

A low-angle, upward-looking photograph of several modern skyscrapers with glass and metal facades, converging towards the top of the frame against a cloudy sky. The perspective creates a sense of height and architectural scale.

# 2022 insurance industry forecast: trends and future risks

February 2022

# Foreword

2021 saw the insurance industry grapple with a multitude of challenges including pandemic impacts, disruptive technology and climate related risks. As we move into 2022, we expect to see a continuation of those challenges. Adapting to new technologies and achieving net-zero will be central to the insurance agenda, to which we add the shifting geopolitical landscape.

Notwithstanding the much heralded COVID-19 vaccine roll-outs, disruption to businesses, supply chains, travel and staffing levels continued. Insurers had to deal with their own business interruption as well as that of their insureds, including the examination of established policy wordings in the Financial Conduct Authority (FCA) test case - which will impact future claims, and not just those associated with pandemic losses.

COVID-19 accelerated the transition to digital solutions as a result of necessity, and enabled insurers to manage the pandemic's impact by allowing workforces to effectively and efficiently operate remotely. But with this shift came increased cyber threats. In addition, 2021 brought a continuation of natural catastrophe losses, resulting from devastating storms, fires and floods.

Resilience will be the overarching theme for 2022. However, whilst last year necessitated a faster pace of change than was perhaps ideal, looking forward, insurers will want to continue to adapt to protect their operations, market and promote customer retention.

Customer demand for more interactive and efficient digital platforms and products is set to continue, which will require insurers' ongoing adaption to new technologies. With that will likely come associated cyber risks, with ransomware and supply chain attacks continuing to rise. However, digital transformation remains essential for insurers wanting to stay relevant, competitive and reputationally sound in the current market.

In a 'Dear CEO' letter to insurers in January 2022, the PRA listed financial and operational risk resilience, climate change, and diversity and inclusion among its 2022 supervision priorities. This is reflected in the insurance market's future strategy. The IUA's business plan for 2022 features climate risk, business interruption, regulatory changes and pandemic response; Lloyd's identified cyber risks, catastrophe exposure, operational resilience and Environmental, Social and Governance (ESG) concerns as some of the core issues affecting the market.

Honing in on ESG, the increased examination of insurers' own ESG commitments will be a priority for firms as they wait to see how moving from voluntary to mandatory disclosure requirements plays out. Indeed, we might see challenges as firms are required to navigate a soup of developing laws and standards. Notwithstanding the shifting regulatory landscape, insurers - like most companies - know that it is probably only a matter of time before regulators or the general public discover any discrepancies in ESG promises, putting reputations at risk.

Geopolitical impacts remain a major concern to global governments and business. Post-Brexit negotiations continue into 2022 as agreements around both goods and services remain unresolved. Concern over future state conflicts remain high with physical, cyber and trade impacts following sanctions looming large; the current tensions between Russian and the Ukraine highlight the reach of these disputes.

**Against this background, we highlight some key legal and regulatory developments, and provide an overview of 10 business critical topics that insurers and corporates should consider as they plan for operational resilience in 2022.**



# Legal and regulatory developments

## Legal landscape

2021 saw the UK courts grapple with pandemic related issues - not least the FCA test case - as well as a shift in type and substance of disputes presented, and these trends look set to continue.

Group actions made headline news in 2021, and many cases remain unresolved, meaning they will continue to shape the legal landscape. The move towards US-style opt-out group claims becoming the norm in the UK took a huge step forward when the Competition Appeal Tribunal (CAT) certified the first application for a collective proceedings order (CPO) on an opt-out basis in [Merricks v Mastercard \[2021\]](#). This decision was swiftly followed by the granting of a CPO in *Justin le Patourel v BT Group plc* [2021].

**The UK Supreme Court also handed down its long-awaited decision in the data privacy case of [Lloyd v Google \[2021\]](#). The case dealt with the important questions of whether compensation may be sought following data breaches, and what constitutes the 'same interest' to enable individuals to rely on a representative action.**

While the judgment suggests that representative claims for damages, rather than just for findings of liability, may be difficult for data breaches, the door has been left ajar for other types of representative claims.

In [Okpabi v Shell \[2021\]](#), the UK Supreme Court ruled that a company can be held liable in the English courts for oil pollution allegedly caused by its subsidiary in Nigeria. This ruling means that parent companies in Britain could face UK liability for their operations overseas.

In December 2021, the Court of Justice of the European Union (CJEU) handed down judgment in [Tattersall v Seguros Catalana Occidente S.A.](#), ultimately coming to the opposite conclusion to

the UK's Court of Appeal. In the CJEU's reasoning, the special rules on insurance under Article 13(2) of the Brussels recast regulation are to address an imbalance between the parties as an insurer is considered a stronger party. The claimant and the insured are seen as weaker parties, so there is no reason to allow a claimant to sue a defendant in their member state of domicile under the special rules.

