Professional liability report 2023

Trends and future risks

July 2023

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Foreword

Generally, UK insurers report low professional indemnity (PI) claims levels in the first six months of 2023, compared to notifications for the same period in 2022.

An increase in claims is expected in the next 12 months, due to the state of the UK economy, as well as the ongoing impact of global geo-political events including the Ukraine crisis, Brexit, COVID-19 and climate change.

> Recent years have seen the introduction of a plethora of domestic legislation and regulation, with a strong focus on protecting the consumer and environmental, social and governance (ESG) issues.

Increased reliance on technology, especially AI, has been successful in maximising efficiencies and reducing costs for professional firms, but cyber-attacks and data breaches remain areas of high risk exposure for firms and their insurers.

In this report, we take stock of 2023 PI claims trends, consider regulatory developments impacting professionals and predict areas of risk for the next six months and beyond.

Finance

2023 trends: the story so far

Audit claims

Following a series of high-profile accounting scandals involving some of the UK’s largest companies, auditors remain the focus of the Financial Reporting Council’s (FRC) attention. The ‘Big Four’ have been criticised for making rudimentary errors in undertaking audits in relation to several household names. In 2022, the FRC issued KPMG with an unprecedented fine of £14.4 million in connection with its audit of Carillion Plc.

2023 has started in a similar vein, with the auditors of Babcock International Group Plc fined £6.5 million in March 2023, the auditors of The Works fined more than £1 million in April 2023 and investigations into the audits of the Joules Group, Made.com and Intu underway.

Tax mitigation schemes

In recent months, PI insurers have received a wave of notifications emanating from the Research & Development (R&D) tax relief scheme. R&D tax relief supports SMEs and large companies which work on innovative projects in science and technology.

2023 has seen a significant increase in the number of claims for R&D tax relief being challenged by HMRC. It estimates that error and fraud has led to relief which should not have been granted, totalling £469 million. Professionals and their insurers are concerned about claims by clients where applications for relief do not bear scrutiny.

British Steel Pension Scheme

Claims relating to the British Steel Pension Scheme (BSPS) transfer scandal continue to plague financial advisers. Based on financial advice, 7,700 members transferred their final salary-style pensions, worth £2.8 billion in total, into much riskier arrangements.

On 28 February 2023, a £49 million redress scheme was launched, aimed at putting members back in the position they would have been at retirement, had they stayed in the scheme. Insurers have experienced a strong uptick in notifications concerning the scheme and are grappling with policy issues, including BSPS advice endorsements, block notifications and aggregation.

Changes to the regulatory landscape for 2023

In March 2023, the Pensions Regulator carried out a review of occupational pension schemes and found that trustees of certain schemes – and their advisers - had failed (or failed adequately) to report climate-related risks and opportunities. The watchdog has warned pension providers and their advisers that it will consider enforcement action for similar inadequate disclosures at the next review.

In Q3 2023, following a consultation which closed in January 2023, the FCA will publish a Policy Statement which introduces a package of measures aimed at clamping down on 'greenwashing' (when companies make false/misleading claims about their climate credentials). This will include sustainable investment labels, disclosure requirements and restrictions on the use of sustainability-related terms in product naming and marketing. The main aim of the Policy Statement is to combat the growing number of greenwashing claims concerning financial products, to protect consumers and to rebuild their trust in the financial market. Those providing the advice which forms the basis of greenwashing will face PI claims.

The FRC opened a consultation on its Corporate Governance Code, which closes on 13 September 2023. In advising their clients, professionals should note that the current draft Code recommends that companies should report on the sustainability of their business model and how environmental and social matters are taken into account in delivery of their strategy, including their climate ambitions and transition planning.

The Pension Regulator's Defined Benefit Funding Code will come into force on 1 April 2024. The Code sets out a 'twin-track' approach for pension schemes to acquire regulatory sign-off. When advising clients, professionals need to be aware of the new rules, which cover all aspects of funding and require scrutiny of the financial strength of a sponsoring employer.

