Looking ahead in the Insurance sector

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Welcome

Looking ahead in the Insurance sector

Last year as we entered a new decade, we took the opportunity to ask a range of DWF experts for their thoughts on the issues likely to emerge over the next ten years. Our concluding comment was that *"the challenge, as always will be developing the resilience and agility to meet the events and disruption that come out of nowhere."*

It's safe to say that neither we, nor the industry, were expecting those events and disruption to be a matter of weeks away, and we admit that a global pandemic did not feature in last year's predictions.

Having said that, we were right to highlight resilience and agility as the key factors in the ability to deal with such an event, as in our view those are the attributes that have characterised the industry's response to the pandemic.

We also predicted that by 2030 some methods of work were likely to have changed in perhaps unimaginable ways, and yet in 12 months the prolonged lockdown environment has accelerated significant changes which will reverberate throughout the industry for years to come.

Looking ahead, the direct effects of COVID-19 will continue to gain momentum, as we have seen only the tip of the iceberg of the types of claims and behaviours expected to emerge. However, the tentacles of the pandemic reach into every aspect of life and the economy, such that many of the themes we have highlighted in previous years now take on a new complexion and present new challenges as a result of it. The rise of technology featured heavily last year, and whilst the pandemic has necessitated the rapid adoption of technological solutions, it has also significantly raised awareness of risk and resilience, and has amplified the challenges around security and stability. Brexit is a continuing theme, and the economic uncertainty already caused by transition and implementation has been compounded by the effects of the pandemic and will have far-reaching consequences throughout the industry. A court system showing cracks before the pandemic is now teetering under the weight of delays and backlogs, despite the best efforts of the judiciary and court service to adapt, just at a time when the long-awaited whiplash reforms and new small claims track procedure and portal will finally be implemented. Further, whilst very much on the agenda already, there is now an even more pressing need to address the assessment of future risks such as cyber-attacks, climate change and potentially uninsurable events, alongside a need to develop products suited to the fundamental changes brought about by the pandemic in how we live, work and travel.

In the coming months we can only hope for some respite from the relentless toll of the pandemic on our lives. This would give the industry an opportunity to take stock and reflect on which of the many innovations that have been borne out of circumstance can be built upon for the future. In the meantime, in the expectation that the need for resilience and agility will continue to be called upon, the priority must be to continue to look after the wellbeing of our employees, and the needs of our clients and customers.

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Automotive & Vehicle Technology

2021 and beyond – Will manufacturers be the new vehicle insurers (even if underwritten by existing insurers)?

In the final few months of 2020, General Motors (GM) announced its intention to launch a car-insurance business based on the idea that its vehicles can remotely track drivers' behaviour, allowing GM to set insurance rates accordingly. GM joins the likes of Tesla and Ford, both of which announced similar plans in 2020 to use data and insights from their vehicles to offer bespoke insurance deals to customers. A clear trend is developing state-side, so can we expect to see a similar wave of offerings from European-based manufacturers in 2021 and beyond? And, more importantly, are consumers on both sides of the Atlantic ready and willing to embrace this new way of buying motor insurance?

The current state of play

Usage-based insurance is no new thing, but to date has largely focused around telematics black boxes and mobile apps. However, the amount of data in the connected vehicle itself is increasingly powerful and, in some instances, more reliable. Current telematics devices most commonly use GPS and accelerometers. Many already use industry-grade GPS, so it's likely one of the most significant improvements that will occur from 2021 and beyond will be through better accelerometer data. With existing telematics, accuracy can be lost through poorly fitting devices, so if the manufacturer builds the device into the vehicle, the results will inevitably be more accurate and consistent. Some new vehicles also provide additional data through wheel speed sensors, which provide even more precise information.

In addition to a greater volume of data being collected by the vehicle, improvements in connectivity mean that not only can this data be used to empower insurers to quote more accurate premiums, but it can also provide important insights in the event of mechanical issues or crashes. High-speed data transfer provided by 5G technology will enable on-the-spot diagnostics, real-time help and support, accident management, precise parts ordering and the latest technical updates - benefiting consumers, manufacturers and insurers alike.

Boosting benefits for consumers in 2021 and beyond

The obvious benefit to consumers is that rather than calculating premiums based on averages and algorithms, the quote made will be truly reflective of the individual's driving habits. Thanks to the advances in technology, manufacturers are going to know how someone drives better than they do themselves.

The benefits to such an approach are obvious, although whether it's seen that way may depend on a person's driving skills. But in addition, the lockdowns brought about by the COVID-19 pandemic and the change in many people's working practices for 2021 and beyond have led many consumers to evaluate and question how they insure their vehicles. With many cars sitting in garages for months on end, consumers are increasingly looking for flexible options that truly reflect the way they are actually using their vehicles rather than according to generic answers provided months earlier.

Manufacturers are often best placed to provide such usage-based insurance policies because they will obtain real-time data from the vehicle. Also, by removing the need for a third party to gather and process data through additional telematics devices, manufacturers will be able to lower costs by creating a seamless end-to-end offering. We're also likely to see manufacturers offer package-style deals, in which they will provide insurance discounts and freebies with the purchase of a vehicle.

The other factor that will play an important role in encouraging consumers to buy insurance directly through the manufacturer is the growing momentum for electric vehicles. With the UK Government bringing forward the ban on the sale of new petrol and diesel cars to 2035, along with a growing consumer preference for 'green' choices, electric vehicle sales are on the up - more than 500,000 were sold across Europe last year.

Electric vehicle insurance has tended to be expensive because these vehicles require more specialist fixing and parts - one of the reasons Tesla launched its insurance offering. With electric vehicles making up a larger proportion of car manufacturers' portfolios, offering bespoke insurance for this fast-growing market could be a lucrative additional income stream.

The impact on insurers for 2021 and beyond

So, what does this mean for insurers? It might sound like bad news, with a potentially huge volume of revenue flowing directly to car manufacturers. However, the reality is that the majority of policies offered by manufacturers are still underwritten by established insurers. GM's new insurance offering, for example, is backed by a subsidiary of American Family Insurance; while Admiral underwrites Ford Insurance.

Part of the reason car manufacturers have refrained from diving into the market is a recognition that insurance companies have a long track record of, and expertise in, underwriting and claims handling. So, it's easier for manufacturers and insurers to work in partnership and play to their respective strengths.

All eyes are on Tesla - the company's chief executive Elon Musk has declared his intention to roll out a fully-fledged insurance offering across the US next year. While certainly a potentially lucrative move, it's by no means a straightforward one.

Setting up as an insurer means being willing and able to meet stringent regulatory and capital solvency requirements. And, as Tesla found out to its cost when it launched its new insurance offering in 2019, a great deal of hard work is required to ensure the back-end works properly. So manufacturers will have to weigh up the pros and cons of doing it themselves versus partnering with an existing insurance company. However, even a few manufacturers choosing to go it alone will be a challenge to the old guard insurance market. This could lead to pricing wars, but that would only be good news for consumers.

European motor manufacturers will be closely watching developments across the pond to assist with their future planning. But one thing is for certain - the advancements in vehicle technology and connectivity mean we are entering an energetic and exciting phase of progress, and maybe even transformation, in the motor insurance industry for 2021 and beyond.

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Catastrophic Injury

We'll hold our hands up: 12 months ago we did not predict the turmoil and devastation which 2020 would wreak upon the country and the world.

So much can happen in a relatively short period of time and the first and foremost thing to say is that looking forward we hope that the world will be a much safer place for anyone affected by COVID-19.

The pandemic has affected every aspect of our lives. It is amazing to see how the insurance industry has coped under such challenging circumstances and, if we can be forgiven for a little self-congratulation, we think we have adapted to the demands of the "new normal" as well as any in the legal world. However, even as we entered 2021 starting to believe that there was light at the end of an extremely dark tunnel, not only did that tunnel seemingly lengthen on us but we also all recognised that we hadn't begun to scratch the surface when it comes to the long term effects of the pandemic.

As evidenced by their rightful position in the vaccination queue, carers are officially in danger. To suggest that such a cohort should be remunerated at less than £10 per hour is indicative of a country with skewed priorities and cannot be sustained. The inevitable increase in carer salaries will have an obvious and immediate impact on the cost of claims, something which is already happening.

The provisional data published by the ONS at the end of last year indicated an annual increase of 5.47%. That is an increase of more than 2% above the average increase (3.2%) for the last 10 years. The impact is significant in a year when the full effect of the pandemic would not have been fully felt or fully reflected within the ONS data.

Our own database, gathered over the last 3 years, suggests that agency care rates are fuelling the majority of the rise, no doubt driven at least in part by consolidation in the ownership of care and case management companies.

What claimant behaviours will this drive? We predict a greater interest in periodical payment awards. Why would claimants be willing to accept the risk of annual increases of > 5% unless they are being significantly overcompensated for a lump sum award?

Last year we correctly predicted the impact of *Swift* upon accommodation claims but, as a decision, does it create just as much uncertainty as it solves?

What is a short life? How will accommodation claims involving claimants with a limited (in terms of duration) need for accommodation be dealt with?

Sadly, it feels as if there is considerable scope for *Swift* to be little more than an initial skirmish in a long-running legal battle. DWF's catastrophic injury team are not in the business of arguing for the sake of arguing: we are in the business of solutions and we are already talking to our insurance clients about creative and real solutions to the problem.

More and more, 2021 needs to be the year of creative solutions. 2020 has taught us that we do not all need to be sitting in a city office five days a week. We have adopted technology and ways of working that we would have thought impossible only 12 months ago. We have found that there are new ways to work: we probably haven't found the balance yet, but as per the quote first attributed to Plato: *"necessity is the mother of invention"*.

The world has been turned on its head and in every walk of life people have had to adapt to doing things differently. Virtual healthcare and telemedicine have seen unprecedented rates of adoption. It is clear that on the other side of this current crisis there will be huge backlogs in NHS treatment with consequent delays in the progression of claims (as if the delay endemic in the court system wasn't bad enough). However, there are positives too: there will inevitably be a move to more and more private healthcare solutions in 2021 where technology and creativity will be at the fore; these should be reflected in reductions in claims for therapy and rehabilitation costs, not least where travel currently forms a disproportionate element of the claims.

One thing is for sure, there is going to be no short-term end to these *"interesting times"* but we will continue to provide our clients with practical advice, offer them creative solutions and partner with them to ensure we ride the challenges together and effectively.

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Commercial Insurance

Changing risk and regulatory landscape

COVID-19 has brought into sharp focus the need to continually assess and reassess changes in the risk landscape. Since 2002 there has been an increased frequency of epidemics such as SARS, Swine Flu, MERS, Ebola and the most recent and ongoing COVID-19 global pandemic. Small businesses in particular will likely wish to ensure they have insurance cover against future occurrences of epidemics and/or pandemics and their effects but at a price that is not prohibitive. Insurers will need to consider their appetite to write such risks.

In light of the Supreme Court's judgment in *The Financial Conduct Authority v Arch Insurance (UK) Ltd and others* [2021], particularly in the context of 'but for' causation (where a series of events cumulatively cause a result notwithstanding that none of those events individually was either necessary or sufficient to cause the result) and the decision that *Orient-Express Hotels Ltd v Assicurazioni Generali SpA* was wrongly decided and should be overruled, both the legal sector and insurance industry are considering and will continue to consider, the implications of that judgment, not only in the context of insurance claims but also for contractual and/or tort claims more generally.

The cooperative way in which the insurance industry and its regulator, the FCA, have worked to ensure certainty for policyholders in the context of COVID-19 business interruption claims, is testament to the UK's ever-increasing customer focussed insurance regime, practice, and regulatory environment. The way customers behave and engage with insurance is changing, driven by digitalisation and customer demands and needs. With an evolving regulatory landscape, fast-paced technological change, data gathering and the use of AI, insurers must continue to adapt to meet customers' demands, ensure the use of new technologies dovetails with existing and future regulation, and ensure that customers are still treated fairly.

Climate change

While COVID-19 has been the focus of global attention this year, an even more pressing issue for the next decade is that of climate change. Increased frequency and severity of major weather events and natural catastrophes will continue to impact domestic and commercial property risks and the rating of them by the market, with challenges ahead for property owners, builders and insurers. In particular, the impact of climate change is likely to produce a significant increase in the number of properties at risk of damage by perils such as flooding and subsidence.

With the UK hosting the 2021 United Nations Climate Change Conference (COP26) in Glasgow in November, the Government's Independent Review of Flood Insurance (recommending that both insurers and intermediaries do more to help people get the right insurance), the increasing usage of more sustainable construction techniques, building regulation reform reaching its final stages and the ongoing recovery from COVID-19, insurers will need to ensure that they continue to work with each other, the Government and alongside customers to fully understand potential risks and exposures arising out of climate change and on strategies for risk reduction and mitigation of losses.