This decision highlights how Brexit will shape the future legal system in England & Wales as, following the end of the Brexit transition period, this may well be the last matter that the courts of England & Wales refer to the CJEU. This is highly significant, as such issues in the future will not have the benefit of consideration by the CJEU and the final decision will come from the UK's home courts.

The FCA test case is widely regarded as having addressed many of the issues arising from COVID-19 business interruption claims. However, some matters remain unresolved, such as coverage questions around specified diseases, damage to property, denial of access, cancellation and disease at the premises, as well as quantum disputes around aggregation, direct losses and government support. These issues are already starting to emerge, which means that insurers are operating in a still uncertain landscape.

## Regulatory and legislative developments

New rules and regulations mushroomed during 2021, not least as the UK began to manage the end of the Brexit transition period. The ongoing impact of COVID disrupted the usual programme of legislative change and so much of what begun last year is set to continue in 2022, with big tech and sustainability taking centre stage.

Insurance firms will be watching to see if Solvency II reforms are now introduced into the UK. Meanwhile, ESG will remain high on the regulatory agenda. In particular, following its appointment of Director of ESG, the FCA set out its ESG priorities in a strategy designed to drive

positive change, which highlights transparency and trust as key themes.

On climate, we can expect an ongoing narrative from the FCA about adapting the regulatory framework to support insurers meet their important role in the transition to a low carbon economy. And on diversity and inclusion, the PRA and FCA intend to consult on more detailed proposals in Q1 2022.

**The [latest instalment](#) of the FCA's work on general insurance pricing practices came into force on 1 January 2022. It covers the 'price-walking' ban for motor and home policies and easier opt-outs from auto-renewal by consumers for most types of general insurance policy.**

A specific post-Brexit change included the [Environment Act](#), which became law in November 2021, creating a new environmental watchdog, known as the Office for Environmental Protection (OEP). This government body will replace the European Commission as the enforcer of environmental regulation and will be responsible for holding government and public bodies (including the Environment Agency) to account on their implementation of environmental law. There have been questions as to how effectively the OEP will be able to hold the government to account. 2022 may provide those answers.

Other legislative change due to Brexit included the UK immigration system, intellectual property and data protection - with the GDPR no longer having direct application in the UK. In practice, businesses will still need to comply with the requirements as they are covered by the Data Protection Act 2018, which sits alongside the UK's mirrored version of the GDPR, although these are currently subject to proposed government reform.

Looking forward, more broadly, we can expect the UK Government continuing to drive their levelling up strategy following the long awaited publication of the Leveling Up White Paper on 2

February which aims to 'transform the UK by spreading opportunity and prosperity to all parts of it'.

That agenda manifested with the [Building Safety Bill](#) being introduced to the House of Commons in July 2021, just over four years since the Grenfell Tower disaster. Royal Assent is expected in the first half of 2022. The Bill represents a seismic shift in building safety regulation - from design and construction to occupation - of high rise properties. As such, property developers, contractors, building-owners, landlords and managing agents will need to take proactive steps to align their fire and structural safety systems and procedures with the more stringent requirements imposed by the Bill.

**The UK Government's Department for Levelling Up, Housing and Communities recently announced plans to force developers to "fix the cladding crisis" and has published a new plan to protect leaseholders and make the construction and insurance industries pay for the cladding crisis.**

Elsewhere, and maintaining its focus on technology innovation, the UK Government launched a Future of Transport programme, with the aim to 'shape transport innovation and make the UK a world leader in transport movement'. The regulatory review included [consultations on maritime autonomy](#), zero emission vehicles, the future of flight and modernising vehicle standards. A government response to the consultations is awaited, with indications being that substantive legislative reform will be required. While it is imperative that regulation adapts to technological advancements, caution must be exercised in light of the potential additional risks to insurers arising from the current proposals.

This trend for regulatory reform and the themes prioritised in 2021 look set to continue throughout 2022.

# Key topics to watch in 2022

## Societal

### Future pandemic risk

---

“As dealing with the risks associated with the current pandemic moves into the ‘business as usual’ category, we are seeing insurers prepare for a wide range of systemic risks which once seemed remote but are now foreseeable.

This includes everything from a future pandemic to catastrophic cyber attacks, reputational risks and increased litigation arising from ESG issues. As a result, we will see new products coming to the market to protect against these risks, learning the lessons of the pandemic and driving resilience.”

