things go wrong, enforcement agencies will look to blame and those who are blamed will call upon insurers for representation.

Things will get worse before they get better

The current economic climate is going to worsen, putting pressure on businesses and resulting in more economic crime.

We expect that insurers will be faced with more claims under D&O, Professional Indemnity and Crime policies, arising from an increase in criminal activity and its detection. This will be particularly true where, for example, company officers are being accused of committing an act of economic crime and fraud and where the corporate is accused of failing to prevent it.

What can insurers do?

Steps that insurers can take to help counter this impending storm include conducting appropriate due diligence to establish if their clients have reasonable policies and procedures in place to prevent economic crime and fraud.

Insurers will be doing this now, but may need to be more flexible in how they do it in the future. They may therefore need to broaden the scope of due diligence conducted on insureds to ensure that an organisation's vulnerabilities to economic crime and fraud are assessed accurately, prior to policies being written. Insurers should look to do this now, before any proposed legislative change that is coming over the horizon.

Such action will enable insurers to limit their exposure, taking steps such as amending policy wording and costing their products in line with the risk. Conducting targeted due diligence will highlight an insured's vulnerability to economic crime and fraud.

The result of such targeted due diligence will also help guide those insureds, identifying the relevant steps they need to take insurers' to limit their vulnerability, thereby reducing insurers future exposure to such risks. That can only be of benefit to all concerned.

It should also be noted that outside of this particular rapidly emerging threat, we continue to see the FCA and PRA issue increasingly large financial penalties to firms with all types of insurance business models for failures in governance, oversight and control effectiveness to prevent the perpetration of economic crime. Accordingly, it is fair to assume that we are potentially at the beginning of an impending storm in this area.

During the early part of 2023, DWF will publish its second annual Financial Crime report, further considering some of the perspectives outlined in this article and the true cost of financial crime to business. The report has been compiled from a survey of nearly 600 decision-makers across the Financial Services and Insurance sectors. The report also examines economic crime trends, and will enable firms to benchmark themselves about where to focus the resources to reduce the risk of economic crime. Please get in touch if you would be interested in receiving a copy of the report.

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Stability or seesaw? Impact and expectations of fiscal policy

With a maximum of two years until the next general election, how is the government going to balance revenue raising and the pressing need to stimulate growth? What might we expect from the more progressive parties instead?

If it were not already apparent, the Truss/Kwarteng disastrous "fiscal event" and the fall-out from it has made it abundantly clear that UK fiscal policy is a slave of the debt capital markets and will be for some considerable time.

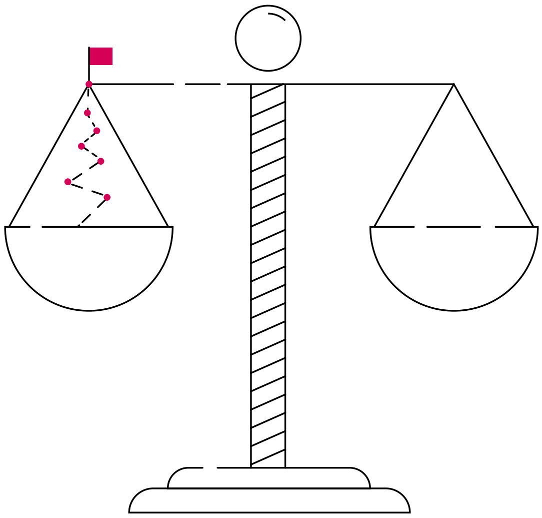
It has been generally acknowledged that Jeremy Hunt's Autumn Statement was politically astute in circumstances of limited freedom of movement. It was designed to ensure that the burden of significant increases in tax take is to be borne most obviously and immediately by large corporations, middle and higher income earners, and those with investment income and capital gains.

Freezing the income tax personal allowance, the higher rate threshold and secondary National Insurance contributions (NICs) threshold, together with inflation expected to be persistently above recent levels for the next three years, plus an increase in the living wage (and its knock on effect on wage inflation generally), means more individuals brought into tax and more at the higher rate, with businesses and employees bearing the additional NICs cost. Overall, a far less obvious and far more gradual means of raising revenue but generally one which will be much more cash-generative for the Exchequer.

Clearly Mr Hunt fought shy of focusing on the obvious taxes on consumption, including increases to the scope and rate of VAT and Insurance Premium Tax (IPT), which would stoke inflation further. Instead, he confirmed the introduction of two levies on energy businesses which, at present, are time limited to 2028 – it remains to be seen the extent to which they are actually temporary measures.