It is a case of 'watching this space' in relation to the Audit Reform Bill. When it is finally tabled, the Bill will propose wide-reaching reform of audit and corporate reporting and introduce a new regulator and/or rename the FRC the Audit, Reporting and Governance Authority (ARGA). The FRC's three-year plan dated March 2023 suggested that ARGA is now unlikely to be created by legislation before April 2024.

Predictions for the second half of 2023 and beyond

Environmental, social and governance (ESG)

We predict a trend in ESG PI claims arising from:

- The introduction of mandatory climate-related disclosures for large UK companies and LLPs in April 2022.
- Government plans to extend the disclosure regulations to all companies by 2026.

To gain market share or improve their reputation, organisations can be tempted to overstate their ESG credentials. Others inadvertently make inaccurate disclosures/representations. If civil claims are pursued against companies/their directors for loss in share value due to greenwashing, those providing advice which forms the basis of misrepresentations will face PI claims.

Finance professionals involved in providing strategic advice that accounts for climate risk, as well as those preparing prospectuses, annual reports and other communications with investors and customers, will find themselves in the firing line when statements included in those communications are untrue and/or misleading.

Bulk annuity claims

By April 2023, the aggregate surplus of the UK's defined benefit pension market was £378.6 billion (compared to a £128.5 billion deficit in April 2020). Companies are looking to the bulk annuity market to guarantee the benefits promised to members through insurance, offloading their defined benefit pension liabilities (and the assets backing them) to insurers for a one-off premium.

Claimant lawyers will be considering claims against those finance professionals advising on:

- The accounting impact of pension risk transfers.
- The effect of interest rate changes.
- The market value of assets versus exit liability.
- Valuation and transfer of assets.
- Exit funding.

Insolvencies

Data from the Insolvency Service confirms that company insolvencies in England and Wales are currently at their highest quarterly level since 2009 due to high inflation, rising interest rates and supply chain issues.

Inevitably, more insolvencies will lead to more PI claims against insolvency practitioners, especially in a market where the value of assets is falling. We can expect to see more claims against those acting as administrators or liquidators, alleging sale of assets at an undervalue, although recent decisions in this area suggest that those claims are difficult to prove (e.g. *One Blackfriars Ltd* [2021], *Swiss Cottage (38) and (40) Properties Ltd* [2022]). Claims by administrators/liquidators against their advisers will also increase.

Where there is a suggestion of fraud or financial irregularity in the failure of a business, auditors will find themselves in the firing line for failing to uncover it.

Legal

2023 trends: the story so far

Wills and probate

For private client solicitors, 2023 has so far been a year for claims by disappointed beneficiaries. The COVID-19 pandemic led to a steep rise in the number of wills being made.

Of course, it follows that more wills will lead to more claims, but the inherent difficulties in taking instructions during lockdown has led to a disproportionately high number of notifications to PI insurers. Against the backdrop of a cost of living crisis, beneficiaries are more prepared to enter into disputes with their advisers (and each other).

Fraud

Dishonesty within the legal profession continues to be a source of high value claims. Whilst insurers have the protection of a fraud exclusion, in April 2023, the PI market was somewhat surprised by the Commercial Court's decision in *Discovery Land Company LLC v AXIS Specialty Europe SE* [03.04.23].

The case concerned a two partner firm and considered whether one had condoned the dishonesty of the other. Despite making some highly critical findings about the actions and honesty of the 'innocent' partner, it was held that he had not condoned the substantial thefts by his partner from client account. Insurers were, therefore, left to pick up the bill for losses arising from the dishonesty.

Changes to the regulatory landscape for 2023

On 27 June 2023, the Law Society issued guidance on the impact of climate change on solicitors, which includes guidance on:

- Advice given to clients in relation to greenwashing.
- How climate change physical and legal risks may be relevant to legal advice.
- Issues to consider regarding the interplay of legal advice, climate change and solicitors' professional duties.

The guidance is welcomed as it will help solicitors mitigate claims for negligent client advice related to climate risks, disclosure obligations and greenwashing.