*Ingrid Hobbs, Partner, London*

---

The global insurance industry is deemed to have come through the initial stages of the pandemic relatively well, but the industry and its regulators must now use this experience to prepare for future pandemics.

Regrettably, it is highly likely that new pandemics will occur, and that they may become more frequent as a result of new diseases emerging and the environment coming under continued pressure. Studies show the impact of climate change, and the increased interrelation between health, climate and biodiversity events increase this likelihood.

As insurers move from their initial pandemic response to a longer-term strategy, close attention should be taken of the shifts in consumer behaviour. COVID-19 has influenced the choices made regarding service providers. This goes through all aspects of a business, from social responsibility commitments to the tech solutions offered.

**The pandemic has accelerated the trend toward automation and digitisation, with initial drivers including changing demographics, customer expectations and competitive pressures.**

Investment in digital capabilities, talent and other strategic resources are key to the long-term success of all businesses. Companies that invest now and strengthen the bond with their customers have the potential to emerge from the crisis ahead of their competitors.

There are also lessons to be learnt from the FCA test case, most notably the necessity for a review of policy wordings. Products need to be simplified and current wordings considered against potential future events. This will be key to the insurance industry’s reputational risk management throughout 2022.

### Social inflation

Social inflation is one of the major emerging risks that the insurance industry must address this year. In 2021, its influence was felt in motor, personal injury and medical negligence, professional indemnity and D&O claims.

There is evidence that the impact of social inflation on claims is starting to spread globally due to socio-economic globalisation, and these factors have been amplified by the pandemic. Societal attitudes have changed, which means there will be an increased effect on the insurance industry.

The causes and trends of social inflation, while more prevalent in the US, are not unique to any one region. As is true of many emerging trends, whatever is spotlighted in the US will likely find itself having global impact.



### Global drivers include:

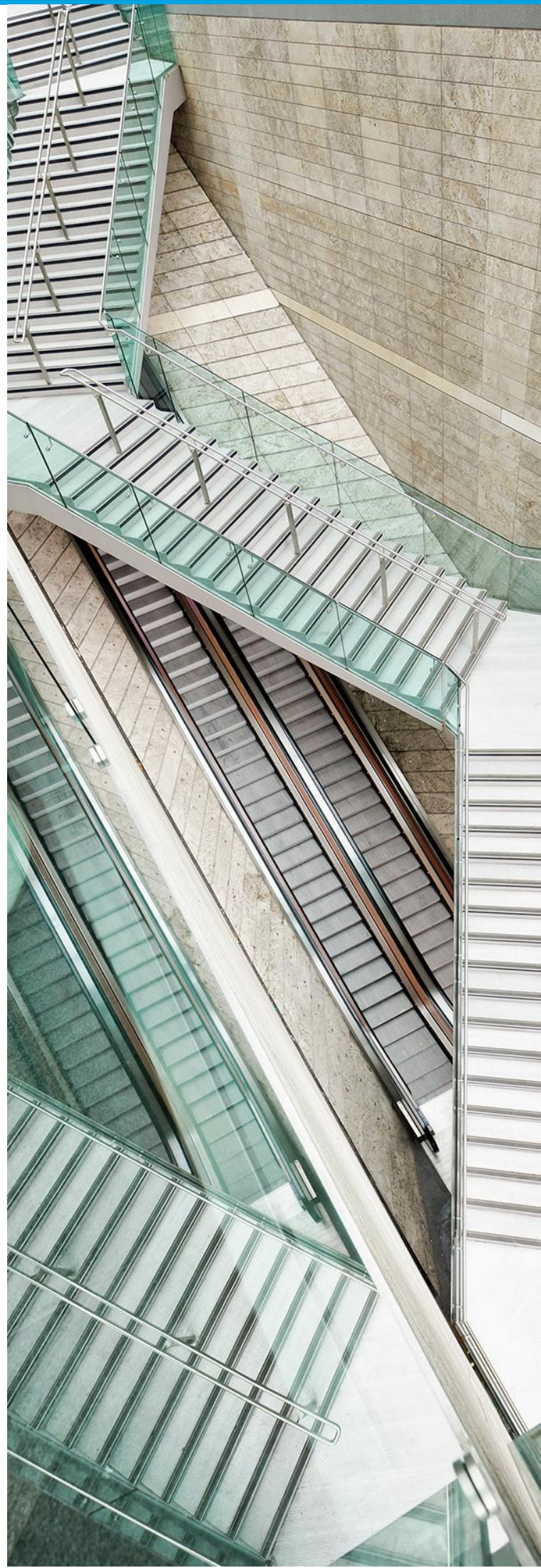
- The rising cost of litigation fuelled by the increasing availability of third party litigation funding/private equity backing of claimant lawyers.
- An increase of group actions.
- Shifts in political/regulatory landscape acknowledging the growing recognition of social inequality.
- Social media use which shapes public opinion.
- Hardening attitudes towards social inequalities and corporate responsibility in the judiciary as well as in juries.