Our expectation is that:

- if the OBR's forecasts are met, there will be a relaxation by this government of some of the stringency introduced, particularly in respect of the income tax personal allowance and investment allowances for businesses in time for the 2024 general election: there is unlikely to be much good news for middle and higher earners or businesses other than those in a growth and investment phase;
- increased activity to target avoidance and evasion: we see the likelihood that HMRC will flex its muscles and utilise those powers it has to make company officers personally liable for certain taxes where their companies are in default; and
- as significant demands are inevitable for higher spending in the next Parliament on the NHS, social care, housing, education and defence in particular, we anticipate that a government of whichever colour is in power will:
  - continue to diversify the tax base under the twin guises of changing behaviours and promoting positive investment: this could involve:
    - further or extended "green" taxes, promoting energy efficiency and greater use of renewables;
    - increases in, or tightening of the scope of, business taxes offset by reliefs for investment or targeted increases in employment or training, for example,
    - the likely reappraisal of investment reliefs including EIS and VCT, to better achieve the intended effects of promoting efficient growth; and
  - reconsider and likely implement further taxes on accumulated capital, including a wealth tax and a substantial reform of rates and Council Tax, both of which are long overdue.



It is hoped that the next government will adopt a more open approach to trade and associated duties and the movement of capital and people than the present one, although the political difficulties associated with such an approach are apparent.

For insurers, an understanding of the impact of higher and more complex taxing regimes, together with increased HMRC scrutiny, is a must in assessing the risks associated with insureds in key sectors. From the point of view of their own tax treatment, it will be a question of being nimble enough to respond to the inevitable changes to come.

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The rise of class actions in the UK and the EU – why now?

Historically the domain of the USA, there has been a significant uptick in the popularity of the class action and group litigation in the UK and across Europe. Insurers are at risk on a dual front – where policies respond to class actions against their insureds, but also where an insurer is a direct defendant. There is a clear potential for coverage issues to arise in class actions.

The UK market

A number of factors are contributing to the rise in such activity across the UK. Firstly, an increasingly challenging economic climate is causing an increase in litigation generally. A claimant is far more likely to pursue litigation if it promises meaningful compensation and very little risk.

Further, improvements in technology and better access to funding means that group actions have become more attractive to claimants. In the UK there has been a significant increase in "class action specialist" law firms, some of which have the benefit of overseas investment to promote and advertise claims about which potential claimants might otherwise have been unaware. Such specialist firms also have the resources to pursue claims for large volumes of claimants.

Europe

In Europe, class action activity is increasing as opt-out mechanisms become more widely available. EU member states have recently been implementing the EU's Representative Action Directive, a legal framework for consumer representative actions.

The Directive will enable qualified entities to bring representative actions, for both injunctive (requiring the infringing conduct to be stopped or prohibited) and redress measures (such as compensation, repair or price reduction), against traders who are infringing the provisions of EU law. The Directive includes both an opt-in and opt-out system.

This Directive provides consumers with an alternative to pursuing costly, lengthy individual legal proceedings, by way of an efficient method to obtain collective redress. The existence of such a mechanism is likely to lead to an uptick in such class actions being run.

Likely growth areas

In the UK, group actions have been filed across a range of sectors, including the financial sector and the consumer sector (such as the Volkswagen litigation).

> We predict that ESG and its associated compliance requirements will drive a growing number of class action cases as investors, consumers and employees are increasingly looking beyond bottom-lines and assessing what businesses are doing to address climate change, tackle human rights abuse and improve diversity.

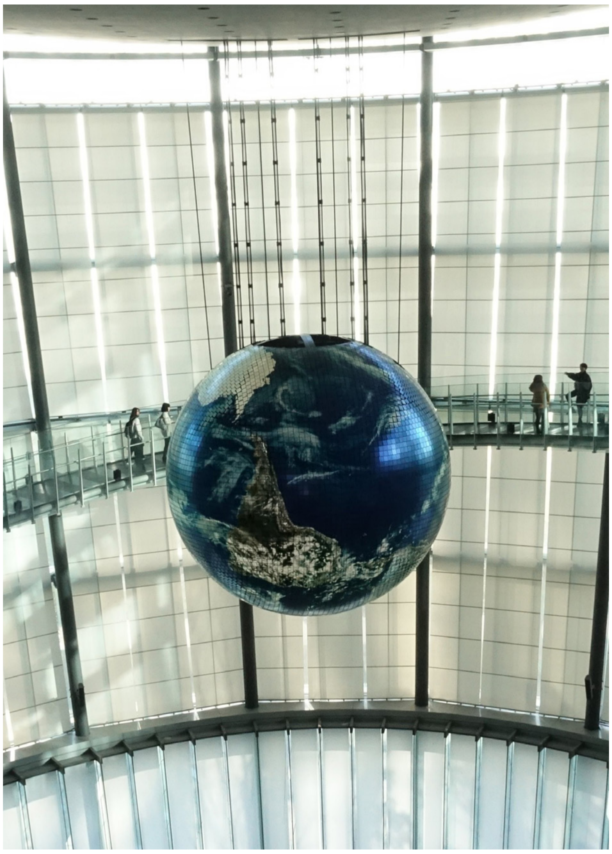
A good example of this is the class action being brought by environmental law organisation Client Earth, on behalf of activist shareholders, claiming that Shell's 13 directors are personally liable under the Companies Act for failing to devise a strategy in line with the Paris agreement around emissions targets.