In April 2023, the Legal Ombudsman Scheme introduced three key changes to the Scheme Rules:

- **Scheme Rule 4:** The time limit for bringing a complaint was reduced to no later than one year from the date (i) of the act or omission complained about or (ii) when the complainant should have realised there was cause for complaint. Previously, these time limits were (i) six years and (ii) three years.
- **Scheme Rule 5.7:** There are now additional circumstances in which the Ombudsman can dismiss or discontinue a complaint, including where a complainant has not suffered 'significant' loss, distress, inconvenience or detriment or where the size or complexity of a complaint, or the behaviour of the complainant, means the complaint requires a 'disproportionate' use of the Ombudsman's resources.
- **Scheme Rule 5.19:** If neither party to the complaint provides 'any substantive reasons' for disagreeing with the investigator's case decision, the Ombudsman will now have discretion to consider it resolved.

Predictions for the second half of 2023 and beyond

ESG

Lawyers can expect to face claims for breach of the duty to warn their clients about potential climate risks, for example, in property transactions where there is a risk of flooding.

> We also expect claims will be brought against lawyers advising clients on achieving B Corp status (companies verified by B Lab to meet high standards of ESG performance), as well as those advising on corporate governance issues (e.g. drafting money laundering, bribery & corruption and D&I policies).

Cyber

Lawyers undertaking conveyancing transactions remain particularly susceptible to cyber-attacks such as phishing and business email compromise. In the knowledge that conveyancing solicitors frequently handle large sums of funds with a wide number of parties, threat actors deploy these types of attacks to impersonate legal professionals, tricking email recipients into diverting funds or leveraging further lateral access and credentials across a system.

The risk of either the client or the professional falling victim to these types of attacks typically peaks when pressure on time and resource for completions is high, with the pressure often resulting in the breakdown of organisational controls including confirmation of bank details or scrutiny of suspicious emails.

Unlike the 'traditional' form of business email compromise, where threat actors would look for immediate ways to monetise the email account, we are also now witnessing a new iteration of this type of attack, which poses increased (data protection) regulatory exposure to firms.

Unfortunately, the risk of complex cyber-attacks such as ransomware also remains, with increasingly common remote working practices meaning that computer environments and their perimeters cannot be as closely monitored, whilst any lack of multi-factor-authentication facilitates a significantly increased risk.

The recent MOVEit compromise affected a number of law firms that use the software. As law firms use more third party technology and software, third party/supply chain compromises become more of a risk and client data is, potentially, exposed.

In 2022, the SRA warned that Artificial Intelligence (AI) will make phishing contacts and other false communications more credible, and some threat actors now impersonate individuals by telephone and email. On a simpler level, misuse of law firms' names in text and WhatsApp messages (Latham & Watkins (London) LLP) and telephone calls (CMS Cameron McKenna Nabarro Olswang LLP) has been reported in July 2023.

AI

The recent advent of generative AI (deep learning models which generate high quality text) has the potential to transform the legal sector by increasing efficiency and reducing costs for professional firms when undertaking legal research, drafting contractual clauses and giving legal advice.

However, these benefits also introduce significant risks to the profession, particularly whilst AI tools remain in their infancy. Those risks are magnified when lawyers seek to rely upon open AI platforms that have extracted data from multiple unverified sources. Firms that fail to introduce appropriate safeguards that include human oversight to authenticate the AI-generated content can expect an increased exposure to PI claims.

Retainer management

Post-pandemic working has created the perfect storm for pure process error claims. Junior lawyers (particularly at smaller firms) are exposed to increasing workloads and pressure to meet financial targets, whilst receiving less supervision due to hybrid working patterns.

This has led to more claims arising from missed court deadlines, delays in registering documents and failure to progress cases and transactions.

Buyer-funded developments

We continue to see claims relating to the collapse of 'buyer-funded developments', which have been the subject of many warning notices from the SRA in recent years.

The financial problems associated with COVID-19 and increased cost of finance have contributed to the failure of these schemes, which are often highly leveraged to non-traditional lenders, increasing the prevalence of such claims.

Inadequate PI cover

An economic squeeze means that many firms are considering reducing the level of their PI cover to cut their insurance spend.

The 'claims made' nature of liability policies, combined with claims inflation (the trend of rising insurance costs due to more litigation, claimant-friendly judgments and higher damages awards) means this is not a decision which should be taken lightly. The solicitors' minimum terms make lawyers an easy target for claimants.