**Litigation funding is an increasingly popular practice in which investors finance lawsuits to which they are not a party (and which are often against insurers) in return for a share of the settlement.**

This contributes to social inflation by increasing litigation costs that affect insurers' claims pay-outs, loss ratios, and coverage premiums.

Such third party funding has led to an upswing in UK litigation which presents a significant risk to corporates and their D&Os. Investors whose shares fall in value are looking to recover those losses from companies through shareholder class actions. High profile example shareholder actions in the UK include claims concerning Tesco's financial reporting and the RBS Rights Issue Litigation.

It is difficult for insurers to structure safeguards against claims that may be presented against existing policies. However, from an underwriting perspective, a recognition of these claims trends and a review of the impact they have on current wordings has to be a priority for 2022.



# Technology

## The role of technology

---

“ 2021 was a year in which there was no longer any doubt that the fortunes of individuals, companies, crypto currencies and even democracies could turn on a social media dime with the rise of dogecoin, events on capitol hill and the pandemic itself played out in the frothy world of the virtual and the intangible. And whilst technology has not caused the froth, it has certainly enabled it. The intangible world - which Facebook has branded the metaverse - is our future.

As we go into 2022, it is technology that will enable reliable, measured indexes of individual and corporate ESG credentials. It is technology that will help shine the light on those aspects of the metaverse that rewards falsehoods. It is technology that will enable us to conquer cognitive biases and inconsistency, improving our ability to judge risk and uncertainty. In the end though, whilst technology enables, it is people that will choose how and where is applied. ”

**Karim Derrick, Product and Innovation Director, London**

---

2021 has shown that digital transformation offers insurers a solution to allow them to meet their environmental, social and governance objectives.

ESG is not a new concept, but it has been brought into sharp focus by the pandemic and has moved from a fringe concern to the centre of business decision making. With that comes new kinds of risk for insurers to navigate. It includes components of climate, transitional and social risk that are difficult to evaluate as the data is often seemingly inaccurate due to inconsistent criteria applied, or simply not being collected at all.

The key enabler to the adoption and implementation of ESG commitments is digital

transformation. As products and systems improve, insurers will be better placed to effectively manage and report on their ESG risks.

The benefits of accurate data capture will be demonstrated in the use of analytics to better understand trends - such as climate change - and harness that knowledge to effect change, informing underwriting and cover decisions.

Digital advancements including the growth of smart contracts and crypto assets has provided additional challenges to the legal system. This has resulted in the Civil Procedure Rule Committee looking at the option of amending or expanding the grounds in which proceedings can be served out of the jurisdiction, which can be an obstacle to pursuing litigation and, therefore, resolving disputes involving these new technologies.

The Master of the Rolls recently reported that such cases had increased significantly, and dispute resolution was “proving complex” because of the difficulty of “applying analogue rules to the digital world”.

## Cyber events

---

“ The increase in sophistication and frequency of cyber-attacks is set to continue throughout 2022, with supply-chain attacks and cyber warfare being the biggest concern for organisations across all sectors. We also expect to see new methods of attack materialise as threat actors seek to bypass multi-factor authentication and access cloud based infrastructure in order to cause maximum disruption. ”

**Oliver Dent, EMEA Cyber and Data Privacy Lead, Manchester**

---

The frequency, scope and detrimental impact of cyber-attacks continued to increase throughout 2021, largely as a result of companies pivoting towards digital operations and the technology behind the attacks becoming ever more sophisticated.



As well as the financial and business interruption losses, a significant and long-term impact of many cyber incidents is the damage to reputation and goodwill. Many organisations are prepared (to a certain extent) for the short-term technical and operational impacts, but are often un-prepared for the longer lasting impact to their reputation.