Technology and Innovation

Many businesses around the world, including insurers, have responded to COVID-19 by stepping up investment in digital development and innovation. AI continues to be a hot topic with advances in technology and a greater willingness to adopt innovative practices. It can assist insurers in learning more about their customers, pricing risk more accurately, improving efficiency, and cutting costs. AI can also help streamline the process of claims settlement, increasing customer satisfaction and also has potential in assisting in the identification of fraudulent behaviours.

The next few years are likely to see AI being used even more in damage assessment. The need for onsite surveys and inspections will continue but for less complex claims insurers may be able to cut the cost of claims - drone inspections, for example, may become increasingly common practice in property claims, with AI being used to extract key data. Further increase in the use of Internet of Things devices will have an inevitable impact in the property insurance arena, particularly in escape of water claims. A rise in the use of water leak detection and automatic water shut off devices (along with smart burglar alarms, fire alarms etc.) in building construction and management, may make many properties much better risks.

Better sharing of pools of data between insurers and better use and analysis of historic and weather data is also likely – this could enable insurers to more accurately plan potential risk in postcode areas or even more precise locations. We could see automatic notifications being sent to organisations and local authorities so that they can better prepare, e.g. with the deployment of sandbags or moving of property to higher floors, all helping to mitigate losses.

Global changes

The next few years will see the effect of imbalances in both European and wider global goods and services standards and regulatory regimes, including the fallout from Brexit. Economic and geopolitical instability, the ongoing shift of manufacturing to China and South East Asia, coupled with the changing global political landscape and, in particular, emerging and increasing trade wars (and their attendant tariffs) may likely significantly affect both the reinstatement costs and business interruption periods involved following losses in various sectors. UK businesses (including those in the agricultural sector) will likely continue to look at ways to continue to bolster the "buy British" message, to increase productivity and to drive sustainability including by use of renewable energy. This will present various opportunities but also brings additional challenges and risks including, for example, from a public/product liability perspective.

Data protection and cyber risk

Many businesses are likely to continue some remote working practices implemented during the pandemic and this continues to present challenges and risk in terms of data protection and security and will inevitably be relevant to policyholders and insurers in the context of cyber risk and liability claims.

The year ahead is likely to see an increase in the frequency and severity of cyber incidents. Cyber-attacks are becoming increasingly sophisticated, creating a growing risk of physical damage to properties, for example, cyber induced fires and power grid outages, as well as widespread non-physical damage business interruption losses, all capable of giving rise to first party indemnity claims and the potential for increased volumes of claims against directors and officers, who in turn may seek indemnity from their insurers.

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Costs

Costs landscape

The year ahead heralds a period of considerable change in the costs industry, both from a regulatory and market point of view. There are a number of reforms to the costs landscape, including the long-awaited "whiplash reforms" which come into force on 31 May 2021. Alongside the increase to the small claims track limit for whiplash claims, there is the potential extension of Fixed Recoverable Costs (FRC) in cases with damages up to £100,000, and we will also see the consultation on Guideline Hourly Rates being finalised, with a deadline of 31 March 2021 for the submission of responses to the consultation. From a market standpoint, as a result of COVID-19, 2020 was the year in which most costs businesses moved their people from the office to homeworking. This year is likely to be the year where progressive costs businesses not only continue with a hybrid of working practices but also ramp up the deployment of technological solutions to the provision of costs services.

Whiplash reforms

The all but total removal of costs recovery in the majority of whiplash claims is likely to make these unattractive and unprofitable for most claimant solicitors. As the reforms apply to accidents occurring on or after 31 May, there is unlikely to be the same spike in claims we saw with the Jackson reforms before implementation, but we *will* see claims being run in parallel under the old and new regimes for years to come. It is too soon to say whether litigants in person will be able to successfully navigate the new small claims injury portal. A collaborative approach from insurers will be key to how litigants in person conduct their claims in the future.

Our own data shows that there are already a number of claims exiting the current RTA/EL/PL portals for value. We are also seeing claims incorrectly notified by letter of claim, rather than submitted onto the portal. Both of these situations are indicative of attempts to circumvent FRC. Opponent-based strategies based on data analytics will be vital to make significant savings in these cases.

Extension of Fixed Recoverable Costs

The proposed extension to FRC in most civil fast track cases worth up to £100,000 has been discussed for a number of years. Lord Justice Jackson originally recommended the extension of FRC in cases worth up to £250,000 but this was scaled back. The extension of FRC did not form part of the whiplash reform programme and is by its very nature a complex task. However, we anticipate that this will reappear on the Government's policy agenda with their reaffirmed commitment to further reform in the personal injury sector. Data gathered on costs and personal injury claims more generally will be pivotal to informing the consultation process.

Guideline Hourly Rates (GHR) review

The GHR consultation was released on 8 January 2021. DWF provided data of hourly rates claimed and agreed over the period from April 2019 to November 2020 and our analysis of that data reinforced the view that any increase in the GHR should be modest, as suggested in the consultation paper. The consultation deadline is 31 March 2021 and we will be providing a detailed response to the proposed increase in hourly rates by the CJC Working Group.

Central to any review of guideline hourly rates is the change to working practices as a result of COVID-19, and also as a result of the increased application of technology to the law.

The pandemic has drastically changed the way of working for most practitioners. Working from home has become the new norm and this looks set to continue, with many firms indicating that they will be encouraging staff to work from home for at least part of the time in the future. Our view is that it is crucial that this is taken into account in reviews of GHR as this will have a significant impact on what rates will be considered to be reasonable, as the real estate footprint of most law firms will be proportionately smaller and therefore their operating model cheaper.

Moreover, it will be important to examine the level of technology now applied to many tasks that would previously attract a level of overhead allocation such as, voice recognition technologies replacing typists, Zoom or MS Teams meetings replacing receptionists, and smart workflows creating automated or semi-automated letters in a fraction of the time it would take to do so manually but that still attract a 'unit' charge under the current 'normal' costs regime. Be it in this review or a subsequent one, it is paramount that the optimal law firm model is considered, not one based on historic costs assessment outcomes, as to do so will provide no incentive to law firms to innovate or provide better, cheaper and more consumer-focused legal services.

Exaggeration on the rise: desperate times call for desperate measures?

The impact of COVID-19 and the subsequent recession has provided fertile ground for exaggeration and fraud. This was a common theme following the 2008 recession where we saw a sharp increase in the number of fraudulent claims being brought. We anticipate that there will be a similar trend following the pandemic, particularly in light of the whiplash reforms combined with the economic climate. We are working closely with clients to identify and combat these claims.

Technology and its application in costs

Out of necessity, most businesses have availed themselves of remote working technology during the pandemic, and progressive businesses will continue to operate a hybrid model even after the need for remote working has dissipated. These industry agnostic technologies do not represent even half the tech story from a costs marketing point of view.

Costs has traditionally been an industry slow to adopt technology and, when technology has been considered an answer, overly prescriptive solutions have been adopted – for example, The 'J' Codes. The irony in this resistance to technological solutions is that costs, as a specialism rooted in numbers, is ripe for the application of data science techniques.

As a result, for the modern costs business, data collation and analysis will continue to be fundamental in the year (and years) ahead. Using data analysis, one is able to predict changing approaches to claims and costs on a granular level, and develop strategies to combat bad behaviour and achieve the best outcomes for our clients.

With extensive data capture, one can provide accurate costs reserves on a case-specific basis for our insurer clients and accurately predict case outcomes based on key claims criteria.

Moving beyond data, we can expect an increased level of automation to the processes in costs and attrition in the costs market as businesses, faced with the twin spectres of substantial reform and the advance of technology, have neither the market position nor capital for investment to remain viable.

In short, the coming year is likely to be one unlike any other in the costs world.

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Data Protection & Cyber Security

The insurance industry has always been a rich source of data, but more than ever, the data that we collect and how we use it can play a critical role in business success or failure. From informing decisions about our customers and how insurance products are priced, to influencing risk appetite and brand reputation, the importance of data cannot be overstated. It will come as no surprise therefore that the protection and security of data continue to be fundamental business priorities for the insurance industry.

Brexit

Many insurers, with international data flows and footprints, will have been monitoring the impact of both Brexit and the *Schrems II* decision on the legality of data transfers. Under the 'bridging mechanism' provided for by the Trade and Co-operation Agreement (effective 1 January 2021), personal data can continue to flow freely from the EU to the UK for a maximum of 6 months, which will hopefully prove to be sufficient time for the EU to reach an adequacy decision. Although the odds of such a decision look favourable, the Information Commissioner's Office (ICO) has advised businesses to take precautionary measures and to put in place alternative transfer mechanisms. Data transfers from the UK to the EEA can, however, continue regardless of an adequacy decision following the UK Government's decision to regard EEA jurisdictions as adequate. However, data transfers are set to remain a hot topic in the coming months as we await the adoption of new Standard Contractual Clauses and as organisations grapple with new obligations such as Transfer Impact Assessments. Beyond data transfers, other potential data protection actions triggered by Brexit include a requirement to review privacy notices, data protection clauses within contracts and Data Protection Impact Assessments (DPIA) to ensure the correct statutory language is being used, reviewing whether you require an EU Representative and ensuring that you have correctly identified your lead supervisory authority.

COVID-19

One of the many ways in which the pandemic has created a longer term business impact relates to the shift to remote working. The concept of a remote and a more disparate workforce is likely to endure and so too will the associated data protection and cyber security challenges. The ability to implement and maintain effective security controls across a much larger attack surface is not straightforward. Aside from an increased number of endpoints, the proliferation of virtual meetings, remote desktop access and use of personal devices will all continue to contribute to a more complex IT estate. The rise in phishing and social engineering frauds serves as a constant reminder to ensure that staff are adequately trained, as your first line of defence. The pandemic has arguably raised awareness of and investment in cyber risk and resiliency, which is a good thing. However, there has also been a corresponding rise in the frequency and severity of many cyber threats.

Supply Chain Risk

Targeting organisations through vulnerabilities in the data security of their supply chain is not a new tactic, and most insurers will already have mature controls in place to help manage this. However, the recent SolarWinds breach should provide stimulus to take stock of any existing measures and to look at the potential risks again, through the lens of increasingly sophisticated attackers, who are deliberately targeting 'watering holes' which if breached, enable them to also infect many other organisations. Insurers typically have large supply chains to manage and frequently need to share significant volumes of personal data. We anticipate an increase in regulatory focus and enforcement activity in this area.

FCA

Consumer privacy, data security and the ethical use of data were strong themes in the Financial Conduct Authority's last Annual Report. We discuss this aspect further in our review of Financial Services Regulation below.

Cyber Insurance

The cyber insurance market hardened significantly last year as the frequency and severity of ransomware increased exponentially, leading to much higher costs for losses such as business interruption. In the short term, the ransomware epidemic shows little sign of slowing as double and triple extortion variants continue to wreak havoc. There is however some evidence that the appetite to pay ransom demands may be diminishing due to a variety of factors, including an increasing number of incidents where the attackers have leaked exfiltrated data online even after a ransom payment was made. There have also been calls to look at the criminalisation of ransom payments, beyond those entities appearing on sanctions lists. This is a complicated issue and one that is unlikely to be resolved in the near future. Despite a hard market, we expect the demand for cyber insurance to continue to grow and keep pace with the rise in cyber threats and general digitalisation.

Digital Journey

Digital transformation programmes will continue to be a major focus, with most insurers having accelerated their digitalisation during the pandemic. Further acceleration looks likely as technologies such as automation and artificial intelligence continue to embed and move from proofs of concept into core service/product components. This means data protection will continue to be a key consideration, from website or application security and privacy settings, DPIAs, to the validity of customer consents and online marketing practices. A broad range of data protection issues arise and it will be critical to the success of any digital transformation project (and brand reputation) to get these right.

Beyond GDPR

With GDPR now in its third year, data protection legislation, including the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003, is now regularly being interpreted in case law and we are also seeing a steady trickle of regulatory guidance. Big cases from the last 12 months included *R (on the application of Bridges) v Chief Constable of South Wales* (automated facial recognition cameras), *Schrems II* (international data transfers), *R (on the application of M) v Chief Constable of Sussex* (Data Sharing) and *WM Morrison Supermarkets plc v Various Claimants* (Vicarious Liability / Data Breach). In terms of regulatory guidance from the ICO, we have new detailed guidance on the Right of Access, the Age Appropriate Design Code in respect of child data, a new Data Sharing Code of Practice, a draft Direct Marketing Code of Practice, and guidance on Artificial Intelligence and Data. There is a lot of new information for insurers to digest and then make necessary adjustments as we can expect this new case law, guidance and codes of practice to increasingly inform regulatory expectations and decisions.

Enforcement

After something of a hiatus, we saw a flurry of regulatory enforcement action last year with some major GDPR fines being levied against Marriott, British Airways and Ticketmaster. Although none of these decisions were focused on the insurance industry, they do collectively provide insight into regulator expectations concerning issues that are very relevant to insurers, including the frequency and extent of both risk assessments in relation to card data and supplier due diligence. At the other end of the scale and of great relevance to insurers, was a prosecution by the ICO against two individuals for the unauthorised access and sale of insurance claims/accident data. This was a welcome example of the ICO utilising powers under the Computer Misuse Act 1990 in response to the unlawful trade of accident management data.