In April 2023, the FCA published a report which found that law (and accountancy) firms operating as company service providers, are increasingly exposed to high money laundering risks and are inadequately supervised.

The 22 professional body regulators addressed in the report included the Law Society and the General Council of the Bar. The FCA has indicated that it will act against those who do not meet their obligations.

Our most recent statistics (April 2023) for new matters still bear out the old ‘rule of thumb’ that real estate and litigation make up about two thirds of claims against solicitors, with other practice areas (corporate, private client etc) making up the balance. Our next analysis will, we expect, show an increase in the proportionate of claims against those acting for private clients.

Strategic Lawsuits Against Public Participation (SLAPPs)

The SRA has threatened action against solicitors who act for clients in seeking to prevent publication on matters of public importance, such as academic research, whistleblowing or campaigning or investigative journalism.

In particular, media and defamation lawyers can expect increased scrutiny by the SRA, finding themselves in the invidious position of balancing their clients’ need for speed in blocking publication with the risk of being reported to their regulator for bringing a SLAPP.

Construction

2023 trends: the story so far

Cladding

The Building Safety Act 2022 extends liability under the Defective Premises Act 1972, Section 38 Building Act 1984 and also arising from building safety risk (defined as risk to the safety of people in or about the building arising from the spread of fire or structural failure) in two ways:

- First of all, a party no longer needs to be a party to the construction contract to be sued, meaning that property owners can now pursue the manufacturers of defective cladding materials directly.
- Secondly, Section 135 extends the limitation period for claims under Section 1 of the 1972 Act (relating to the 'provision' of a dwelling and applying where the dwelling is not 'fit for habitation') to (a) 15 years from the date of practical completion for buildings completed after 28 June 2022 and, more controversially, (b) 30 years for buildings completed before 28 June 2022.

The 2022 Act has prompted some insureds to make block notifications in relation to building safety related matters. Cover for newly-notified claims is likely to be restricted by virtue of the introduction by most PI insurers of broadly-worded combustibility and fire safety exclusions.

Where policies are triggered, many policies have inner limits of indemnity, high excesses and/or very widely-worded aggregation clauses for cladding/fire safety claims.

Changes to the regulatory landscape for 2023

On 6 April 2023, the Higher-Risk Buildings (Key Building Information)(England) Regulations 2023 came into force. Those regulations require all existing occupied high-rise residential buildings (18-plus metres or 7-plus floors) to be registered (accompanied by key building information) with the Building Safety Regulator by 1 October 2023. All high-rise residential new builds will need to be registered before they can be occupied.

It is expected that the Building Safety (Responsible Actors Scheme and Prohibitions) Regulations 2023 will be adopted in the next few months. The regulations introduce consequences for developers refusing to sign up to the developer remediation contract, including a prohibition on carrying out 'major development' (10 dwellings or more) of land in England and gaining building control sign off for development works.

Those developers barred from the Responsible Actors Scheme (and those in breach of contract) are likely to look to the original project teams and/or their suppliers (and PI insurers) for recovery of their liabilities. It is therefore likely that there will be a growing number of claims against project parties and their insurers.

Predictions for the second half of 2023 and beyond

The Pledge

The Department for Levelling Up, Housing and Communities (DLUHC) has progressed plans to force developers to 'fix' the cladding crisis. The initiative, known as The Pledge, is encapsulated in the 'Self-Remediation Terms and Deed of Bilateral Contract', which requires developers in England to take all necessary steps to address life-critical fire safety defects arising from design and construction of buildings 11 metres and over in height that they developed or refurbished over the last 30 years. The agreement also requires developers to reimburse government for funding incurred in remediating buildings through the Government's Building Safety Fund (BSF).

Given the money at stake, there are concerns that developers will seek to pursue their supply chains where there is a liability arising from The Pledge. The wording of The Pledge expressly allows for recovery actions of this type and insurers of consultants and sub-contractors involved in cladding projects will be closely monitoring developments. In an initiative based on The Pledge, the Secretary of State, Michael Gove, has written to investors in cladding manufacturers urging them to encourage specified manufacturers to engage in the cladding remediation process. The Secretary of State warned that, if manufacturers do not come forward with a comprehensive financial package, DLUHC will take severe action.