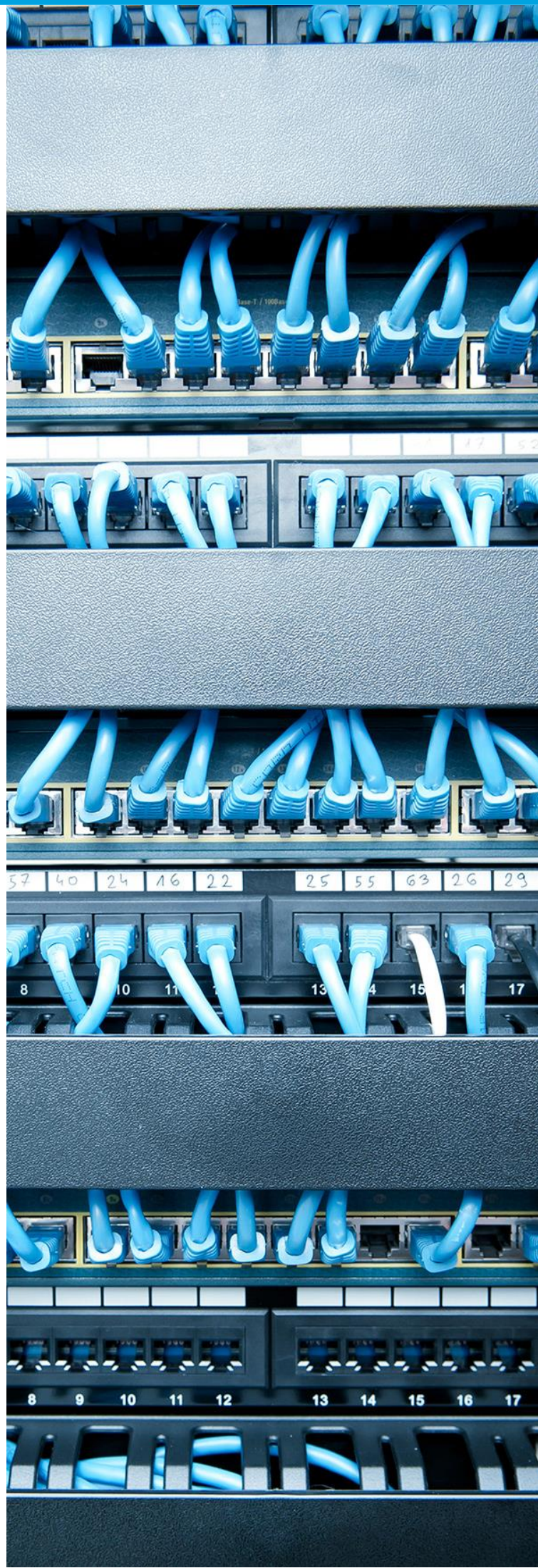
This occurs because as well as notifying regulators of a cyber-attack, many clients and customers also require notification, either as a result of regulatory requirements or to comply with the terms of business agreement contacts. Employees are also made aware of these incidents when they are asked to help remediate them or if they are impacted themselves, for example, if their pay is delayed. Some larger incidents also make headline news.

**With many companies adopting permanent hybrid working policies, threat actors will continue to exploit vulnerabilities in working practices, leading to a continued increase of cyber-attacks in 2022.**

**The industry is responding to these increased threats:**

- The IUA has stated its intention to publish research looking at the cyber impact on supply chain risk as well as continuing its dialogue with the National Cyber Security Centre.
- When setting out its main areas of focus for 2022, Lloyd's stated that it will continue to support innovative areas of underwriting, such as cyber.
- The Council for Licensed Conveyancers has launched a consultation on whether it should make stand-alone insurance for cyberattacks compulsory as it looks to update its policy on professional indemnity cover.

Cyber impacts look set to remain a significant concern for the insurance industry for the foreseeable future, but innovation, mitigation and collaboration across industry and regulators will assist in managing this risk.





# Political

## Brexit

---

“The insurance sector spent a considerable amount of time considering the impacts of Brexit and a no-deal scenario for one key reason: to ensure that it could continue to serve customers in the UK, Europe and beyond. Looking forward, the customer will remain a priority as insurers continue to watch closely the changes in the legal and regulatory environments.

This year will bring into focus the potential for the Solvency II regime to start to diverge between the EU and the UK. The UK Government will be alive to how much deviation may be too much in order to maintain equivalence, and at the same time, aware that they need to deliver the ‘Brexit dividend’ as promised.”

**Deborah Newberry, Corporate Affairs  
Director, London**

---

One of the most significant outcomes of Brexit has been regaining the right to negotiate independent free trade agreements.

Last year the UK began formal negotiations to join the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP). The CPTPP is a mega-regional trade agreement consisting of 11 members, representing just over 13% of global commerce, 15% of global trade, and has a population of 500 million people. If successful, this will have a significant impact on all elements of trade, and the risks attached.

Turning to post-Brexit regulatory reform, levelling up is a useful hook for the industry to leverage and the more the conversation around [Solvency II reform](#) can draw on it, the better. To date, the priorities have been the mechanism for releasing capital into long-term investment and delivering on wider governmental policy objectives. However, there is scope for Solvency II reform to play a bigger part in this agenda.