Claims & Litigation

Many insurers will be feeling the brunt of the rise in frequency of damages claims for alleged data protection breaches and consequently looking closely at their appetite for policy coverage of these risks. Claims farmers are now entrenched in this area and actively marketing, with the promise of compensation. This is currently a lucrative area for claimants and their representatives where insurers face difficult decisions around the economics of defending individual claims, where the costs risk far exceeds what are often small damages amounts. Privacy activists also continue to be very active in this space, tackling some of the big privacy issues of the day, such as how children are tracked and monitored online. The trend of claims farmers following in the privacy activists slipstream is likely to continue. All eyes will be on the Supreme Court this year when *Lloyd v Google LLC* is heard, as this decision has the potential to have far reaching consequences in relation to issues such as when damages for loss of use can be claimed, even if no distress has been suffered.

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Diversity & Inclusion

Looking back to look forward.

George Floyd. Kicking over the statues. Reclaim the streets. Plenty has happened over the last year to propel Diversity & Inclusion ("D&I") to the top of the agenda in society. But how will that translate into our industry as we look to the future? And why does it matter to the insurance sector as a whole?

The Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016 came into effect from 1 March 2017. The FCA's Disclosure Guidance and Transparency Rules ("DTR") also came into effect at the same time.

DTR 7.2.8R provides that a listed company's corporate governance statement must include a description of:

- The diversity policy for the board, including age, gender, educational and professional background,
- The objectives of the policy,
- How the policy has been implemented, and
- The results in the relevant reporting period.

If a company does not have a diversity policy, then it must explain why that is the case.

In January of 2021 Georgina Philippou, Senior Adviser to the FCA on Public Sector Equality Duty, gave a speech at the Ethnic Diversity in The City and Corporate UK Summit.

The highlights were:

- Financial services generally are not diverse and that is not good for anyone. But it is also important to remember that diversity is one thing and inclusion is another; without an inclusive culture, the value of diversity, when achieved, will not be realised.
- As the FCA, they want to see a healthy financial services industry; they want to mainstream diversity and inclusion into all of their regulatory processes.
- The responsibility for creating and maintaining more ethnically diverse and inclusive cultures in the financial service industry sits with everyone.

So, apart from the requirements to do so, why else should businesses seek to achieve a more diverse organisation and instil a culture of inclusivity?

1. *It's the right thing to do.*

   Candidates that might not otherwise have thought about applying will be encouraged to do so if they see the organisation has committed to D&I. That means that the business increases its pool of possible talent. Having applicants from differing backgrounds will lead to fresh thinking and new ideas – reducing the possibility of "groupthink" can only be a good thing.

   In addition, widening the hive mind of a team or business should result in better advice to clients and new approaches to problem solving. As staff feel valued and included that will lead to a lower rate of attrition. The average cost of recruitment for a new employee in the UK is £3,000 (Glassdoor 2020).

2. *Competition*

   Clients are beginning to put pressure on suppliers. For example, Coca-Cola is updating its outside counsel guidelines to require that the US law firms it uses take concrete steps toward promoting diversity within their ranks.

   Novartis, the global pharma company is taking it one step further. If a law firm does not meet its agreed-upon diverse staffing commitment for a particular matter, Novartis will withhold 15% of the total amount billed over the life of that specific matter.

   Some forecasters predict that Coca-Cola's policy will cross the Atlantic within 36 months. How soon before other organisations adopt similar policies to those of Coca-Cola and Novartis? And how soon before it spreads to other suppliers such as insurers?

   Any organisation that is ahead of the curve on this will have an immediate business advantage over its rivals.

3. *The Bottom Line*

   UK ethnic minority groups have a spending power of £300 billion a year, and even though the LGBT population is not as big, with estimates ranging from 1.2 million to 3.6 million people it is clear the addressable market has significant potential.

   Internally, businesses are beginning to realise that apart from it just being the right thing to do by their people, there are significant business advantages to being inclusive and diverse.

   Research from organisations such as the Harvard Business Review, McKinsey, KPMG and Forbes, has corroborated the idea that diversity can have a positive impact on a company's bottom line. The most diverse companies are now more likely than ever to outperform less diverse peers on profitability.

   Companies with leadership in the top quartile for gender diversity are 25% more likely to experience above average profitability. Ethnic diversity makes it 36% more likely.

   It has been reported that increasing gender diversity by just one percent will boost an organisation's bottom line by three. In addition, if there is just a one percent rise in race equality, it can increase revenue by nine percent.

Conclusion

Greater and greater transparency will be required of organisations as to their "culture". Does the organisation have an inclusive and respectful culture? Are its values those that a potential client would want to be seen to be endorsing by choosing that organisation as a supplier/partner? These are questions that will gain increasing traction in the coming years. Businesses should be alive to this and be ready to respond positively when they are put to them.

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Environmental, Social & Governance

The concept of Environmental, Social and (Corporate) Governance (ESG) is evolving in the insurance industry, and in the wider financial and business communities such that it is no longer a matter of compliance but is essential for survival. Insurers are looking at it from the perspective of how ESG issues impact insurance and investment portfolios, and also how insurance and investment portfolios impact the environment and society.

Climate change can affect access to affordable insurance, but also provides an opportunity for insurers to invest in companies and technologies that are working to address the issue—and the insurers that do so will have an advantage. Those writing directors' and officers' liability insurance or professional indemnity insurance need to closely consider the future and how they provide this insurance. Insurers will need to consider brand and reputational issues which might arise as a result of the decisions that they make.

The coronavirus pandemic has led to many issues being deprioritised but ESG remains high on the agenda and has highlighted the potential for disruption to everyone that climate change could bring. The pandemic has proved critical but climate change is even more fundamental.

There are differing standards and frameworks that make the agenda challenging to navigate but they share the same aim and it is not an option to abstain. It is said that, in 10 years' time, if you are in a sustainable business you might survive. If you are not, you won't.

Relevant frameworks for insurers include:

1. **The UN Environment Programme Finance Initiative (UNEP FI) Principles for Sustainable Insurance (PSI)** is a useful framework to reference. It highlights that the new opportunities and risks posed by ESG factors mean that insurers should change the risk factors they consider when managing their businesses. The PSI is motivated by the fact that as risk managers, risk carriers and investors, insurers can play a vital role in encouraging sustainable economic development.

   Four main principles are outlined in the PSI framework:

   — Embed decision-making ESG issues relevant to insurance business.

   — Work together with clients and business partners to raise awareness of ESG issues, manage risk and develop solutions.

   — Work together with governments, regulators and other key stakeholders to promote widespread action across society on ESG issues.

   — Demonstrate accountability and transparency, regularly disclosing publicly progress made in implementing the principles.

2. **Sustainable Finance Disclosure Regulation (SFDR).** The EU regulation on sustainability-related disclosures in the financial services sector applies from 10 March 2021. The SFDR provides a harmonised set of ESG disclosure standards for financial market participants and therefore helps to achieve one of the key aspects of EU sustainable finance.

   The SFDR applies to insurers selling insurance-based investment products, in particular, the increasing popularity of ESG funds. It is unclear whether the SFDR will apply to UK based insurers, however, it is likely that the UK will seek to adopt regulations that are similar as it works towards meeting the goals of the Paris Agreement. Account therefore needs to be taken of them now even if they are not directly applicable yet.

3. **Task Force on Climate-related Financial Disclosures (TCFD).** On 9 November 2020, the UK Government announced various proposals for the financial services sector in the UK to support the green economy. The key announcements included:

   — In the UK, Climate Related financial disclosures will be mandatory by 2025 across the economy (including occupational pension schemes, insurers, banks and building societies, companies and asset managers) adopting the recommendations of the UK's joint regulator and Government body, the TCFD).

   — The roadmap to compliance requires large UK asset managers to comply with disclosure requirements as of 2022 and other asset managers by 2023. The TCFD's principles-based disclosure recommendations focus on governance, strategy, risk management, and metrics and targets.

   — The UK will implement its own green taxonomy, using the EU Taxonomy Regulation as its foundation. A UK Green Technical Advisory Group has been set up. This leaves scope for UK divergence from the EU Taxonomy Regulation.

   — The Government will issue its first Sovereign Green Bond in 2021, subject to market conditions.

Next steps

In light of the increasing focus on ESG disclosures, and the growing recognition that managing ESG risks can create long term value for an enterprise, there will be pressure on companies, asset managers and other relevant market participants who are not yet making ESG disclosures to start doing so, even if it is not yet mandatory.

In preparation for the advancing regulation on ESG, businesses should:

1. Consider whether the business is in the scope of the new disclosure requirements;
2. Carry out an assessment of the impact of the SFDR at the firm and product level, including whether any products promote sustainability;
3. If they fall within the scope of the SFDR, ensure compliance by updating websites and pre-contractual and contractual documentation as soon as possible (given commencement date of 10 March 2021); and
4. Consider making or working towards proposed ESG-related disclosures, even if not yet within the scope of the SFDR, given increased stakeholder requirements.
5. Work towards TCFD requirements for disclosure.

This list is not exhaustive and all relevant regulations should be considered in terms of expected compliance.

ESG in practice

An example of how commitment to ESG is progressing, both directly and through influence, is seen in Lloyd's recently published report and approach. Lloyd's ESG commitments include the following:

— Encouraging all insurance undertakings in its market to allocate 2% of annual premiums towards innovative and sustainable products by 2022

— Developing a new risk centre, launching in 2021 which will undertake research into new insurance products to protect society from systemic risks, including climate risk

— Ending investment in thermal coal-fired power plants, thermal coal mines, oil sands and new Arctic energy exploration activities. This means that Lloyd's and Lloyd's market participants will end new investments in these areas from 1 January 2022, and will phase out existing investments in companies that derive 30% or more of their revenues from thermal coal-fired power plants, thermal coal mines, oil sands or new Arctic energy exploration activities by the end of 2025.

— The publishing of a road map that sets out how Lloyd's will become net zero in its operations by 2025 and will work with the market to support their net zero emission plans.

— Asking managing agents in the Lloyd's market to stop providing new insurance cover for thermal coal-fired power plants, thermal coal mines, oil sands, or new Arctic energy exploration activities from 1 January 2022 and to phase out renewal of existing insurance cover for these types of business by 1 Jan 2030 allowing the market time to help their customers' transition. Lloyd’s will consult with the market and policyholders and provide ongoing support and guidance during this period of transition.

In the run-up to the United Nations Climate Change Conference (COP26), Lloyd's will also consider how else the insurance sector can best support the global effort to address climate risk, and respond to the UK government's Ten Point Plan for a green industrial revolution.

In summary, expected action on ESG is accelerating and needs to become a central part of business strategy for all insurers.

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Financial Services Regulation

Conduct, Culture and Financial Crime will be key regulatory watchwords in 2021.

The Regulators' (FCA, PRA and the Society of Lloyd's) approach to the insurance sector in 2021 will see a greater focus on operational resilience, data security, anti-financial crime and non-financial misconduct.

Operational resilience

The global coronavirus pandemic has focused Regulators' minds on operational resilience. Even before the start of the pandemic in 2020, operational resilience was still very much towards the top of the PRA and FCA agendas.

Operational resilience is defined by the FCA as *"the ability of firms and the financial sector as a whole to prevent, adapt, respond to, recover and learn from operational disruptions"*.

The FCA and PRA want to increase the resilience of financial institutions to protect customers, the wider financial sector, and the UK economy from the impact of severe operational disruptions. To their credit though, considering the scale of the disruption in 2020, most insurance firms have coped well. Post-pandemic, we expect the Regulators to review and test those resilience plans.

Anti - Financial crime

Financial crime will always remain high on the Regulators' agenda; in particular, firms' systems and controls to counter and mitigate the risk that they may be used to further financial crime. As discussed above (see page 9) Fraud probably represents the biggest material risk to the insurance sector; however, insurers and intermediaries should consider other elements of financial crime. For example, third party arrangements, where third parties are outside of the immediate control of firms, could be viewed by regulators and law enforcement agencies as 'associated persons' for the purposes of corruption and tax evasion legislation. Although general insurance does not readily lend itself to money laundering; as the banking sector strengthen their defences against professional money launderers, they will, in turn, look for other sectors to launder the proceeds of crime, and this includes insurance. The financial crime risks of financial and/or trade sanction breaches, is also relevant, especially when on-boarding a risk and paying a claim.

Data security

Protecting consumer privacy, data security and using data ethically were strong themes in the Financial Conduct Authority's last Annual Report. It is clear that data protection and cyber security will continue to feature heavily in the regulation of firms. Examples cited by the FCA which are likely to continue to be regulatory hot topics include the importance of ongoing penetration testing / ethical hacking to properly assess cyber resiliency; ensuring that personal data used in pricing is ethical and transparent; guarding against the potential for consumer harm associated with the increasing use of big data, artificial intelligence and the general trend of collecting and analysing ever more granular data about consumers. In November last year, the FCA issued a warning to firms that as the economic climate was causing some firms to change how they operate and others to leave the market or merge with others, any client data needed to be processed and transferred lawfully in compliance with data protection legislation.