RAAC panels

Following the collapse of several buildings, the government has recently announced that it is launching a UK Government-wide inquiry into the use of reinforced autoclaved aerated concrete (RAAC) across the entire government estate.

RAAC panels have a lifespan of 30 years and were commonly used in schools, hospitals and other buildings from the 1950s until the mid-1990s. Many RAAC panels are now well past their shelf life and are at risk of structural failure and collapse, increasing risk of injury to those on the premises. This is likely to put insureds in breach of the Health and Safety regulations which, in turn, may trigger coverage issues. The unpredictability of collapse adds to this risk and insurers will want insureds to undertake investigations and to remove RAAC panels, where identified.

Property

2023 trends: the story so far

Over-valuation

The COVID-19 pandemic changed how we live and work. This has had a permanent effect on demand for office, residential and retail space, particularly in big cities.

Those involved in valuing commercial space have experienced significant over-valuation claims, following a substantial reduction in value across all mainstream property sectors. According to RICS, the industrial market posted a near 30% drop in value in the seven months to March 2023.

Bridging finance

In the last few years, smaller developers and some home owners have used short-term finance to fund development projects and property acquisitions where mainstream lenders have been reluctant to lend or only prepared to lend at very conservative Loan-to-Value ratios (LTVs).

These short term lenders are prepared to overlook issues with credit history and affordability on the basis that they are lending against the strength of the value of the building. They often treat a valuation as a guarantee underlying high risk lending. The interest rates charged to borrowers are usually high. Often, the lenders themselves are also borrowing at high rates.

We have already seen a number of valuation claims arising out of this area of funding, with lenders seeking to recover high contractual rates of interest from valuers following borrower defaults. Recent interest rate increases mean this trend is likely to persist.

Changes to the regulatory landscape for 2023

In the next 12 months, RICS will continue to focus on implementing the recommendations of the 2022 RICS Review, which proposed an overhaul of the structure and governance of the organisation. In addition, RICS is working on new/updated professional standards and practice information documents for the valuation sector.

Predictions for the second half of 2023 and beyond

Lenders claims

As the UK emerged from lockdown, house prices soared, compounded by the desire for gardens, increased savings and the stamp duty holiday announced in July 2020. But we are now looking down the barrel of the real possibility of a recession in 2023, with interest rates at their highest since July 2007, energy costs at record levels and real wages falling. Recent rises in the UK base interest rate have sparked fears of a property market crash. A mortgage with an LTV of 65% in 2021 may have an LTV of 100% or be in negative equity by 2024.

For valuers (and solicitors) operating in the property space, the ongoing Ukraine conflict combined with Brexit, the COVID-19 pandemic, relentlessly high inflation and the cost of living crisis, which has sparked fears of a property market crash, is likely to lead to a resurgence in lender claims.

House prices have risen consistently in the last decade; this will have masked overvaluation of properties by valuers.

Whilst the Office for National Statistics (ONS) confirmed that average UK house prices increased by 3.5% in the 12 months to April 2023, the Office for Budget Responsibility (OBR) estimated in March 2023 that house prices will fall 10% by 2024.

Sticky inflation (currently 8.7%) and escalating interest rates (currently 5% and predicted to peak at 6%) mean that this this could be an underestimate. Inevitably, volatile market conditions lead borrowers to default on mortgage repayments, leading to repossessions, property market slumps and, where available, PI claims by lenders against surveyors (and solicitors) to recover any shortfall.

Pandemic issues

COVID-19 had a real impact on how surveyors and valuers operated, ruling out internal property inspections for several months and increasing reliance on desktop valuations. Valuers with negotiating clout introduced COVID-19 clauses into their terms of engagement. By reference to Valuation Technical and Performance Standard (VPS) 3 and Valuation Practice Guidance – Applications (VPGA) 10 of the RICS Red Book, those clauses confirmed that valuations were being performed in the context of 'material value uncertainty'.

> The intention was that these clauses would operate as a caveat to the valuation. In practice, this ought to have meant that lenders scaled back their LTV ratios.