While levelling up lacks clear definition or policies, it has become ingrained in national discourse. Arguments for reform drawing on it are likely to gather momentum and play to the industry’s favour - although regulatory scepticism about reform should not be underestimated.

We are expecting the government to launch its Phase 2 consultation as part of its Solvency II Review, and the PRA to publish results of its Quantitative Impact Study in the next few months.

**As part of the post-Brexit restructure, it is likely the UK Government will publish a Financial Services Bill in the next Queen’s Speech (expected May 2022) which will be the main legislative vehicle for many of the reforms.**

Included in the legislation emerging from the Future Regulatory Framework process, we expect a portfolio Bill capturing various different reforms to financial regulation - with Solvency II chief among them. We anticipate an announcement in the Queen’s Speech, to be followed by publication of the Bills by Autumn with the aiming of working their way through parliament to receive Royal Assent by May 2023.

The Bill itself is unlikely to deal substantively with the design of the new Solvency II regime - or whatever replaces it - instead giving the Minister power to delegate that power to the regulators via a statutory instrument. What the Bill will do, and this is where insurers should focus their public affairs resources, is setting the objectives and accountability framework for the regulators.

A House of Lords committee has recently launched an investigation into the regulation of the London insurance market, and will examine whether regulatory policy can be amended to boost international competitiveness in the wake of Brexit.

The Industry and Regulators Committee have said that it wants responses from the sector on whether the current rules for the industry strike

the right balance between protection for consumers and commercial competitiveness.

As 2022 progresses, we can expect post-Brexit trade negotiations and the push for regulatory reform to continue.

## Geopolitical risk

---

“ The impact of the ongoing pandemic on global supply chains remains a key issue for companies that source raw materials or components internationally. This issue is particularly acute for companies that rely on a ‘just in time’ philosophy, and we anticipate that it will remain a problem for some significant time to come.

In terms of emerging risks, the stand-off at the border between Ukraine and Russia looms large. If Russia does launch an invasion, and if the western democracies respond with enhanced economic and/or trade sanctions, the consequences for companies doing business in, or involving, Russia may be profound. Particularly if US sanctions were so stringent that they effectively cut off Russia, or companies doing business in or with Russia and Russian entities, from the US banking system. ”

*Graham Gowland, Senior Associate,  
London*

---

The fallout from the pandemic has heightened the [geopolitical risk](#) to insurers. It has caused increasingly fragile states, exposed political insecurities, diverted government resources and aggravated mental health problems, making people more vulnerable and susceptible to joining movements for change.

Workers are more likely to become disenfranchised and demand better pay and conditions which can result in strikes and subsequent claims, under both employment and business interruption policies, if not met. A lack of tourism can have a devastating effect on communities, resulting in businesses failing and property falling into disrepair.

A recent surge in environmental and social protests in the UK has prompted a stern response from Boris Johnson’s government, which is seeking to push through tough new curbs and penalties around demonstrations. The proposed Police, Crime, Sentencing and Courts Bill sparked resistance from civil liberties campaigners and businesses. Opposition peers voted against a range of measures proposed, which means the Bill now faces going back and forth between the Commons and Lords.

In the World Economic Forum’s annual global risks report, survey respondents pointed to “climate action failure” as the top long-term threat over the next decade. The report predicted that the “disorderly climate transition” was set to continue – and warned that a transition that did not consider “societal implications” risked exacerbating existing inequalities and feeding larger geopolitical tensions.





Lloyd's have analysed the risks associated with geopolitical instabilities, and have recommended that geopolitical tensions arising from climate change can be addressed by insuring regional energy and agricultural projects.

**In a new report produced in collaboration with the Cambridge Centre for Risk Studies, Lloyd's has explored ways to ease tensions between national power blocs by providing risk solutions that can bind the international community together.**

These include helping multinationals manage their increased exposure to political risk through the energy transition towards net zero but also providing available capital to underpin confidence in transition projects and ease construction problems that could strain geopolitical relations and interdependencies. Insurers will also be relied on to close the 'geopolitical protection gap' in immature markets, providing much-needed coverage to developing economic powerhouses where political institutions may be historically insecure.

Undoubtedly, geopolitical risks and frictions between international communities add a layer of complexity in tackling climate change which will continue to challenge insurers in 2022.

## Supply chains

“Modern British manufacturing is built on an efficient 'just in time' global supply chain. Marine insurers face unprecedented and on-going problems - likely to continue throughout 2022 - arising from log-jammed ports, static transportation networks and cargo-loss events as a result of a toxic combination of COVID-19 and Brexit inefficiencies overwhelming the industry.