Non-financial misconduct

Christopher Woolard's message in December 2018 that 'non-financial misconduct is misconduct, plain and simple' continues to ring true. Since that pre-COVID-19 message, we have seen the FCA focus increasingly on non-financial misconduct and cultivating firms in which such misconduct is not tolerated.

The FCA has repeatedly made its views clear that non-financial misconduct falls within its remit, and whilst there is no 'one size fits all' approach, improving culture in financial services, including policing all types of misconduct, is a continuing priority for the FCA.

Whilst everyone's experience of working from home has differed, it is true that for all of us, our working lives have been revolutionised. The FCA has repeatedly asserted that the combination of financial pressure and psychological stress on employees working in a remote environment may result in an increased risk of misconduct and could certainly lead to the decline of a firm's culture. Whilst firms must tackle the immediate financial and operational issues caused by the pandemic, the FCA has emphasised that it is equally important for firms to foster a healthy and inclusive work culture.

The continued remote working environment means that the lines between work and home, and professional, personal and social life have become blurred and firms must work hard to identify and manage emerging risks. For example, bullying and harassment through the use of WhatsApp or video calls, remote client relationships and client confidentiality. To reduce the risk of harm, the FCA expects formal processes and objectives to remain accessible, clear and re-enforced (irrespective of the work location).

Given the FCA's rhetoric, it is particularly important for both firms and Senior Managers to be able to demonstrate their consideration of these points in the context of the pandemic and throughout the areas of the business for which they are responsible.

The FCA expects Senior Managers to instil behaviours in their teams that comply with the five conduct rules and ensure that employees know what those rules mean for their particular roles. Senior Managers are also expected to regularly assess and certify that colleagues in key roles are "fit and proper". These assessments should include anything that could be seen as non-financial misconduct. The key to being able to demonstrate all of this is, of course, documenting the actions taken and showing pro-activity in addressing any issues identified.

The focus on culture, driving positive behavioural change and clamping down on non-financial misconduct has not wavered in the context of the pandemic. Firms, and their Senior Managers, must be able to demonstrate that, whilst their focus will inevitably have been on servicing customers, and financial and operational resilience, they have not lost sight of the importance of promoting healthy and inclusive work cultures by being pro-active and through clamping down on poor behaviours when necessary.

From a regulatory perspective: be it regulator or regulated, the pandemic is an unprecedented chapter, but it has not equated to a let-up in the Regulators' demands on the sector and seeking to ensure that insurance firms act in the best interests of their customers.

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Fraud

COVID-19 and Whiplash Reforms – Both Big Risks

Two big themes emerge as challenges in the fraud environment for 2021 and the future - COVID-19 and the financial fallout from that, as well as the Whiplash Reforms.

Having initially been tabled to be introduced last year, the reforms are now due to come into force in 2021.

Whilst lowering the overall costs of claims, the new measures of the Whiplash Reforms could present a challenging fraud environment with unregulated claims farmers processing claims in the background, hiding behind the new litigant in person portal, which will make it easier for fraudsters to avoid detection, for example, by constantly changing the names of key attractors such as credit hire companies. Additionally, there will often be no solicitors which means two things - no gatekeeper to obvious fraud at all, meaning the real rogues organising fraud can send the claims in with abandon, and less ability to screen data for known solicitor risks. So suddenly much of the usual pattern and matching data may be missing.

Added to this is the further automation of claims that the new system will bring, with less hands-on involvement and a more process-driven environment.

It is essential that insurers develop new approaches. Using data will be key, and changing what works now, as that may not necessarily work in the future. Predictive analytics, route to market and the latest data analysis need to be properly leveraged in the new environment. But tools also have to be developed and quickly, to take the data from the portal and 'grab' from the claims conveyor the highest risk claims for more careful analysis in this new highly automated environment.

First party fraud increasing

First party fraud is on the rise and will continue as the economy reels from COVID-19. After the 2008 financial crash, fraud increased substantially in the following year, and a similar rise is expected now. Not only are we seeing an increase in vehicle thefts and first party home claims fraud but we are seeing some more specific patterns. We are seeing more cash-bought vehicles allegedly being stolen in laundering escapades, and GAP insurance fraud is becoming a big issue which the market is just getting to grips with. For example, GAP is being utilised in stolen vehicle frauds and staged accidents. 2021 may be the year when GAP insurers and General Insurers start sharing more data which must be a goal for the common good.

Pet fraud continues to be an issue- both at the claims level and the supplier level with inflation of fees.

Surprisingly, 'old school' staged making a comeback in motor

Another indicator that criminals are under financial pressure is that 'old school' staged and induced accidents unexpectedly started to make a comeback in mid-2020. There are some new people trying their hand, but we have also seen a large number of these claims connected to previous networks, groups and families who had toned down their fraud over the past five years but are suddenly back. Often aided and abetted by 'Pop Up' enablers and 'clean' associates, probably to subvert data fraud matching, the overall controlling entities are people who have connections to organisations we have dealt with in the past. Again intelligence and data is the key to detecting this. It seems many of these experienced entities are back for the long game, and probably thinking up schemes now how to best exploit the new litigant in person portal, Official Injury Claim.

But the trend to be less reliant on personal injury and 'layer' the claim continues unabated

Fraudsters were already moving to ever more sophisticated practices other than outright staged accidents and whilst we have seen the unexpected comeback in the basic staged claims, these other practices also continue apace. We have seen the fraudsters moving away from whiplash being the centre of the claim for the past five years. They are more concerned with claims inflation of the 'bent metal', credit hire and 'layering' the claim than the personal injury claim itself. In all types of claim, they are concerned with layered, unnecessary and fraudulent rehab. Vehicle damage is often grossly exaggerated and made worse, supported by fraudulent and sometimes 'Pop Up' engineers. As the money is further squeezed from claims, layering will be ever more common.

Is it really ghost broking?

Ghost broking has increased as a problem, but we are also seeing an increasing use of false identities to incept policies in order to stage accidents. This practice seems here to stay and is because the fraudsters have worked out that insurers may just pay claims if they cannot trace the policyholder, often putting it down to ghost broking and sometimes these claims never see an insurer's fraud teams. It is important to note that insurers can implement various technical 'frustration' tactics to prevent claims in these situations, and all insurers should be aware of this and ensure a process is in place so that these claims make it to their fraud teams.

COVID-19- a huge fraud opportunity

And then we move onto claims caused by COVID-19 itself. This is a huge concern in the market.

We already know how the claims farmers have decimated the motor market and are moving into domestic property via loss assessors. We expect the same in COVID-19 disease claims. The market for them is almost unlimited, and the ability to farm and encourage fraudulent claims in this area will be massive. DWF have been monitoring the COVID-19 disease claims 'market' since the start of the pandemic, and have seen the websites gearing up to encourage claims, and even some of our commercial clients have had farmers outside their premises. The layering opportunities are also huge, with 'rehab' and even scans at substantial cost potentially being added onto the most mundane of alleged COVID-19 disease claims. The claims have already started to trickle in, but we expect this to ramp up significantly over the next few years.

With this in mind, DWF have developed a data solution to help insurers ask the right questions and identify the riskier COVID-19 claims at the outset with live analytics, data matching and risk identifiers.

But the fraud opportunities are not only in disease claims. The insurance market has to think outside the box- for example, we have seen substantial fraud in events cancellation claims, and even business interruption claims are being farmed- sometimes by entities with no instructions to act.

We expect COVID-19 related fraud to continue long beyond the pandemic itself with first party SME fraud a particular risk- the smaller businesses that are struggling may be tempted to invent or exaggerate any type of claim to recover funds or find a good exit strategy.

Financial crime

Fraud will increase substantially across all areas, with consumers the target of phishing attacks, authorised push payment fraud, as well as online scams. We have already seen an increase in some of our life and commercial insurance clients having increased potential liabilities caused by fraudsters hijacking their customers' accounts and diverting money.

A particular area of vulnerability and seen as 'easy pickings' for the fraudster is income protection fraud. Again, with no real databases and cross-industry liaison, we have seen numerous claims, sometimes from serial claimants across different clients. We have even seen these claims combined with outright staged EL accidents, and it is essential the industry look at this area more closely- with a failing business it is all too easy for an SME owner or employee to fake an income protection claim in order to solve their problems.

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Healthcare

Health is now the most important issue on the world's agenda, and we have all become 'armchair experts' in virology, the R value and mutations. The recent domination of pandemic issues does not, however, mean that we should be blinkered, as there is considerable other activity in this sector that will bring significant changes to the landscape.

COVID-19

Claims involving healthcare providers and those that insure them arising out of COVID-19 will mirror many of the issues identified by DWF's experts in catastrophic injury, occupational disease and fraud, namely the need to remind claims farmers that correlation is not causation, and in those claims where liability cannot be disputed, a forensic quantum analysis will be essential as the pandemic-hit economy turns loss of earnings multipliers on their head and, to a degree, life expectancy computations.

Other Issues

Political factors are (understandably) impacting healthcare like never before. Drivers being:

— concerns that some patients have been unable to recover damages due to indemnity being denied to the medical professional involved

— the cost of clinical negligence against the NHS to the Government is unsustainable

— the need to manage the social care crisis – funding and integration with the NHS

By way of context, the Department of Health and Social Care 2018 consultation on appropriate clinical negligence cover, asked for views about indemnity cover for health professionals not covered by a state scheme, and indicated a government preference for insurance versus discretionary indemnity, with the expectation that legislation would follow to that effect. As yet there has been no statutory requirement that insurance (not discretionary indemnity) must be taken out by private healthcare practitioners, but it is expected that this will follow and insurers should ensure they are ready for that.

Whilst the cost of claims backed by state indemnity against the NHS appears, at first glance, to be of no relevance to insurers, in February 2021 the Government indicated that it was working on a total overhaul of the '*outdated*' system of clinical negligence compensation within the NHS, and that no-fault compensation for clinical negligence claims against the NHS was being *'seriously considered'*. It is early days, but the Government has indicated an affinity with the Swedish scheme, which covers public and private healthcare. Interestingly, Sweden's model is funded via insurance paid by healthcare providers, which contrasts with New Zealand's no-fault scheme which is funded by the taxpayer.

The unknown is whether the market could grow or shrink. Our prediction is that no-fault compensation is unlikely to overcome the pressures of delivering access to justice and the anomaly that a victim of a broken leg in a motor accident would recover more than a patient suffering the same injury due to a fall in an NHS hospital. If it does come about, it will take time to evolve the proposition.

Another hot potato is the white paper published in February 2021 which details plans to embed lessons learned during the COVID-19 pandemic and make legislative changes '*rewiring'* the NHS and the relationship between health and care services (NHS/Local Authorities) to reduce red tape which could lead to private providers (awarded contracts due to statutory obligations to go out to tender) being cut out of future plans. The need for private healthcare insurance will be squeezed here but again, in view of the demand for high-quality health and social care, the affordability of such an option is questionable.

New risks

For those private practitioners who have been able to consult with patients during the pandemic, telemedicine has proven a crucial enabler. Indications are, however, that this will bring its own raft of claims and referrals to regulators, as a result of online prescribing, diagnosis without examinations, no one complete medical record, and platforms set up in haste that are not secure.

Timing

Regulators are hugely backlogged, leaving many practitioners waiting for their fitness to practise to be evaluated and enduring drawn-out coronial and criminal investigations.

In the civil litigation sphere, medical experts are crucial to being able to evaluate the viability and defensibility of clinical negligence claims. Understandably – many have been rather busy over the last 12 months and just as with backlogs in treatments, expert assessments of claims are also being pushed off well into the long grass.

The bottleneck is unlikely to be released before 2022 – until then, we are left with delay, condition and prognosis reviews on the records or at best via Skype/Zoom etc which lacks the rigour of an in-person review, fuelling the potential for fraud. Much as shelf life is a concern for every insurer, now is the time to consider changing that approach as waiting for the right assessment by the best specialist will save money in the long run.

Time pressures are also impacting on the judicial function (as others have referenced) so to return to where we started, and to politics, government action again looks likely to change the landscape, and we anticipate that the compulsory ADR button that has been sitting there waiting to be pressed for many years will be activated within the next 12 months. In view of the costs of litigating a clinical negligence trial, and the impact of Qualified

One Way Costs Shifting, waiting for compulsory ADR might be a smart move.

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The International Perspective

Cyber, Climate Change, and Environmental Social and Governance (ESG) issues remain significant and constantly evolving areas of risk which will continue to shape the international insurance landscape going forward.

COVID-19

In 2020, the COVID-19 pandemic certainly had the greatest impact. Every operator, in every single field, has had to deal with the health emergency. Not least, the insurance sector has found itself (and will continue to find itself) facing huge, accelerated challenges to its normal modus operandi in order to adapt to the turmoil and destruction the pandemic has brought with it and will leave behind, once it is over.