We also foresee an increase in data breach class actions, such as the British Airways Group Litigation Order, which followed a breach of British Airways security systems leading to leaked data. A claim was filed on behalf of those impacted by the mass breach seeking compensation for non-material damage – including inconvenience, distress, annoyance and loss of control of their personal data. Given the potential for such data breaches to take place, it is likely that such actions will increase.

What can be done?

It is impossible to know when the next class action will arise, but there are steps which can be taken by insurers and their policyholders now, to include:

- Having in place a crisis/incident response plan.
- Risk assessing the company's readiness to respond to group litigation.
- Ensuring that there is a cyber-incident response strategy.
- Tracking complaints received from customers, and monitoring any arising trends.



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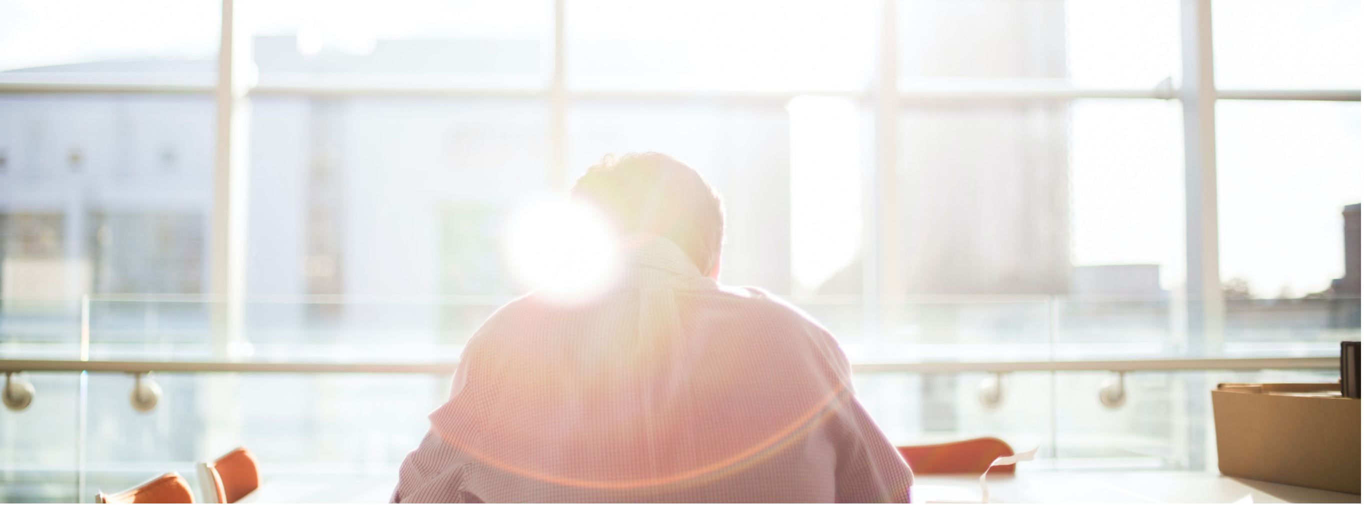
Redefining opportunity: M&A, investment and access to capital in a challenging economic climate

In recent times, the insurance sector has been fertile ground for the deployment of capital. In this article we explore whether, in the face of the current macroeconomic climate, this is likely to continue.

The late 2010s and early 2020s saw a considerable amount of M&A and investment activity in the insurance market involving both capacity providers and intermediaries. Acquirers have sought to consolidate their position in the market by purchasing and/or investing in businesses that provide specific sector coverage, the ability to scale and to improve distribution channels to customers. Similarly, ambitious management teams have sought to obtain capital and strategic partnerships to expedite growth, and in some cases achieve partial exits on attractive terms. With the change in the macroeconomic climate and the resultant pressures that have been brought to bear on global economies, has this changed?

Whilst indications are that investors are taking a more watchful approach to deploying capital, investment activity in the insurance sector does not appear to have materially reduced. In fact, there have been a number of acquisitions and investments in this sector both in the UK and globally in the second half of 2022. Businesses continue to seek to maximise coverage, capacity and market access which may best be achieved by synergies with existing participants in the relevant market.



A case in point in recent times has been the intermediary market, where large, sponsor-backed brokerage and MGA platforms are acquiring other brokers, MGAs with niche sector specialisms and international market presence, with a view to broadening market access and driving up the volume of gross written premiums. Additionally, a new growth area has been identified by market participants – being the need for businesses to improve and innovate when it comes to service delivery by embracing and investing in technology.

Whilst insurtech is not new, the Covid-19 pandemic has emphasised the need for market participants to improve service delivery and distribution. As such, insurance businesses are seeking to acquire or invest in businesses that have already developed technology platforms that will enhance this capability – a swifter alternative to seeking to develop such technologies in-house. An example of this is the investment by insurance business in AI to help with the assessment of insured risks and the calculation of coverage requirements.

> The “tech enabling” of insurance businesses will also assist them to fulfil aspects of their ESG objectives.

ESG is becoming an increasingly important topic within the sector (with Lloyd’s in particular taking a lead in creating a sustainable insurance market) meaning that insurance businesses will need to place a greater focus on it, both to ensure continued market participation and attract capital.