The EVER GIVEN grounding in the Suez - where we are acting for cargo interests - highlighted problems of aggregation with an increase of cargo at terminals, vessels

queuing often for months at outer anchor at ports (West Coast US ports in particular), exacerbated by a global shortage of containers and container freight rates increasing three-fold.”

*Christopher Dunn, Partner, London*

Linked to pandemic impacts, 2021 saw extreme weather events and cyber risks as additional disruptions to supply chains.

These global factors will result in insurers continuing to see claims arise from a variety of sources throughout 2022:

- Bottle necks and availability (or not) of warehousing space.
- Problems in physically moving goods due to strikes and protests.
- The increased risk of hijacking and theft due to limited available routes, looting or security presence being removed from storage facilities.

The inability to move goods also leads to an increased risk of theft, and potential fraudulent claims with malicious actors taking advantage of the inability to track goods. Supply chain management may become more difficult to control. Global sanctions may change as situations develop, resulting in ports being declared unsafe, leading to policy coverage disputes.

Regulatory shifts add another layer to the challenges faced. New customs controls came into force in the UK on 1 January 2022, with British importers now required to make a full customs declaration on goods entering Britain from the EU, and rules of origin requiring exporters to prove their goods qualify for zero tariff access before shipping. Trade associations are already warning that this will hit food supply in particular, with smaller businesses likely to struggle the most.

To avoid the direct impact to operations and the associated reputational damage to a company's brand, supply chain resiliency is now a priority issue for all businesses, and their insurers.

# Legal and regulatory

## Regulatory expectations on firms

“Increased regulatory focus on ESG coupled with demands for transparency from increasingly active shareholders mean that companies and their directors and officers face real challenges in 2022.

D&Os must understand shifting regulatory and societal expectations and ensure the company responds. The spotlight will be firmly on any non-compliance, resulting in both legal and reputational vulnerability for companies and D&Os - and increased risk for their insurers.”

*Jenny Boldon, Partner, London*

ESG remains central to the regulators' focus. From 6 April 2022, over 1,300 of the largest companies and financial institutions will have to comply with the [Task Force on Climate-Related Financial Disclosures](#) (TCFD) aligned mandatory disclosure requirements. The FCA has also acted quickly to progress Sustainable Disclosure Requirements (SDR), issuing a discussion paper in November 2021 with the plan to launch a subsequent consultation in Q2 2022.

The SDRs are to be aligned with the long-awaited UK taxonomy, which is currently being developed by The Green Technical Advisory Group (GTAG). Given that a date for the consultation on the initial climate mitigation and climate adaptation objectives is still to be announced, there is still a lot of work to be done.

**The UK Government is due to publish a revised Green Finance Strategy in 2022, developing the initial 2019 strategy and building on last year's Greening Finance Roadmap, which will be critical for setting a clear pathway for a net zero financial system.**

Overall, while the building blocks of the UK's Net Zero Strategy have been laid out, the final shape is not yet clear. 2022 will see businesses in the UK having to navigate an ESG landscape in flux, with the many government and industry-led consultations providing a valuable chance for firms to take advantage of opportunities to help shape the emerging debate through original thought leadership and by demonstrating clear action.

The PRA and FCA are also looking to progress their focus on diversity and inclusion in the financial services sector and are proposing to follow their 2021 joint Discussion Paper with consultation and policy statements in 2022. The regulators see clear benefits of D&I in improving the quality of decision-making and expect this to lead to better consumer outcomes. This will no longer just be a matter for firms to consider internally, as the regulators are looking to set clear minimum expectations for firms to meet, or face the consequences of falling short.

**The Treasury has announced that legislation to bring the promotion of crypto-assets under the wing of the FCA will be introduced when parliamentary time allows.**

Around 2.3 million people in the UK are thought to own a crypto asset such as digital coinage or non-fungible tokens (NFTs). However, the Treasury said that understanding of the technology is declining, “suggesting that some users may not fully understand what they are buying”.

Whether these proposed developments take place before or after the next parliamentary term, expected by May 2022, remains to be seen. However, regardless of any potential changes in the UK Government (which may lead to a shift in the political agenda towards technologies or trade), regulator activity is likely to stay on course.



## Remote justice

---

“ Having attended two virtual application hearings and one in person trial over the last eight months, I have experienced first-hand the advantages that remote justice can provide. The main advantage has to be cost savings. There was no travel or waiting time. It was very easy and cost effective to have virtual discussions with Counsel and the client either side of the hearings, and we were able to communicate with Counsel in the usual way by passing virtual notes. Thankfully, the technology worked very well so the hearings were not hindered in any way.