Based on the above, the resumption of business as usual for insurance companies is envisaged with a particular focus on one area: *digitalisation*. Now products and back-office procedures can be managed online in order to meet the needs of clients who require the rapid conclusion of new contracts.

Cyber risks

The digitalisation of the multiple branches of the global economy (from domestic to corporate) brings with it an increased risk of cyber "crimes". Phishing and brute force attacks are just some of the risks that companies face. The challenge for insurance companies is to offer increasingly advanced products in this area of risk, which is not yet fully developed.

Government regulatory bodies and law enforcement agencies worldwide have taken numerous initiatives to tighten the existing data security and protection measures. Additional requirements provided under new pieces of legislation on data protection, such as the European Union’s (EU) General Data Protection Regulation (GDPR), are increasingly persuading insurance providers to focus on cyber insurance products. Meanwhile, in connection with the outbreak of the COVID-19 pandemic, policyholders, brokers, insurers, and agents showed increased attention toward cyber insurance coverage. At the same time the increasing level of digitalisation has also led to a tremendous growth in the rate of cyberattacks, more so during the COVID-19 pandemic. Hence, the cyber liability segment is expected to hold a progressively larger market size up to 2025.

D&O insurance coverage

In addition, in 2021 it will definitely be necessary to monitor the market request for D&O insurance coverage. This is growing steadily throughout Europe, due to the significant increase of litigation involving the companies' executives, often resulting in securities or derivative claims from shareholders.

Also, the effect of the COVID-19 pandemic outbreak is an important factor to be considered in connection with D&O Policies. The current pandemic is likely to lead to a significant increase in litigation against D&Os as potential claimants scrutinize the way Boards guide their companies through the pandemic crisis, and top management is being put under huge pressure to take wide-ranging decisions to protect the interests of various stakeholders under constantly changing circumstances.

Furthermore, given the significant recent increase in insolvency proceedings deriving from the heavy impact of the pandemic crisis on the markets, one of the "hottest topics" of the post-COVID-19 era with respect to D&O insurance coverage relates to the dilemma concerning whether or not insurers may include in their policies specific exclusions aimed at carving out from coverage those liabilities for D&O claims which arise from or relate to the entering by the policyholder into some insolvency procedure, irrespective of whether such procedure started before or after policy inception.

In fact, the application of such a coverage exclusion in practice could lead to situations where the relevant D&O would lose their right to coverage as a consequence of circumstances falling outside their scope of control, regardless of how diligently the insured risk was represented at policy inception.

Business interruption

Another issue that will certainly remain under discussion is business interruption and the question *"Is the insurance sector ready to insure against business interruption from pandemics?"* Whilst there are already some examples of insurance companies seeking to address the need for business interruption coverage due to pandemics to date, there are still very few reports of insurance products being available in the marketplace. This is likely to change however as further data on the development of pandemics becomes available. The likely next steps could be to develop business continuity planning, supply chain management and, finally, communication.

Parametric insurance

Last but not least, is the topic of parametric policies. This is one of the main global trends in insurance innovation that offers the payment of a predetermined amount based on the probability of a predefined event occurring.

The peculiarity of a policy, whose premium is calculated according to the probability of the event, has the benefit of being potentially attractive in a pandemic and post-pandemic era. In addition, these policies have the potential to fill the gaps of more traditional products albeit they should not be seen as a substitute for the latter.

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Local Authority

COVID-19 challenges

There is no doubt that the ways in which we are all reacting and adapting to the challenges of the COVID-19 pandemic will continue to shape our lives for the foreseeable future. The crisis has highlighted the essential nature of services provided by local authorities and the importance and value of their connections with their communities have been thrown into the spotlight. Despite the immense challenges that the next year is likely to bring, the public sector has already demonstrated resilience, flexibility and innovation in adapting to unforeseen consequences.

Public sector finances

The COVID-19 outbreak has caused significant financial strain on local authorities. Even before the pandemic, austerity and significant cuts to public sector budgets were having a major impact on the delivery of local authorities' statutory functions and there were many challenges for the public sector insurance market, not least continuing issues surrounding the implementation of Brexit. More local authorities are likely to come under immense financial pressure in 2021 and beyond. Local authorities will be having to focus on how they can deliver services within severe financial constraints while meeting increased demand.

Maintaining our highways

Despite the fall in traffic on the highways (and resultant motor claims) through long periods of lockdown, highway authorities continue to be under a statutory duty to maintain the condition of highways and must act reasonably to ensure they are not dangerous. Changes to usual inspection, maintenance and repair policies may have been necessary in certain areas due to restrictions and financial pressures caused by the pandemic and pothole claims are an increasing area of concern. The Well-Managed Highway Infrastructure Code of Practice will assist in allowing highway inspectors to assess each defect and use their discretion but local authorities will be looking to ensure that their decision-making processes are well documented.

Even before the pandemic, we had noticed a marked increase in claims by injured cyclists. Cycling has enjoyed a boom in popularity during the pandemic and we anticipate an appreciable spike in cycling (and e-scooter) claims against local authorities over the next 6-12 months Our recent defence in *Nash v Hertfordshire County Council [2020]* demonstrates that the courts are willing to take a forensic approach to all the components of a highways claim and that causation will be key - the question should always be asked, whether the condition of the carriageway was actually the cause of the accident.

Looking further into the future, local authorities will be exploring a longer-term approach to investment in effective road maintenance, to improve the condition of roads and help prevent potholes from forming in the first place. Consideration will likely be given to new ways of assessing the highways, using new technological developments and AI to greater effect.

Redress for victims of abuse

The Independent Inquiry into Child Sexual Abuse recently completed its final public hearing leading to 14 reports so far, with 53 recommendations to better protect children from sexual abuse. The continuing work of the Inquiry and the impact of redress schemes both south and north of the border, pave the way for increased claims and a change in the way in which claims will be dealt with. There is no doubt that the impact of substantial volumes of historic child abuse claims will continue to prove a significant challenge. Local authorities are adapting to this through engagement with the Inquiry and also with redress schemes to ameliorate the impact on the victims of pursuing such claims. There are five further reports due to be published this year and the evidence will inform recommendations in the Inquiry's final report, due to be published in 2022.

In Scotland, the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Bill sets up a scheme to make redress payments to survivors of historical child abuse in care. The Bill is now going forward for consideration and amendments at the Scottish Parliament. Lady Smith, Chair of the Scottish Child Abuse Inquiry, has reluctantly postponed the latest phase of hearings, examining the abuse of children in boarding schools because of COVID-19 restrictions and these are expected to resume as soon as possible along with foster care hearings in late 2021/2022.

Impact of climate change

2021 has already delivered significant challenges for local authorities on the flooding front, with Storm Christoph resulting in flood warnings and evacuations in large swathes of northern England and Wales. The impact of climate change, with such events increasing in frequency and severity, will be keenly felt by local authorities both in their capacity as part of the first response to these events and in their handling of claims. Local authorities will need to be alert to and adapt to flash floods and surface water issues. Sporadic and intense rainfall and storms that lead to surface water flooding are very difficult to predict but working together with insurers and the use of technology and AI to aid prediction, will assist both flood resistance, resilience and the claims process.

Tackling climate emergency and making a green recovery possible will necessitate local authorities making difficult decisions, communicating these effectively and encouraging changes in behaviour. Post COVID-19, it will be essential to find common ground and balance between objectives aimed at restarting the economy and actions protecting the environment.

Tree maintenance

Local authorities' inspection and maintenance of trees may have suffered from delay following periods of lockdown when non-essential works were postponed. This coupled with extended periods of dry weather in 2020, could see an increase in claims for subsidence and tree root damage. Allocation of resources in itself is unlikely to be a sufficient defence but will be considered alongside other issues, such as sickness absence and delay in supply of materials.

Housing disrepair

Claims for housing disrepair are likely to rise following delays in repairs during lockdown periods. Maintenance of proper documentation, particularly demonstrating the reasons for any delays to inspect or repair will be essential for local authorities in defending these claims. Courts will be trying to balance difficulties in carrying out repairs along with the health and safety of tenants, housing officers and tradespeople.

Increasing challenges for schools

As focus on children's rights to education during periods of lockdown intensifies, are we going to see failure to educate claims under Protocol 1, Article 2 of the Human Rights Act 1998 or in negligence? Schools have gone to extraordinary lengths to provide the best education they can in the circumstances but the experience has been variable with those from poor and vulnerable backgrounds still struggling to access online provision. Courts will expect education providers to have taken reasonable steps to identify those needing assistance and steps to address that need.

New ways of working

Clearly a major challenge for local authorities as employers will be the dramatic shift in ways of working, such as the move to agile working along with greater awareness of the importance of mental health and overall well-being in the workplace, wherever that might be. Working from home presents new risks compared to office settings. Rather than any significant increase or decrease in the volume of employers' liability claims, there may now be more of a mix of type of claims. Lack of mobility, inadequate equipment provision for working at home, extended screen time, child care/schooling responsibilities and the blurring of the line between work and home could result in a shift towards more stress-related and work-related back/upper limb disorders. Local authorities will want to engage proactively with their employees to fully understand the nature of the challenge, protect employees' time away from work and provide the necessary tools for well-being. For essential workers still delivering services on the frontline, pre-COVID health and safety standards must continue, despite the extra pressure of service delivery in a global crisis.

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London Market

Lloyd's and the London Market are known for their speciality products and international reach. The COVID-19 pandemic has therefore impacted the London Market in many ways. While much of the business is written directly, a significant amount of business is generated and written via third party coverholders. The COVID-19 pandemic has highlighted the sheer spread of exposures in the London Market, including:

— Property/business interruption, for SME and large global policyholders;
— Contingency and Event cancellation;
— Personal Accident, travel and tour operator liability covers;
— Political Risk and Trade Credit;
— Energy;
— Excess Liability; and
— Reinsurance.

It's no lie that London reinsures the world, and as the world slowly recovers from the COVID-19 pandemic, insurers globally are evaluating how best to aggregate their claims and claim on their international reinsurance programmes. The treaty reinsurance market, after almost a decade in the shadows, has therefore lit up in spectacular fashion. The volume of claims notifications is almost overwhelming for the market, and the true cost remains an unknown. What is also true however is that the London Market has always been dynamic and quick to evolve, and so there is no doubt that it will rise to the challenge of Covid-19, and the future beyond Covid.

We touch on each class of business below in more detail.

Property/Business Interruption

The focus in 2020 was of course the FCA Test Case. But while only a handful of London Market and Lloyd's insurers are household names for consumers, they provide important and specialist insurance capacity, in particular for SMEs. There are specialist products written by coverholders designed for restaurants, bars, childcare centres and nurseries, hotels and so on. Each of these sectors has been devastated by the effects of the pandemic, and so almost all London Market insurers have been affected by the FCA Test Case (in which only Hiscox, Arch, QBE and MS Amlin from the London Market were named)

2021 does not look to be any easier for the property insurance sector, and several open issues have yet to be determined. We successfully represented an insurer in having business interruption claims dismissed, on the basis that the cover for business interruption only responded to one of 34 diseases named in the policy (and COVID-19 was not one of them). While many new policies have COVID-19 exclusions, the sheer volume of claims from 2020 and the impact of the FCA Test Case means that we may well see some further test cases (perhaps this time instigated by insurers) on certain issues that were not determined by the Supreme Court. As important as all of the above, the sector may be seen by some as needing to rebuild trust in consumers and SMEs.

Contingency and Event cancellation

London has an enviable specialism in event cancellation and non-appearance risks. Worldwide events such as the Olympics, Ryder Cup, major tennis championships, Formula 1, most international football tournaments and domestic leagues are insured by the London Market. In addition, conferences and exhibitions are covered, as well as (more well-known) rock and pop concerts. The range of policyholders varies broadly, from the promoters or organisers of events themselves to third party ticket agencies, plus the hundreds of businesses that service the industry (right down, for example, to the companies that provide food and drinks/seating for these events).

Historically, full cancellations have been rare. In most cases, events are merely postponed to another day, but as we are all aware, mass gatherings were one of the first types of event to be banned in all territories. And as yet, many countries are still in lockdown, only cautiously considering a return to live concerts and sporting events where fans can attend, and the participants can stay safe. Despite most policies having an exclusion for communicable disease (and only a handful of policyholders paid the extra premium for communicable disease cover), the losses are still likely (globally) to be in excess of $6bn, and the market is faced with a double whammy: with no major events planned in the foreseeable future, and a long road to get back to the level of events pre-COVID-19, there are no risks for the market to underwrite to even attempt to recoup some of those losses. The level of losses combined with an uncertain future has led to many insurers pulling out of the sector. But that is no bad thing. While a few new names have entered to fill the void, ready to swoop on higher rates and better terms, the reality was that the contingency market seemed overcrowded for some time. Longer term therefore, one effect of the pandemic may be to create a more sustainable and balanced market.

Personal Accident and Travel

The London Market again insures, via third party coverholders, travel products sold throughout the world (we touch separately on the reinsurance aspect below). These policies of course have been heavily impacted, as one might expect. Policies have been put under a lot of scrutiny, focused on when government/foreign departments advised against travel overseas. Many policies excluded epidemic/pandemic cover, or did not provide cover where travel was cancelled because of government advice. These are all being tested in the UK and Ireland at least in front of the Financial Ombudsman.