It will be interesting to see whether, if claims by lenders are pursued, inclusion of a material uncertainty clause will:

- Increase what the court considers to be the reasonable range of opinions (currently, generally 10% for residential properties and 15% for properties which are more difficult to value); or
- Only entitle valuers to argue that those lenders who have suffered losses have done so due to imprudently lending at too high an LTV ratio in reliance on the caveated valuation figure.

Property managers and estate agents

We anticipate that property managers will see more claims, as utilities and other costs continue to soar, leading to an increase in service charges. The management of individual blocks of flats is governed by a complex legal framework intended to protect tenants, which can be a minefield for managing agents to navigate when considering refurbishment and repairs.

In addition to this, higher annual budgets are being submitted to leaseholders for approval. This has led to greater scrutiny and more complaints from leaseholders and tenants associations.

Post-COVID, we are hearing that the number of tenants entering long leases with less than ideal financial history and/or without personal guarantees, is now leading to an increase in disputes relating to rental defaults/forfeiture proceedings. Property managers will bear the brunt of the blame for these disputes.

ESG

Valuers will face claims if they fail to take into account the impact of ESG factors on value. According to The Independent (11 May 2023), property professionals are seeing a trend for buyers down-sizing and an appetite for more energy-efficient new-build homes. Inevitably, this demand will increase the value of this type of property (with a corresponding decrease in the value of older, less cost-efficient homes).

VPGA 8 section 2.6(c) requires valuers to have a working knowledge of the impact on value of sustainability and ESG issues in the short, medium and longer-term.

Those valuing properties or advising on geo-technical risks (e.g. surveyors, solicitors or geo-technical experts) can expect to face more claims when property damage and consequent losses arise from issues which they failed to identify or claims that properties have been over-valued because a valuation figure did not take into account a specific climate risk.

Brokers

2023 trends: the story so far

Fire safety exclusions

Brokers are facing significant claims arising from allegedly negligent advice provided to those involved in construction projects in the wake of the Grenfell Tower disaster.

In particular, clients involved in cladding/fire safety claims are alleging that their brokers failed to advise them:

- To (block) notify potential cladding/fire safety claims to expiring PI policies before the introduction of combustibility or fire safety exclusions on renewal;
- Of what constituted notifiable circumstances so that they might have considered notifying potential cladding/fire safety claims;
- Of the broader ramifications of combustibility/fire safety exclusions; and/or
- Of the consequences of accepting the introduction of sub-limits and/or aggregate limits of indemnity for fire safety claims.

Causation remains a thorny issue in claims against brokers and regularly involves analysis of the coverage position the underlying insurer would have taken, but for the alleged act or omission. This is in addition to consideration of what the client would have done, if advised differently.

Underinsurance

Inflationary pressure has led to an influx of PI claims concerning alleged failures by brokers to establish the adequacy of the sums insured, particularly in relation to stock and materials, the value of which has increased exponentially in the wake of Brexit and as a result of the ongoing conflict in Ukraine. There are also an increasing number of claims against brokers relating to underinsurance for business interruption losses.

Changes to the regulatory landscape for 2023

The FCA will introduce the Consumer Duty on 31 July 2023. It requires a higher and more consistent standard of protection for retail financial services consumers, including customers of retailers offering general insurance policies (such as those accompanying financial products, home insurance and motor insurance).

Predictions for the second half of 2023 and beyond

The Consumer Duty

The Consumer Duty (the Duty) will have a significant impact on brokers (and financial advisers) with issues arising from the new standards for 'fair value' and 'pricing'.

As the Duty does not confer a new specific duty of care on these professional firms, we anticipate that claims against brokers will fall into the typical pattern of failing to act with reasonable care and skill (with reference to the Duty) on the basis that, by virtue of the broker's negligence, a good outcome was not achieved for the customer.

D&O cover

The heavy regulation of certain sectors puts added pressure on brokers. For example, brokers placing D&O cover for clients in the energy and power sectors can expect PI claims where their clients are not (or are not adequately) insured.