Acquisitions though are not the only route. Investments involving the acquisition of majority or significant minority shareholdings are also attractive propositions - both for the management teams of target businesses who are looking to continue their plans for growth, and for the investors themselves. Investors may enjoy the benefits of developing synergies with businesses offering complimentary services and products, whilst at the same time protecting themselves from the risk of buying such businesses “as is, where is” on day one. These deals may be structured in ways that give management a significant cash incentive on day one, whilst also dangling the carrot of the opportunity to participate in future growth in front of them.

So, whilst capital remains accessible and deals are being done in the insurance sector, it will be interesting to see how matters develop as we move further into an economic slowdown. It will also be worth keeping an eye on regulators to see how they might react to this possibility and if they may seek to reduce regulatory barriers to entry. For more information on the regulatory outlook in the UK, please refer to our article on pages 5 and 6.

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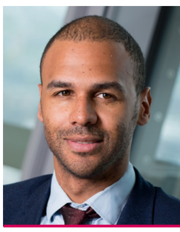

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September 2022 mini-budget fallout: Claims in the wake of the pensions LDI crisis

The insurance sector faces a number of potential professional negligence claims arising as a result of losses incurred by UK pension schemes due to soaring gilt yields in the aftermath of the September 2022 mini-budget.

A number of months have passed since the turbulent events surrounding the September 2022 mini-budget. Many UK defined benefit pension schemes were hit hard as a result of the sharp rise in gilt yields. This sent many trustees and scheme managers scrambling around to urgently source liquidity. Losses abounded - for many, liquidity could only be found by a fire sale of investments and/or through taking disadvantageous short-term loans.

The crisis largely centred around UK pension schemes' heavy investment in Liability Driven Investment (LDI) funds. LDI is the most widely marketed solution to help address scheme funding volatility. According to the Pensions Regulator, roughly two-thirds of UK defined benefit schemes use LDI to hedge out volatility.

> LDI seeks to hedge out the interest rate and inflation risks, which are inherent to funding pension liabilities. The problem is that it does so through the use of leverage which requires cash collateral to be posted to cover positions, often on a daily basis. However, schemes will generally have assets tied up in long-term investments matching the age profile of their membership. This means that emergency liquidity to meet unexpected collateral calls is difficult to come by.

So, now that the dust has settled, most schemes have taken stock. Some had the resources (both within scheme cash reserves and/or through short-term financial support from scheme sponsors) to weather the storm relatively unscathed. Others did not. Therefore the inquest begins. Could this lead to a surge in professional negligence claims?

We are anticipating three categories of possible claims. These all relate to professional advice given to trustees and managers by investment managers on:

1. the extent to which LDI is a prudent strategy for the scheme in question and the advisor's assessment of the scheme's liquidity holdings;
2. the recommended steps to be taken in the period leading up to the mini-budget to ensure additional liquidity was available as interest rates and inflation rose and gilt prices started to fall; and
3. risk factors – both those communicated during the marketing of LDI products and contained in LDI related agreements. Was LDI presented as a "sign here" solution to pension investment related issues or was a sufficient explanation of risk factors given?

Important factors in relation to each category of claim are likely to include an assessment of whether:

1. the strategy used was a standard one for the market;
2. the advice given and action taken fell within the range of what a reasonable manager of the pension scheme's assets could have been expected to have given/undertaken;
3. proportionate steps were taken in response to the crisis, for example in relation to any strategic advice given to trustees/managers around closing-out positions, realising investments to generate cash to meet collateral calls and/or entry into loan arrangements; and
4. advisers/investment managers had sufficient resources to provide the necessary advice at a time of high demand.

These are objective tests. In the absence of any specific contractual provisions that can be relied upon, a successful defence to a claim may need to demonstrate that: (i) the mini-budget and resulting market response was an unforeseeable event; and (ii) the losses were so remote that it would be unreasonable to hold the professional advisors accountable for them.

Also of relevance to adviser culpability is the fact that, irrespective of the actions of their investment advisers, certain schemes fared better than others due to their governance structures. For example, schemes with a sole trustee were generally able to react far quicker than those with a board of trustees that had not delegated authority to a crisis sub-committee. Any delay in this regard is likely to have exacerbated losses.

For the time being, we advise insurers to keep a watching brief on developments. The DWF pensions and litigation teams are monitoring the situation and will provide further updates in due course.

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Changing consumer expectations for the future of insurance

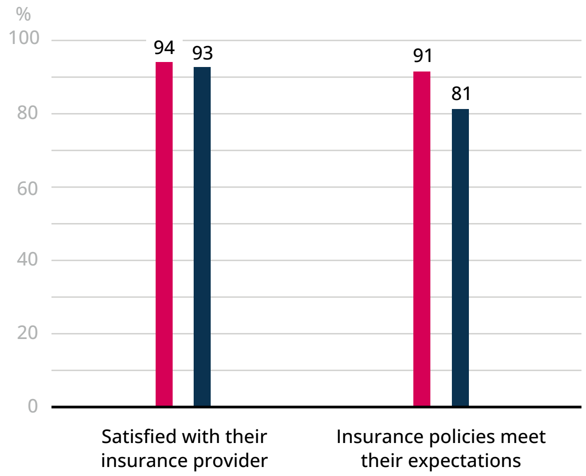
There is always volatility in the insurance market but the pandemic marked the start of an unprecedented and challenging experience for the sector. DWF's research on consumer expectations carried out in the wake of the pandemic showed reason for optimism but the question now is can this be maintained through the ongoing turbulence?