Less well known is that the London Market provides insurance to tour operators. The Package Travel and Linked Travel Arrangements Regulations 2018 came into force fairly recently and meant that a tour operator was liable to the customer if the trip failed to go ahead. This led to numerous travel agents and tour operators (some for the first time) seeking out cover for airline failure, travel disruption and force majeure. Hot on the heels of the collapses of Monarch and Thomas Cook, this sector has seen claims emanate from tour operators who are all struggling to pay customers. The attritional nature of the claims means that 2021 will continue as 2020 ended, with tens of thousands of claims still to be evaluated and examined. It looks to be a busy time still to come.

Political Risks & Trade Credit

2020 was a tumultuous year for the trade credit industry. The industry was rocked by a number of crises, any one of which would have been defining for the period. Fraud and corruption scandals were of particular note, including Hin Leong in Singapore, and Wirecard in Germany, which together caused well over a billion dollars' worth of losses to lenders. Further, the collapse in oil prices in March roiled markets, and that volatility undermined a number of basic assumptions about how commodities markets function. On top of those issues, the COVID-19 pandemic has brought many key industries across the world to a standstill and is causing economic shrinkage and unemployment across the world. Commodities traders, in particular, have struggled with short-term disruptions amid COVID-19 and a deteriorating credit environment leading to a number of collapses in the market, including the UAE based Phoenix Commodities. These struggles seem set to continue in the short to medium term.

Most in the trade credit insurance market were braced for large-scale claims activity towards the middle and end of 2020. However, by and large, those fears have not yet materialised, especially in the London Market. Several factors seem to have contributed to this, including unprecedented fiscal support across the world and leniency from lenders, with many businesses restructuring loans and credit, rather than strictly enforcing their terms. The 'shock' nature of the current crash means that many lenders and counterparties are expecting their debtors to rebound once COVID-19 restrictions ease. In 2021, as governmental fiscal support programs start to run out, and as the unusual pandemic circumstances recede and businesses start to return to business as normal, we expect to see claims activity tick up significantly. It also seems likely that lenders, particularly in Asian markets, will have to strengthen their systems and processes, with some lenders following ABN AMRO out of the market altogether, with others retreating to only service larger and better established clients.

Alongside all of that, there is a move in the trade credit market to start taking a more robust stance on social-responsibility issues, including climate change. Many lenders are starting to factor in these issues more carefully when assessing clients and projects. We expect this to continue.

In the political risk world, 2020 continued to prove Mr Fukuyama wrong that history is not, in fact, over. We saw significant instances of unrest across the world, including large-scale protest movements in Hong Kong, Belarus and Thailand. This trend has continued in 2021, with significant unrest events in Russia and Myanmar already. We expect that in 2021 economic recovery from the pandemic will continue, but that global unemployment will remain high and that it will take some time for all of the pandemic economic losses to be recouped. Economic troubles have typically been key causes of civil unrest and political strife, and we expect them to contribute to a turbulent 2021. Further, the continual willingness of the governments in China and Russia to support nationalist political challengers and autocrats, alongside a rising tide of nationalist sentiment across the world, means that democratic values will likely remain under threat across many countries throughout South America, Africa and Asia. These factors have caused significant unrest in the past and we expect will continue to do so.

Onshore Energy

The COVID-19 pandemic has not led to a substantial number of claims for onshore downstream insurers. While it is possible that courts in some jurisdictions might be willing to consider the presence of the virus as 'physical damage', we are not aware of any substantial claims in the market on this topic being raised, nor of the issue being litigated in the English courts. Moreover, the market's prompt adoption of communicable disease exclusion clauses should further suppress the risk of any such claims.

There is concern that the mandatory lockdowns and social distancing requirements have forced some policyholders to defer maintenance and upgrade works. As mass vaccination programmes accelerate across the world, we are hopeful that these works should be able to proceed by the middle of 2021. The return of in-person meetings and inspections will also allow insurers to resume full surveying programs that had been put on hold.

As the downstream market continues to deal with the fallout of a number of challenging years and low investment incomes, we expect premium rates to continue to rise, particularly for smaller and medium-sized policyholders and for those who lack long-term partnerships with insurers.

On the renewables side, we anticipate this will continue to be a real growth area for the market. Developing renewable capacity remains a key political priority for many governments, including the Biden administration.

Excess Liability

Through 2020 and into 2021, the excess liability insurers for US opioid manufacturers, wholesale distributors and retail pharmacies have become embroiled in a multitude of coverage issues arising from underlying claims pursued by state, county, municipal and Native American governments. These institutions allege that they have incurred costs to address the opioid epidemic, including costs for medical care, drug treatment, emergency services, law enforcement and other public services.

These claims, based in public nuisance and involving allegations of deliberate misconduct by those involved in the manufacture, distribution, and sale of prescription opioids, raise novel coverage issues for insurers around the application of "expected and intended" defences, and the extent to which occurrence-based liability policies providing indemnity against damages "because of" personal injury during the policy period, respond to claims for the abatement of a future nuisance.

That litigation raises the prospect of future 'copy-cat' litigation in other jurisdictions, while prescription rates in the US for other classes of addictive and recreationally-abused drugs such as benzodiazepines and certain ADHD medication suggest that the US opioid litigation may not be the last of its kind.

The team is currently acting for a range of London Market insurers as London arbitration counsel in relation to excess liability policies issued to opioid manufacturers and distributors in coverage cases arising out of the opioid crisis.

Reinsurance

Reinsurers started the new decade facing various existing issues, including the ever-increasing number and severity of natural catastrophes, social inflation, and fierce competition in the market fuelled in part by the increase in alternative capital. This led to reports that the long-anticipated hardening of the market would finally arrive, bringing about the correction needed to improve results.

Enter COVID-19. Reinsurers have seen a wide range of reinsurance treaties being called upon to respond to the pandemic, including personal accident, property catastrophe, risk excess, contingency and political risk/trade credit covers. In turn, reinsurers have notified potential exposures to their retrocessionaires.

Cedants, reinsurers and retrocessionaires are left to grapple with treaty wordings which, for the most part, were not designed to respond to pandemic-type risks, but which do not exclude communicable disease. The central issues facing the market include whether a pandemic is a reinsured peril and, if so, how COVID-19 related losses aggregate under treaty limits.

While a number of disputed claims will settle, given the "all or nothing" nature of many of the disputes, we expect that there will be an uptick in arbitration in 2021 and 2022 as the market seeks to resolve the coverage issues. Importantly, although the majority of treaties include arbitration clauses, some affected contracts do not. The result may be precedent in the form of a court judgment. While there are discussions in the market about referring certain issues to the courts, in a similar manner to the FCA Test Case, the lack of consistency across wordings placed by various brokers will likely be an obstacle to an equivalent test case.

On the underwriting side, we have seen reinsurers adopting communicable disease exclusions and rate increases, as part of the hardening of the market. The reinsurance market and cedants appear to have adopted a pragmatic approach to renewals, prioritising the need to get cover in place, despite the widespread uncertainty regarding cover under renewing treaties.

Of course, the pandemic has not meant that the other issues facing reinsurers in 2020 have gone away. The changing climate means that we are again likely to see a high level of natural catastrophe losses in 2021, in particular hurricane and wildfire, and the trend regarding social inflation looks set to continue. 2021 is therefore likely to be a busy year for a reinsurance market dealing with both disputed COVID-19 presentations and the day job of adjusting and paying large losses.

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M&A Activity

COVID-19

The impact of the COVID -19 pandemic during 2020 does not appear to have had any direct impact on the level of corporate M&A activity in the UK and this looks to continue throughout 2021. There still seems to be an appetite for deals and a return to high EBITDA multiples. Private equity (domestic and international with particular emphasis on the USA) has also maintained its interest in the sector and will probably do so for some time. This, together with the strength of the US dollar and the continuing interest of the US private equity market in midmarket deals, are all good signs for a healthy 2021. If you add to this the prospect of entrepreneurs relief being discontinued in the March 2021 budget or other substantial changes that could be made in the Capital Gains Tax regime, there seem to have been an avalanche of M&A deals commencing in the last quarter of 2020 all having hard completion dates prior to the end of February 2021. If the Chancellor does decide to leave Capital Gains Tax largely untouched in his forthcoming budget or the changes in tax rates are less draconian than anticipated, then there is no reason why M&A activity will not continue at a healthy level throughout 2021.

Brexit

Brexit has clearly had an effect on the industry but this has largely been constructive as brokers, in particular, have sought to acquire or incorporate European Community domiciled subsidiaries to ensure as smooth a transition as possible. Whilst the central banks of many offshore jurisdictions have been overrun by such applications, most financial services businesses were able to put into place appropriate arrangements before the New Year deadline. We should now see a continuing flurry of activity in this sector as insurance entities seek to finalise their transitional arrangements into more permanent arrangements in most cases resulting in the establishment of permanent business arrangements in appropriate offshore jurisdictions. We would expect to see this activity levelling off towards the end of the second and beginning of the third quarter of 2021.

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Marine & Transport Insurance

Marine Insurance: general outlook

Premiums for marine insurance, which until 2018 had fallen for years due to rising competition and lower claims, are increasing due to growing geopolitical tensions and a surge in catastrophe losses in the past two years. The damage caused by hurricanes Harvey, Irma and Maria caused the market to harden and the warehouse explosion in Beirut in August 2020 has led to some wildly differing early estimates as to the total insured loss; although the consensus seems to be that it will not be anything like the Tianjin explosions in 2015.

The effects of COVID-19 on the claims landscape

Reduced Shipping and Warehouse Activity

COVID-19 has reduced shipping traffic and warehouse capacity in the marine and cargo sector. The first sign of reduction came in Mid-February 2020: a radical drop in demand for Chinese crude tankers from an average of 3.4 billion tonne miles per day in 2019 to almost zero. The number of ships calls at EU ports declined by 14.7% in the first 37 weeks of 2020 compared to the same period in 2019. Chemical Tankers, Bulk carriers, Oil tankers, and Ro-Ro passenger vessels had a decrease of up to 5%.

1. During March - August 2020, the ship traffic from Europe to China and the US declined when compared to the same periods in 2019. Comparing weeks 1-37 in 2019 and 2020 show:
   - (a) a decrease of 50.5% from Europe to China
   - (b) a decrease of 30.8% from China to Europe
   - (c) a decrease of 29.2% from Europe to US
   - (d) a decrease of 38.3% from US to Europe
2. General disruption of traffic: major container lines such as Maersk have reduced their calls to ports in China which is causing delays and the rerouting of cargoes to other ports.
3. Ports have faced an unprecedented number of vessels at anchor and vessels queue up waiting for a spot to unload cargo. Since the beginning of 2020 through to the beginning of 2021, there is an increase in the number of ships "at anchor" in comparison with 2019.

What does this mean for the year ahead in Marine Insurance?

1. Lockdown measures and restriction of movement in various countries have reduced domestic and international trade, interrupting and slowing down global maritime traffic, leading to a reduction in cargo claims.
2. Decreasing consumer demand due to the economic downturn has reduced shipping traffic as well as increased the strain on storage capacity.
3. With warehouses at full capacity, claims against collateral managers will rise as will actions against owners of warehouses for negligence.
4. The decline in ship traffic with reduced calls to ports will lead to a decline in casualty claims.
5. The labour shortage and reduced workforce, especially at key points of the supply chain, and closure of facilities have reduced capacity utilisation at ports. The reduction in capacity to distribute and handle the goods means cargo will be held for a longer duration and increases in storage locations while stocks await their next destination.
6. The inability to sell to consumers (due to lockdown measures and reduced demand) has also led to some retailers and manufacturers not picking up cargo and containers because their warehouses are full or closed. This means an increase in claims for container demurrage and business interruption. The uncollected cargo at ports creates congestion and warehouse accumulation, thus reducing capacity for incoming cargo and containers and further disrupting the supply chain causing an increase in breach of contract and negligence disputes and a rise in insolvency litigation.

You can read more about the impact of COVID-19 in our recent survey of traders and operators in the shipping sector.

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Motor Claims

Whiplash reforms… and beyond?

We have said this many times before, but it seems that 2021 will finally be the year that the "whiplash reforms" are implemented. The reforms, dating back to George Osborne's Autumn Statement of 2015, were set to be implemented in 2020 but were postponed after COVID-19 hit. That delay was initially to April and then until May 2021, as a result of difficulties in completing the rules during lockdown and concentrating resources in other areas.

However, even after the reforms are implemented, it is unlikely things will settle down for some time. As there was after the implementation of LASPO, we anticipate that there will be a period of disruption in the motor market, as accident management companies and claimant lawyers get a taste of post-reform life and adjust their operating models. Those continuing to process whiplash claims are likely to be reliant on "layering" claims to replace income lost due to the reforms and undoubtedly new battles will be fought over minor injuries falling outside the scope of the reforms and how to value those claims, particularly where there is a whiplash injury and other injuries.