Appointed representatives (ARs)

In August 2022, the FCA issued a Policy Statement on Improvements to the ARs Regime. Between 2018 and 2019, it reported that principals and ARs accounted for 61% of the value of claims to the FSCS (c£0.67 billion). As a result, tighter rules were introduced in December 2022 for those using ARs when undertaking regulated insurance intermediary activity, including brokers.

Regulated firms are now required to oversee and manage their ARs to ensure compliance with FCA rules. Where brokers fail in this role, restrictions can be placed on their activities, including a prohibition on the broker undertaking regulated activity or a requirement to terminate AR relationships. In June 2023, the FCA placed restrictions on four brokers.

> Enhanced duties may leave brokers and their PI insurers 'holding the claims baby' where their ARs do not have (adequate) insurance to meet claims/complaints.

Others

2023 trends: the story so far

Technology professionals

COVID-19 highlighted the importance of technology to business continuity and performance. The pandemic accelerated the development of technology and IT. Increased energy costs and high wages mean that the pace of, and appetite for, innovation has not diminished.

Whilst the emergence of new technology and AI has the potential, ultimately, to reduce risk, the speed of evolution and the processes themselves means errors may not be identified until they have been duplicated multiple times (and, potentially, globally).

The increased use of shared platforms and service providers presents its own risks; they need to be used on terms that preserve confidentiality.

Human error in the use of technology platforms remains a risk factor. Technology professionals must ensure that effective training on new software or platforms is provided to help mitigate that risk. They should also be mindful of providing updates to software and additional training, if required, should new risks or software vulnerabilities be identified.

Regulated professionals should also not forget that they may have higher obligations when using new tech, particularly AI – a New York lawyer is currently facing a court hearing of his own after using ChatGPT for legal research without appreciating that it could produce inaccurate information.

Changes to the regulatory landscape for 2023

The Online Safety Bill continues to make its way through Parliament. The Bill has been 'watered down' in some respects – the imposition of a duty of care on major tech platforms has been dropped – but tech firms within its scope will have new obligations to ensure that material available through their sites is not harmful to children and that platforms' terms of service are upheld.

Ofcom will have a greater role to play in vetting online communications and will have the ability to make companies publish information about certain breaches, as well as to apply fines and even the potential to block sites in extreme cases. Criminal sanctions could also flow from certain breaches. This will mean extra work for tech firms, who will need to pro-actively prevent harmful (or unwanted) material reaching users.

Predictions for the second half of 2023 and beyond

Technology professionals

The use of AI by professional services firms will undoubtedly be an area to watch. As the case in New York shows, it may also be an area where regulatory intervention/clarification is required. Hybrid working has become the norm, increasing the risk of potential breaches due to varying security protections and levels of supervision.

> Data theft or loss will have a significant impact on a business's ability to trade, which in turn could lead to first and third party losses. Claims against technology professionals for losses arising from copyright/privacy breaches are, clearly, foreseeable. Technology companies which fall within the remit of the Online Safety Bill should begin to identify and plan for new procedures and protocols in preparation for its enactment.

ESG consultants

Along with traditional professionals, who tend to provide more discrete advice on specific aspects, specialist ESG consultants have emerged. These consultants are helping to shape ESG strategies, offering advice across the whole spectrum of ESG themes which are likely to give rise to PI claims, including:

- Helping to build and maintain ESG policies and procedures.
- Developing and monitoring KPIs.
- Creating statements of corporate values and behaviour.
- Performing due diligence reviews and risk assessments of targets/investors/supply chains.
- Helping with ESG disclosure reporting.
- Peer benchmarking.
- Undertaking culture audits.
- Anticipating developing ESG regulatory obligations.
- Performing carbon footprint assessments.
- Developing crisis response strategies.

Trustees

Historically, an issue in the US - the introduction of the UK Pensions Schemes Act 2021 combined with the ready-availability of third party litigation funding - means that we are expecting more claims against pension and other trustees alleging a lack of oversight over fee arrangements.

Trustees (as well as asset managers and investment managers) will also become embroiled in litigation arising from the use of liability driven investment strategies (LDIs) to hedge interest rates and inflation.

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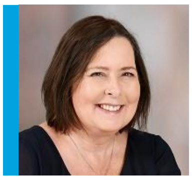

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