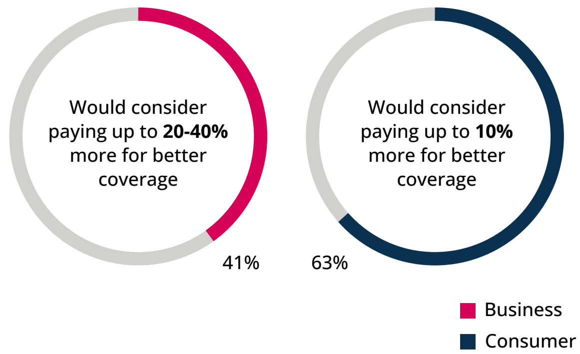
Without doubt, almost three years on from its start the pandemic has, as the Association of British Insurers predicted, been "one of the biggest insured events of recent times". The latest data from the FCA showed that as at September 2022 £1.5 billion had been paid out by insurers to over 36,000 small businesses as a result of the Business Interruption test case.

Against that backdrop, DWF carried out its own research into customers' perceptions of insurance and in early 2022 published the report "**The Future of Insurance – Consumer Expectations**." The views of 2,000 consumers of personal insurance and 403 business insurance purchasers in the UK were gathered and, despite the significant challenges brought about due to the pandemic, our primary research found that the vast majority of businesses and consumers felt positive about their insurance providers and most of the insurance policies that they buy.

Perhaps counterintuitively, the research revealed that the pandemic had positively reinforced buyers' perceptions of insurance, with nearly half of consumers (41%) and businesses (42%) reporting that the pandemic had made them appreciate the importance of insurance policies much more.

Overall, half of businesses said that the pandemic had changed their views on insurance, but opinion differed depending on the size of the business. The smaller the business, the less the impact seems to have been felt, with 63% of smaller businesses recording little or no change in their attitudes, compared with 52% of medium-sized businesses and 38% of large companies. The vast majority, 93% of consumers and 94% of businesses, were satisfied with the service of their current insurers – and at the point the survey was commissioned were even potentially prepared to pay higher premiums for better or more bespoke cover.





That said, buyers are also discerning and have high expectations. Both groups believed that the insurance buying process could be improved, with 66% of consumers and 70% of businesses stating that choosing or buying an insurance policy is always a difficult process. Both sets of buyers were aligned on calling for clearer policy documents. They wanted policies to be written in plain English with greater clarity around product information, and especially more transparent explanations of any caveats or exclusions.

On the whole, the research identified a period of opportunity for the insurance industry to build on already solid foundations and forge an enhanced relationship with a largely engaged and satisfied customer base.

However, as 2022 unfolded, the sands shifted again. The Ukraine war exacerbated an already rising inflation environment and cost of living crisis, resulting in new factors influencing consumer expectations and different challenges for insurers.

In times of uncertainty and rising costs, consumers look carefully at how they manage expenditure and whether they are obtaining good value for money. Looking to reduce spending, they will often search for cheaper policies without necessarily appreciating the impact on the adequacy of coverage. The FCA published a 'Dear CEO' letter at the end of September 2022 setting out its expectations of insurers, particularly with regard to customers in vulnerable circumstances and reminding insurers of the Consumer Duty coming into force in July 2023 designed "to help deliver good outcomes for consumers". The duty will require insurers to support customers through the entire lifecycle of a product, including claims resolution, which is especially important during a recession as consumers want to receive payment as quickly as possible.

The Financial Ombudsman anticipates a range of complaints trends over the forthcoming year. These include a rise in complaints about increased cost and supply issues for parts, materials and labour, and concerns around the impact of reduced spending on the type and level of cover provided.

However, the current economic conditions also present an opportunity for insurers to strengthen their relationships with consumers through the increased take up of personalised, usage-based insurance products. Now, more than ever, consumers are likely to be interested in "pick and mix" style policies and in choosing specific risks they want to insure. These products can be accompanied by the offer of risk prevention services that use Internet of Things (IoT) technology to help reduce or even avoid losses, although insurers will have to be mindful of balancing consumers' views on the use of their personal data.

It will be interesting to see how consumer expectations and behaviours evolve through this turbulent period, but the insurance industry, as always, will be there to support its customers in their times of need.

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Dealing with business as usual in a different way for greater efficiencies

When everyone is still asking the perennial question of how we do more but with less, here is how the maturing world of legal operations can deliver the efficiencies everyone is looking for.

Initially the role of the legal operations professional might have been perceived to be all about risk monitoring and cutting external legal spend. However, this role has really matured in recent years to be able to contribute so much more.