Beyond that, the Ministry of Justice have previously indicated that they would then turn their attention to the second part of their response to the 2016 whiplash consultation, which looks at rehabilitation and credit hire. Whilst a solution for the friction caused by credit hire claims might be beyond the MOJ, rehabilitation seems likely to be tackled as part of a further package of injury reforms, although it appears that we will have to wait for the new portal, Official Injury Claim, to bed in before we see what form they might take and that might take some time.

At a time when the civil court system is creaking and the concern is whether additional small claims relating to whiplash might tip it over the edge, the new Master of the Rolls, Sir Geoffrey Vos, indicated in a recent speech that he would like to see an "*online funnel for civil claims",* as part of a fundamental generational review of the civil justice system, in which all claims begin online, before entering a digital court process. Lofty ambitions indeed…

Balancing advances in micromobility and vehicle technology with road safety

E-scooters are now a regular feature in the news and often seen on our roads and pavements (albeit they shouldn't be there!). Trials for e-scooters have commenced in a number of cities, although logistical problems have meant that the trials in London, which are perhaps the most significant, are yet to begin. The trials have been strictly regulated on the basis that the rental e-scooters are insured, speed limited and a driving licence is required to ride them.

It is expected that data from the trials will lead to a framework of governance around the wider legalisation of e-scooters. There remains real concern that outputs from a sanitised trial will not reflect the reality of the dangers of e-scooters and the need for insurance, but one way or another e-scooters will have a greater presence on UK roads in 2021 and, in turn, in claims notifications.

Whilst there are many facets to advances in vehicle technology, two key items in the news in the latter part of 2020 and likely to be a feature of 2021 are smart motorways and Automated Lane Keeping Systems (ALKS).

Smart motorways use traffic management methods to increase capacity and reduce congestion. In particular, these methods include using the hard shoulder as a running lane and using variable speed limits to control the flow of traffic.

However, in January a coroner declared that they presented an ongoing risk of future deaths after the lack of a hard shoulder was ruled to be a contributing factor in two fatalities, and he would be writing to Highways England and the Secretary of State for Transport to call for an urgent review. It remains to be seen what action will be taken.

ALKS, like smart motorways, are undoubtedly beneficial in using new technology to provide greater mobility solutions, ease congestion, and, in the long term, reduce accidents. However, again the concern is in trying to run before we can walk. Introducing ALKS trials is one thing, but declaring vehicles with ALKS to be automated vehicles under the Automated and Electric Vehicles Act 2018 is pushing the boundaries too far and risks compromising road safety needlessly.

The Government's desire to place the UK at the heart of advancing vehicle technology is admirable but needs to be balanced with the time to consider safety and regulatory requirements in the short term to not damage consumer confidence in the longer term. We think that may be a theme of 2021 as we see how those issues develop.

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Occupational Health, Casualty & Disease

COVID-19

Claims relating to COVID-19 will continue to grow throughout 2021, both in the employers' liability and public liability contexts. The care home and healthcare sectors are where we expect to see the majority of claims. The developing understanding of the virus from late 2019 and throughout 2020, the availability of PPE and the knowledge of specific risk factors will all be relevant. Given the widespread prevalence of the virus, causation will be a significant challenge for any claimant. Claimants will have to establish that exposure for which the defendant was liable, rather than exposure elsewhere, caused them to contract the disease. We can anticipate secondary claims from the families of employees allegedly infected at work.

Beyond that, the changes in working patterns towards homeworking, social distancing, and reduced shift rotas make claims for workplace stress more likely. We already know that claims management companies are active in this area and expect to see claims increase significantly over the course of 2021 as a clearer understanding of duty, breach, causation and loss develops. CMCs have obviously seen a reduction in RTA work and will be alive to the opportunities presented both by COVID-19 claims and the wider effects of lockdown on UK workers.

Concussion

With the recent high profile injury claims made by retired international rugby players, we can also expect sports-related brain injury claims to feature heavily as part of the landscape in 2021 and beyond. Following the publicity around the NFL concussion litigation several years ago, attention in the claimant community in the UK is now turning to both concussion and sub-concussive injuries sustained by professional rugby and football players in particular. Other sports including ice hockey and horse-riding are likely to be affected. The NFL claims principally related to chronic traumatic encephalopathy (CTE) which can only be confirmed as a diagnosis on post mortem. More recently, the focus of these claims has widened to traumatic encephalopathy syndromes (TES) and traumatic brain injuries in general, the outcomes of which (it is alleged) include CTE but also other conditions including other types of dementia and motor neurone disease.

It hardly needs to be said that this is a continually evolving area of medical science and, as such, a complex legal area in relation to both date of knowledge and duty of care. These are not simply employers' liability claims, but also claims with roles also being played by national and international regulatory bodies, referees, and medical personnel. Medical causation is also likely to be extremely complex, not least because many of the injured claimants will have spent years participating in (and being injured in) the same sports as schoolboys and amateurs prior to any professional contract being obtained. In all likelihood the issues raised by these claims will not be resolved in the next 12 months!

Modern Slavery and Human Trafficking

We have recently seen claims intimated against employment agencies and commercial organisations with whom victims of human trafficking and modern slavery were forced to seek employment by an Organised Crime Group. The increasing prevalence of modern slavery and human trafficking in the UK makes such claims likely to increase over the coming years. These claims raise a number of legal issues, including alleged breach of economic torts and the Protection from Harassment Act 1997, as well as the likelihood of seeking aggravated, exemplary and/or restitutionary damages (which will usually be uninsured). Whilst there are some direct reporting duties on larger commercial organisations and public authorities under the Modern Slavery Act 2015, the key to whether these types of claims are successful will be determining whether the agencies and/or companies with whom the victims are placed for work can be vicariously liable for the tortious actions of any of the perpetrators in the Organised Crime Group.

The doctrine of vicarious liability has been developing at pace over the last 20 years, since the House of Lords introduced the 'closely connected' test in *Lister v Hesley Hall* which enabled employers to be held vicariously liable for deliberate criminal acts conducted by employees (or those in a relationship akin to employment), provided such acts were closely connected to that employment. In the cases which have followed, the appellate courts have confirmed that vicarious liability can be imposed for fraudulent activities, equitable wrongs and breach of the Protection from Harassment Act 1997 (and breach of statutory duty generally), although the Supreme Court reiterated in last year's *WM Morrison Supermarkets v Various Claimants* that such actions should at least appear to be furthering the employer's business. As with all vicarious liability cases, the findings will be very much fact dependent, but this is an area which is likely to see increasing attention over the coming months and years.

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Product Liability & Recall

Brexit and COVID-19 create a new landscape

Departure from the European Union, and a global pandemic, have caused many changes for product liability and recall.

In 2020 we saw numerous UK producers, distributors and retailers put in place **alternative supply chains** in preparation for disruption from Brexit. Even now, the central concept that trade with the European Union is **tariff free** is incorrect; as exemplified by the media surprise over a tariff on M&S Percy Pigs (manufactured in Germany, stored in the UK, sold in Ireland). Producers, particularly in the food & drink sector, are grappling with the **complex rules around origin and processing**.

The departure from the European Union also means a need, for regulated products, to bear a **UKCA** mark if sold in the UK, as well as a CE mark if sold in the European Union. At present, UK and European standards are aligned; but may diverge as time passes, requiring producers to comply with two different regimes if selling in the UK and EU. In addition, those **importing products** into the UK from the European Union will be fixed with 'producer' status and therefore subject to greater regulatory requirements and liability exposure, when they would otherwise have been mere 'suppliers'. Greater complexity for UK businesses selling into the EU may result in a greater proportion of **trade to other countries** e.g. the US; diversifying (and potentially amplifying) product liability exposure.

Three areas of product liability law bear scrutiny in 2021:

1. *Wilkes v DePuy*, *Gee v DePuy*, and the *Bailey & Ors v GlaxoSmithKline* judgments demonstrate a transfer of the risk from producers to consumers under Part I of the Consumer Protection Act 1987 ("CPA"), enabling producers to defend claims by introducing **risk/benefit analysis** arguments. Part I of the CPA should no longer be perceived as imposing strict liability. Legislating against this seems unlikely, at a time when the UK seeks to foster a welcoming, entrepreneurial environment for business post Brexit, particularly for novel technology such as autonomous vehicles.
2. The ability of parties, particularly commercial claimants, to pursue strict liability claims under **Part II of the CPA (s41)**, based on breach of statutory duty e.g. the Electrical Equipment (Safety) Regulations, is uncertain. Clarity on the scope of this from the court would be welcome. It is arguably an irony that non-consumer claimants enjoy an advantage over consumer claimants, under legislation ostensibly intended to protect consumers.
3. With the UK no longer directly subject to the European Court of Justice ("ECJ"), will we be more likely to depart from the ECJ's rationale in *Boston Scientific*, that where some products in a batch are defective, the risk of other products in that batch being defective is such as to render them *actually* defective?

The **fitness for purpose** of the Product Liability Directive (on which the CPA is based) has been under scrutiny for the last three years or so as part of a routine review, with the primary focus being its ability (or not) to deal with novel and/or intangible products. That scrutiny will continue, at least at a European level.

What about **COVID-19**? At present, there is huge demand and inadequate supply of vaccines; despite the extraordinary emergency legislation allowing **fast-tracking of product approval**. This exemplifies the rapid production of products to fight the pandemic. 2020 saw a glut of poorly manufactured, inadequately (and in some cases fraudulently) certified products such as face masks. To some extent this was an inevitable consequence of rapidly scaling up production, producers having to find new supply lines for raw materials, and businesses turning their hand to the production of new types of product (e.g. Brewdog shifting from beer to hand sanitiser to help the national effort). Unfortunately, for some others, it was **unscrupulous profiteering** with a disregard for safety. No doubt this will perpetuate through 2021.

Bricks and mortar stores were already struggling in some sectors pre COVID-19. The lack of footfall on high streets has accelerated the decline of traditional high street businesses (e.g. Arcadia group entering administration), but conversely, we have seen the **growth of online retailers** (e.g. Amazon posting record revenue). Consumers now buy directly from a wider range of producers through online sales channels, including sellers based in China and the Far East. Consumer groups are likely to continue to examine the **self-regulation** of these sales channels. However, the positive of such sales is **vastly increased traceability** of affected consumers in the event that product safety issues require corrective action, compared to e.g. cash purchases by anonymous customers in high street stores. Online sellers typically see much higher response rates from consumers notified of corrective action.

Liability and recall exposure shifts with the quantity of products purchased. During lockdown, our retail clients report a significant **shift in popularity of product lines** (e.g. jewellery and designer clothes – down; home gym equipment and gardening tools – up).

The UK product regulatory body, the **Office for Product Safety and Standards**, described by a House of Commons committee as a *"toothless regulator"* was meant to be a **central hub for consumers** for the registration of products and the publication of product recall information. It has been slow to achieve its stated goals, but positive indications come from increasing output on specific product sectors and deep understanding of novel technology, such as a recent 96 page paper on risks arising from 3D printing of spare parts for consumer appliances. However, a budget of more than £34.9M (as at 2019/2020) is likely to be needed to make it a truly effective regulator.

The development of **novel technology** continues apace. Despite Brexit, the UK should remain interested in the significant EU activity around AI, robotics and connected devices. Autonomous vehicles, as well as e-bikes and e-scooters, continue to pave the way in novel technology, though the ability to use trials to forecast and quash potential safety issues arising from mass adoption is hampered by the fact that road usage patterns are not 'normal' at the moment. Will COVID-19 delay product launches, mass adoption, and the ability to devise effective insurance?

Lastly, even before COVID-19, a **hard market in insurance** was developing. A reduction in capacity and a reduced appetite for risk increases the need for policyholders and insurers to work together, to enable underwriters to thoroughly understand and be comfortable with the risk they are writing, and offer premiums that are affordable. Insuring the **risk arising from novel products** is difficult in this climate, but crucial in order to enable the production of technology of tomorrow, and be profitable for those insurers who invest in understanding it.

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Professional Indemnity

The direct impact of COVID-19 and the switch to home working will dominate a number of important sectors in the professional indemnity market in 2021

The redeployment of staff in response to the rapid growth in some areas of work and overnight stagnation in others, caused by lockdown and new ways of working, will have resulted in large numbers of professionals working outside their usual practice areas under light touch supervision, at a time when they may have been facing substantial personal and logistical pressures. Errors will have been made and may be picked up more slowly than would have been the case pre lockdown.

The uncertainties of Brexit and the last minute nature of the negotiations will have made it substantially harder for many professionals to advise their clients. As late as mid-December 2020, almost half of SMEs were reporting that they were unprepared for the end of the Brexit transition period.

History has also taught us that there is a correlation between recession and claims against professionals, so as the economy weakens, a resurgence in claims seems inevitable. Against this somewhat gloomy background, we consider the future faced by a number of professions.