Many in the insurance sector are looking to consolidate their legal teams with other key functions, be that compliance and risk, regulatory compliance or procurement. As a result, it is becoming clear how much more there is to be gained from applying the legal operations mindset to these new organisational structures. In fact, one might argue it becomes critical to apply the benefits of legal operations to these more closely aligned teams, to ensure they are finding the best ways of working better together.

> Fundamentally, the world of legal operations is about applying business processes to ensure legal teams work in the most efficient way possible – taking the lessons from other industries, other sectors, and applying them to find new ways of tackling old problems.

We do often advise on the need to take a slight step back from an instinct to simply purchase the next shiny toy in terms of technology as the key enabler for legal operations and, first, ensure that the people, process and data components have been considered in detail, to ensure the right factors are driving those technology purchasing plans:

People
Exploring resourcing options to ensure the right people are doing the right work at the right cost.

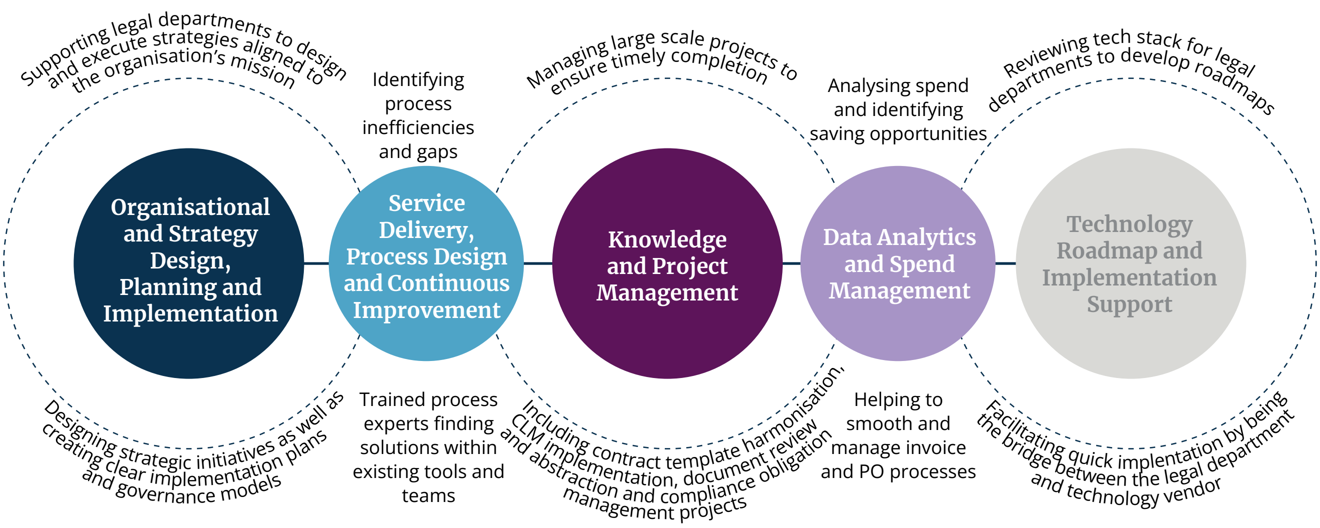
Process
Collaboratively designed process improvements to embed efficiencies through standardising, systematising and optimising workflows.

Data
Re-set the benchmark to put critical data at the heart of decision-making.

Technology
Best fit technology solutions as enabler tools to enhance the transformation.

It is clear that the 'Holy Grail' remains to improve productivity and make efficiency gains, but how best to achieve that while keeping things moving on a day-to-day basis? Clearly, the business as usual work must keep on being supported, but focusing on that whilst trying to change a whole team's way of working, alongside all the preparatory data analysis needed to strategically plan the route ahead, is not a task for the faint hearted.

There is therefore huge benefit to having support alongside the existing team either in a temporary, consultancy capacity or as a permanent addition to the team, of someone with real focus and dedication to driving forward efficiency gains for the longer term. This in turn will leave others in the team to focus on what they do best; supporting the business and getting the day-to-day tasks achieved without unnecessary disruption or distraction.



In summary, by ignoring the legal operations function you could be missing out on these significant gains for the wider business.

At its most dynamic, we are seeing legal operations develop into responsibility not just for managing the legal spend, but for strategic planning aligned with the organisation's wider aims, embedding continuous improvements through process efficiencies, driving decision-making through comprehensive data analysis, together with planning and implementing technology investments.

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Key employment law considerations: Responding to changing demands

Employment law has remained as fast-paced as ever in recent months and looks set for further developments. As we plan ahead for 2023, we consider some of the key trends for insurers.

1) The labour supply challenge: practical solutions

Attracting and retaining key talent will remain a top priority for insurers. Following the so-called "Great Resignation" many employers have struggled with labour supply and ensuring the right people are in the right place with the right skill set. Although insurers may be looking to reduce costs, this does not mean they want to lose key personnel. Employees will be seeking out the most attractive rewards packages in order to combat the financial repercussions of the turbulent economy. However, financial constraints mean that not all employers can afford to increase pay packages, so employers are having to think outside the box. For example, we have seen some employers allow increased flexibility to help reduce childcare costs and allow employees to sell back some of their unused annual leave (providing the statutory minimum annual leave is not impacted).

When offering support it is important for insurers to be mindful of any legal implications – for example, do terms and conditions need to be changed to reflect a new flexible way of working? Has the support been offered in a non-discriminatory way?

> As always, a fundamental message for insurers is that culture is key. Insurers that are able to create a sense of community and loyalty during this period of economic uncertainty will find that they have fewer issues attracting and retaining talent.

2) Emerging risks: An increase in employment tribunal claims in 2023

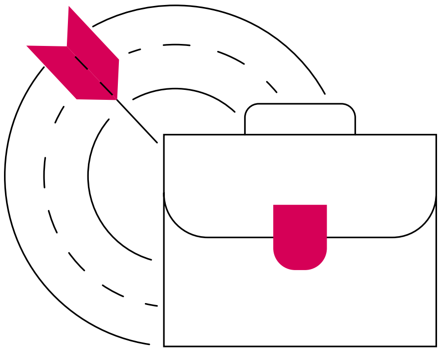
With the economic crisis taking its toll on both employers and employees, it is inevitable that employment tribunal claims will follow. Although businesses have been focusing on retention for some time now, the uncertain economic climate is likely to lead to a number of businesses taking cost-cutting measures resulting in redundancies. We expect to see claims for unfair dismissal and redundancy pay.

In addition, we may also see a rise in National Minimum Wage ("NMW") claims. With so many people facing financial difficulties there is going to be greater scrutiny on pay. Due to the complex nature of NMW calculations, many employers may inadvertently fall foul of the legislation, resulting in substantial penalties and reputational damage. Where workers are paid the NMW, or near to the NMW, insurers should consider undertaking an NMW audit.

We also expect to see an increase in discrimination claims. Reports from the Menopause Experts Group found that the number of cases citing "menopause" nearly doubled in 2021. Although a recent government consultation has confirmed that the menopause will not be a stand-alone protected characteristic under the Equality Act 2010, there has been an increase in awareness of menopause in the workplace and employees can bring claims for sex, age or disability discrimination.

We have already seen a tribunal case where an employee with long-Covid symptoms was considered disabled for the purposes of the Equality Act 2010. In 2023 we predict that we will see more long-Covid cases grappling with issues such as discrimination arising from disability and employers failing to make reasonable adjustments.

Training is absolutely vital for insurers. In order to minimise exposure it is important for all stakeholders to be fully trained on emerging risks. Policies and procedures should also be reviewed and updated to ensure they reflect the latest legal position.



3) Change is on the horizon: What might the future look like for employment law?

The political landscape has been incredibly unsettled with three prime ministers in the space of two months. With Rishi Sunak now appointed and warning that the UK faces a "profound economic challenge", it will be interesting to see what impact the new government may have on the labour market. The Retained EU Law (Revocation and Reform) Bill has been published and if passed "EU-derived subordinate legislation" and "retained direct EU legislation" will be revoked on 31 December 2023 (or a later date prior to 23 June 2026 if a delay is agreed) unless positive action is taken by the government to preserve specific legislation. Employment laws impacted by this Bill include the Working Time Regulations 1998, the Agency Workers Regulations 2010, the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") and the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000.

It will be essential for insurers to keep up-to-date with the latest employment law. The Bill is at the start of its legislative journey and there has been much concern raised about removing all the regulation in this way, so it has the potential for significant change. Insurers should be aware that with such legal uncertainty there is a greater risk of disputes.

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The war on talent and how insurers can overcome it

The insurance market will continue to face significant employment challenges in 2023. Insurers will need to think differently about the important skills for the future and where they are going to attract the right talent.

The war for talent has been fierce over the last 12 months, which has created huge competition throughout the profession. It has meant that a positive employer brand has become critical to talent attraction. The talent shortage that the market is facing has meant salaries have increased significantly but the consequences are having an impact much wider than monetary reward. Candidates are now looking beyond the fundamental salary and benefits package offered by an organisation and really delving into the culture of the company and the additional value and opportunities it can offer them.

Matt Green, CEO of IDEX Consulting comments, “Like many larger organisations, insurers just don’t have enough differentiators that make them attractive to the talent they are looking for. The future will be won by the insurers who invest in creating organisations that attract and motivate the top tier of talent in the UK market. This is not difficult to do; it just needs to be front and centre of their business strategy”.

With almost a quarter of the experienced insurance workforce predicted to retire in the next few years, and the existing lack of middle management, the need for insurers to identify and develop future leaders has never been greater.

Intelligent and capable people are strongly focussed on building long-term skills. To retain high-potential junior talent and ensure strong succession planning, modern and committed mentoring relationships are vital. Effective mentors play a pivotal role in sharing knowledge and organisational IQ, but leaders must adapt traditional mentoring methods to work effectively in today’s hybrid working environments.

How are employee training requirements for insurers changing?