Solicitors

The press has been pessimistic about small high street firms and law centres surviving the pandemic. Many small firms were struggling before COVID-19. Staff absence, changing work types and the need for significant investment in technology to enable homeworking may have been the last straw for some.

While few claims were issued in the second and third quarters of the year, notifications of claims against solicitors increased sharply, particularly in private client and real estate.

Claims associated with poor supervision (including home working), the use of unfamiliar technology, rapid legislative change and remote hearings are likely to focus on missed time limits, confidentiality/data breaches, delayed or failed completions and document errors, including incorrect execution. In the longer term, complex new rules for the remote witnessing of wills may give rise to claims relating to incorrect execution, identification issues and undue influence. Reductions in the nil rate band for SDLT may also give rise to claims if solicitors' actions delay completions, and additional tax becomes payable.

Finally, we anticipate claims arising from the reduced need for commercial property; a business that wishes to reduce its office space may make a claim if it discovers that there is no break clause in its lease.

Construction Professionals

The Grenfell tragedy will continue to have repercussions throughout the construction industry, with the spotlight on the practices of those involved in the specification, manufacture and testing of cladding materials. COVID-19 will also continue to have an impact, both in relation to delays caused to projects (and who should pay for them) and the extent to which they should be classed as force majeure, particularly as the construction industry did not close down, even during the national lockdown. COVID-19 has also led to excess office capacity and an acceleration in the demand for conversion to residential, with the increased risk of disputes and claims that such change of use brings.

The hard insurance market faced by consultants seems unlikely to soften and they continue to face the challenges of increased premiums and restrictive exclusions, causing concern as to how they can remain in practice and comply with their professional obligations to maintain adequate insurance. However, the impact of sharply increased premiums has now largely been felt and, barring any other unforeseen global catastrophe, the hope is that the industry can re-align. The previous widespread difficulties in securing renewal due to a combination of reduced capacity and a hostile liability environment have given rise to a real appetite for brokers to assist their policyholders in mitigating the worst effects of these trading conditions, whilst insurers who are underwriting these risks have a renewed interest in risk assessments and in taking sensible risk management steps. The ongoing industry movement towards BIM level 3 and the widespread digital agenda encourages a more collaborative and less confrontational approach to construction. Meanwhile, off-site and more modern methods of construction leading to the incorporation of factory construction items, mean that the risk profile of all construction team members needs to be reassessed.

Valuers

Litigation against valuers is a traditional solution when property markets are stagnant. As businesses close, commercial lenders will seek to recover sums lost when borrowers default. With the move to homeworking affecting both the demand for office space and satellite retail premises, such as coffee shops, it may be harder for lenders to offload commercial premises and they may look to valuers to recoup some of their losses.

In the housing market, while the £500,000 SDLT nil rate band has been extended to 30 June 2021, it will then reduce to £250,000 until 30 September 2021 and return to its customary £125,000 thereafter. This may cause a bubble as purchasers scramble to buy before the nil rate band reduces, followed by a slump as the reductions kick in. Residential lenders have been advised not to commence or continue repossession proceedings at this time; however, COVID-19 related payment holidays must end by 31 July 2021. A surplus of repossessed property and disappointing auction results may lead to claims that properties were overvalued.

The private rental sector is also in difficulty as rental receipts disappear, leases cannot be enforced but maintenance and repairing obligations remain. We expect to see a spike in claims against agents who do not take steps to protect their property owner clients and the buildings they manage.

Brokers

An FCA survey into the financial resilience of firms shows that the cash liquidity of brokers has dropped by 30% since February 2020, leading to concerns about their liquidity.

The COVID-19 pandemic has led to widespread claims under business interruption policies. In the aftermath of January's Supreme Court judgment in the FCA's business interruption test case, we expect claims against brokers arising out of their duties and obligations to advise pre-inception. Where the claimant is an individual or small business, claims may be dealt with by the Financial Ombudsman Service. If the disputed policy renewed after 1 April 2019, FOS's increased £355,000 limit will apply.

IFAs

On an individual level, investors are likely to be feeling poorer. Declining share and property prices resulting in reduced investment income and lower capital values are likely to drive claims, particularly where FOS is free at point of use.

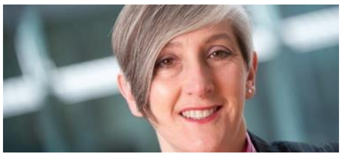
Pension transfers remain an issue. The number of enforcement actions involving IFAs is anticipated to increase, particularly as the FCA has said that it will be looking at smaller firms and those which consistently fail to meet its standards.

Accountants

In recent years we have seen a growing disconnect between a company's expectations of its auditors and the audit role, resulting in increasing claims and demands for regulatory change. While a combination of Brexit and COVID-19 has meant that many audit reform recommendations were placed on hold, regulatory reform remains a priority and one which is firmly on the agenda for 2021.

In terms of case law, in August 2020 the Court of Appeal handed down their judgment in *AssetCo Plc v Grant Thornton UK LLP*, concerning scope of duty and legal causation in the context of auditors' negligence cases, and the application of the *SAAMCO* cap to auditors' negligence cases generally. The case demonstrates that where an auditor negligently failed to identify in its audit the dishonest concealment of the claimant's insolvency, it was liable for the trading losses resulting from the claimant continuing to conduct its insolvent business.

Recent financial pressures on business leading to fraud and/or business collapse have further worsened the situation and we also expect increasing numbers of audit-related claims where fraud or insolvency is a feature.



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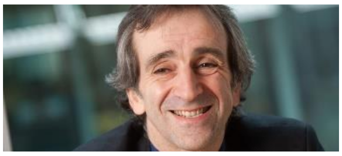

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Scotland

Despite assurances that 2020 would see the introduction of Qualified One Way Costs Shifting (QOCS) in Scotland, Brexit and lockdown have inevitably delayed implementation. We have been assured from a number of sources that the implementation of QOCS is the main priority for the Scottish Civil Justice Council (SCJC) and we expect to see the rules published in the first quarter of 2021. Once published there will still be a three-month period before the rules come into force to allow for any operational changes that need to be made. It is currently anticipated QOCS will not go live before June 2021.

QOCS will undoubtedly fuel an increase in claims volumes and litigation rates, at least in the initial period after it comes into force. We expect dormant/repudiated claims to be litigated and claimant solicitors to stockpile claims for litigation, at least in the immediate run-up to the rules coming into force. The resulting increase in the size of the Scottish claims market will attract new entrants who see England & Wales as a less attractive location due to saturation and lower margins (whiplash reforms).

Counter-fraud

The increase in more dubious claims as a result of QOCS will create an increased fraud risk. Insurers need to be more alive than ever to specific Scottish fraud indicators. The need to develop a Scottish counter fraud strategy and KYO has never been more important. Equally, insurers will need a firm grasp of the exceptions to QOCS in Scotland to inform their handling of Scottish claims. Scotland will not have fundamental dishonesty. Our equivalent instead will be "fraudulent misrepresentation". Time will tell how high a bar the courts will set for that, and how they will interpret or limit claimant conduct.

The advent of DBAs in the last year will also make subrogated recoveries a more attractive proposition for insurers and we expect to see more recovery claims (which previously might have been uneconomic to pursue) to litigate in 2021. A number of insurers are reviewing their commercial books in Scotland to identify opportunities for outsourcing claims for litigation on a DBA risk/reward model.

On the horizon in 2021

— Self-driving vehicles – the Scottish Law Commission committed at the end of last year to work together with the equivalent bodies in England and Wales to establish a comprehensive new legal framework which will seek to ensure the safety of self-driving vehicles via a comprehensive new legal framework. This work builds on previous consultations and is clearly something that the UK Government intends to press forward with.

— COVID-19 – claims arising from the pandemic will increase significantly in 2021. There have already been EL claims in Scotland in the care home sector and we are currently instructed by a client in what may become a test case in Scotland on the duties of care involved in these topical and complex claims.

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Technology in Claims Handling

Standing as we are at the beginning of 2021 to assess how technology is likely to be deployed generally and in particular insofar as it impacts insurance, we see a very different landscape to that which stretched out before us in 2020. COVID-19 has upended business and social norms and has accelerated the use of certain technologies.

We have purposely steered away from phrases like AI, Blockchain and Machine Learning in this piece, as it is a given that these technologies will play a part in the digital journey of the insurance industry over the coming year. Moreover, it is also assumed that, particularly in light of the SolarWinds hacking event, cyber security will remain at the top of most business's list of technology priorities.

On-going need for virtual delivery of services

Bearing in mind the certainty that the virus will continue to mutate, necessitating a suite of infection management techniques to bolster the effectiveness of the various vaccines, business risk management will continue to include a level of social distancing and minimising of contact as part of day-to-day business life. Therefore, the first and most obvious technological trend of 2021 is the continued prevalence of technologies which facilitate virtual delivery of services to consumers and business.

Whilst the likes of Zoom and MS Teams will no doubt retain their dominance in the general video communication sphere, we can expect to see an increased rapidity in the rollout in industry-specific remote service delivery tools, using a combination of hardware and software to enable a vast array of tasks to be performed without the need to be 'on-site'.

No-Code & Low-Code development platforms

Turning to developments in projects with software at their heart, there is likely to be an expansion in the use of no-code and low-code development platforms. These platforms use a different build methodology to traditional coding techniques, such as graphical user interfaces, to create applications quickly and cheaply, without the need for a deep understanding of coding.

Whilst no-code and low-code techniques have, out of necessity, been a feature of delivering software projects in SMEs – as most SMEs can afford neither the time nor the expense of using more traditional software project methodology – outside of the tech sector, larger scale businesses have been slower to adopt no-code/low-code methodology.

The advantages of using these platforms are numerous and include:

- Increased agility and speed of project completion.
- Reduced input by expensive and scarce coding resource.
- Reduction in cyber risk from potential errors in home-grown code.
- Democratisation of the app-building process, allowing not just technologists with the prerequisite skills to create apps.

With the advent of more no-code/low-code platforms aimed at corporates and the increased focus on digital transformation and the customer's digital journey, there is likely to be an expansion in the use of such platforms within the insurance sector.

'Headless' technology

Before turning to the means of driving all these technological developments – namely data – the final noteworthy tech trend for 2021 is the likely increase in the deployment of 'headless' technology in insurance.

Put simply, headless technology is the use of 'frontends' and 'backends' in system infrastructure, rather than having a single system infrastructure. As these 'ends' can be designed as mutually exclusive elements, the customer-facing digital interface (frontend) can have a fast pace of evolution, thus allowing for a continually fresh UX, whilst maintaining a slower evolution to backend system development so as to maintain stability and keep system capex under control. With many insurers facing numerous legacy systems, this approach has obvious appeal to the industry.

Shift in data skillsets

Cricket is a sport that has always concerned itself with understanding performance and how to improve through data and analytics. Insurance is increasingly similar, and insurance technology will advance in 2021 through the improvement of one, more or all of the golden triangle of people, process and technology. Each of these three key pillars impacts the other two.

The predicted expansion of no-code and low-code development platform technology is likely to be accompanied by subtle shifts in the type of data skillsets sought by employers in the insurance sector – think an increasing proportion of Ben Stokes all-rounder types rather than specialist Jimmy Andersons.

Salaries for specialist skillsets such as data scientists have been - and will continue to be - driven ever upwards, and potentially out of reach of SMEs. However, more insurers are becoming aware of the value of the hybrid or bridge skillset – increasingly advertised as 'data translators' - who have a strong footing in both the technical insurance, data and technology camps, and who can ensure a data-driven product or solution is fit for purpose in a holistic, rather than narrow way. The owners of these skillsets usually come from insurance backgrounds rather than data science, and they are far more affordable!

Richie Benaud, when asked about why he was such a successful captain of Australia, famously said:

"Captaincy is 90 per cent luck and 10 per cent skill. But don't try it without that 10 per cent."

In the data and technology context, perhaps replace 'captaincy' with 'data-driven technology', 'luck' with 'specialists' and 'skill' with 'hybrid all-rounders' and….well, you get the picture.

Diversity is increasingly – and rightly – important to insurers. In 2021, increased diversity within insurance businesses will drive the adoption of stronger and more effective processes and governance for data-driven solutions or products, as improvement in these areas demands diversity of skillset and thought.

Data quality

What of data quality itself? Poor-quality data abounds in the insurance sector and this is because so much of it is still captured via us inefficient humans. The humans employed by insurers in this practice are seldom invested in the process, frequently because insurers don't know how to, can't, or won't drive the investment required into the task. In 2021, we foresee insurers becoming increasingly aware of the importance of high-quality source data and therefore increasingly improving their data quality by a two-pronged approach of increasing investment in technology to convert unstructured data to structured data at scale, and through properly engaging their humans who still manually capture or cleanse much of their data. Human input into these data sets will also be vital to avoid the consequences that might flow from data, unintentionally containing elements of bias, being used to train algorithms. High-quality data will inform the production of high-quality data-driven solutions, after all.

In concluding, it is safe to say that, in the coming year, the pace of digitisation will only continue to increase, as it has done every year in the 21st century.

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