The shortage of talent within the profession is forcing organisations to look outside the insurance market to attract new talent, which inevitably means that we are seeing an increased need for basic or entry-level insurance skills training.

Insurers are now hiring based on potential, and this requires a cultural shift to accommodate those coming in from outside the industry. There will be a greater focus on a candidate’s soft skills, looking at their attitude and how they will fit into an organisation, rather than focusing solely on technical skills and experience. This in turn creates a need for more innovative approaches to onboarding and training that perhaps has not been experienced before.

However, the increasing regulation around governance, non-financial misconduct, ESG, D&I, the Consumer Duty and employment law cannot be overlooked, and Learning and Development (L&D) teams need to design ‘best-in-class’ programmes that incorporate the hard and soft skills needed, along with up-to-date insights on learning methods.

Fran Burgess, CEO of Zing365 comments, “In the last 12 months, we have seen a significant increase in requests from internal L&D teams to partner with them to create very bespoke training programmes that blend technical and soft skills subjects with agile learning methodologies to accommodate learning styles and remote workers”.

Looking forward to 2023 and beyond

The talent shortage the industry is facing is here to stay. Creating flexible opportunities for currently untapped talent pools such as return to work parents, retirees, contractors and neurodiverse employees would certainly increase the number of applicants for roles and create a more diverse workforce. Clear career pathways, flexible working and competitive reward schemes will help create an enticing work environment.

Knowledge management systems, artificial intelligence, machine learning and automation are likely to drive continuous change to the design and delivery of training. Being able to track and analyse the performance of employees and how they have developed their capabilities will inevitably transform the training in the future. E-learning, virtual reality, experiential and microlearning are all trends that are set to further evolve as an effective way to deliver training to a modern workforce.

As traditional boundaries shrink and digitalisation takes a firmer hold, we still do not know the full impact on the insurance employment market, and some of those answers could come from outside the profession.

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Sustainability agreements and competition law

Insurers are increasingly taking steps to address sustainability concerns and working towards wider ESG commitments via sustainability agreements. However, such arrangements raise a number of novel issues in their interaction with the competition law rules.

As part of its efforts to promote sustainability, the Association of British Insurers (ABI) joined the UN Environment Programme's Principles for Sustainable Insurance Initiative (PSI) in 2021, a global sustainability framework and the largest collaborative initiative between the UN and the insurance industry. The PSI has launched the Net-Zero Insurance Alliance (NZIA), with NZIA members committing to transition their insurance and reinsurance underwriting portfolios to net-zero greenhouse gas emissions by 2050.

Sustainability initiatives, such as cooperation agreements between businesses for the attainment of sustainability goals, are a relatively recent development and therefore may raise a number of issues in their interaction with the competition law rules. This is particularly exacerbated by the fact that there is currently limited case law or specific guidance regarding sustainability agreements. Additionally, whilst such collaboration can be an excellent way to improve environmental sustainability within businesses and wider industries - such as the insurance sector - parties may be reluctant to put them in place due to lack of understanding of the competition law concerns that they may raise.

The Competition and Markets Authority (CMA) has over recent years been working to both clarify competition law risks arising from cooperation agreements, and provide guidance on how to successfully navigate those concerns when making sustainability agreements. This includes the publication of an information document in January 2021 and advice to the government in March 2022 following a public consultation. The hope is that businesses will not be deterred from taking part in lawful environmental initiatives and working to achieve their sustainability goals for fear they may breach competition rules.

> In its advice note published earlier this year, the CMA highlighted that stakeholders involved in the consultation expressed a lack of certainty about how competition law would apply to sustainability initiatives, in particular regarding the circumstances in which agreements that restrict competition can qualify for exemption under competition law. For an agreement to be exempt from competition law, the businesses' customers should receive a 'fair share' of the resulting benefits.

To address these concerns, the CMA stated that it intends to bring forward guidance to provide greater clarity and certainty on the following topics:

- when sustainability agreements will not restrict competition;
- the concept (and measurement) of 'benefits' in a sustainability context; and
- the issue of what constitutes a 'fair share' of benefits for consumers.

To build on its advice, and further its wider objective of supporting the UK's transition to a low carbon economy, the CMA has launched a Sustainability Taskforce within the CMA. We can therefore expect further guidance and discussion on this topic in the future.

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In March 2022, the European Commission published draft revised Horizontal Block Exemption Regulations (HBERs) and Horizontal Guidelines. The existing HBERs expired on 31 December 2022, with the new framework coming into effect upon their expiry. The new Horizontal Guidelines include a chapter on sustainability agreements, clarifying that parties to a sustainability agreement that restricts competition will not be held liable for competition law infringements if they have been compelled or required by public authorities to conclude the agreement.

The UK will also need to replace the retained HBERs when they expire. The CMA has recommended that they be replaced with UK Horizontal Block Exemption Orders to be in place until 31 December 2035. Whilst they will likely be largely similar to the HBERs, there may be some changes not aligning with the revised HBERs.

Looking ahead to 2023, it will be important to be aware of the introduction of these new frameworks and the changes they bring about.

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