That said, I do consider that parties are better served by having in-person hearings in some circumstances, such as a trial where there are numerous witnesses and cross examination is extensive. The trial that I was involved in very much turned on witness recollection of certain historical events. I firmly believe that part of the reason the Judge reached the decision he did was because he was able to read the body language of the witnesses. I'm not convinced that the Judge would have been able to 'read' the witnesses to the same extent if they were being cross examined virtually.

Overall, I think virtual hearings should and will be utilised as much as possible in the future. They have many advantages for those involved. However, there are certain times where an in person hearing will result in a better outcome, even if more money (on travel, for example) is spent in the long run. ”

***Matt Deaville, Partner, London***

---

COVID-19 dramatically accelerated the accessibility to [remote justice](#). The groundwork was already in place, but necessity meant that the debates had to stop, and the processes activated. Overall, the courts and arbitration platforms responded well.

In 2021, HM Courts & Tribunal Service published an evaluation of remote hearings during the COVID-19 pandemic, reporting on the experience of public users, the judiciary, legal representatives, HMCTS staff and support professionals, and their attitudes towards remote hearings.

Interestingly, the research found that public users attending remotely were slightly more likely to be satisfied with the overall experience of their hearing than in-person users. Benefits cited included greater convenience, reduced costs and removing the anxiety of being in a room with another participant, with whom they may be in conflict.

**93% of legal representatives said they felt remote hearings were an acceptable alternative during the pandemic, although views were mixed about how they should be used in the future.**

**51% of judges thought remote hearings were effective at creating an environment comparable to in-person hearings, but raised concerns about their impact on well-being and increased workload.**

Now that the technology is in place to progress the digital legal evolution, this momentum and willingness for advancement must be embraced.

In November 2021, Kennedys responded to the [UK Ministry of Justice's Call for Evidence](#) on the future of dispute resolution in England & Wales, highlighting that technology has the potential to resolve disputes on a more efficient, humanised, simpler and inclusive basis.

Progression of access to remote justice and technological advancements in dispute resolution will assist the UK in establishing itself as the legal jurisdiction of choice for governing transactions involving new technologies, such as blockchain, crypto assets and smart contracts.

## Group actions

---

“ Business is strongly advised to stress test its capability and capacity to respond to group actions. An increased frequency in group actions is likely to be accompanied by potentially vastly increased group sizes.

The reasons are, as ever, multifactorial with one important factor being the cross-border/global nature of the issues at the forefront of group litigation, the EU having already formalised its own collective action process, with specific rules on cross-border actions. Boundaries will therefore inevitably continue to be pushed in the UK and beyond. ”

*Samantha Silver, Partner, London*

---

The ability to bring a group action claim in the UK sits hand-in-glove with the rise in the availability of litigation funding, as was witnessed in 2021. Group actions are particularly common in certain types of claims, such as competition law, data privacy and breach, financial services, shareholder, environmental, personal injury and product liability claims.

Whilst the UK does not have a specific group action mechanism for securities litigation, increased use of group litigation orders (a straightforward ‘opt-in’ procedure or claimants to join a group action) and the developing role of specialist claimant law firms and claims managers

indicate that the rise in group action claims is set to continue.

The role of claimant lawyers working alongside funders is not to be under-estimated. There are a large number of group action law firms operating in the UK, including US and Australian law firms with class action expertise who have set up office in the UK. These firms are increasingly innovative and adept at bringing claims and facilitating funding.

In addition, the evolution of litigation technology has assisted with locating relevant publicly available information, making it easier to identify claims and appropriate members of a class. Further, case portals, workflow tools and electronic signing, have eased some of the practical challenges involved in building, managing and settling large-scale actions.

Already in the diary for 2022 are claims against shipping companies for allegedly fixing delivery charge prices, consumer led claims regarding fees charged by Apple and Google for purchases on their app stores, a proposed class action accusing banks of rigging foreign exchange markets, and Meta is being sued for £2.3bn in a class action lawsuit that claims 44 million Facebook users in the UK had their data exploited after signing up to the social network. These are indicative of this trend continuing.

In response, the UK Government is currently consulting on whether further routes to collective consumer redress should be opened up as part of its broader consultation on reforming competition and consumer policy.





# Get in touch

If you would like to discuss any of the issues raised in this report in more detail, please reach out to your Kennedys client relationship partner or get in touch with any of the contacts listed below.

To find out more about our services and expertise, and key contacts, go to:

[kennedyslaw.com/our-expertise/sectors/insurance-and-reinsurance](https://kennedyslaw.com/our-expertise/sectors/insurance-and-reinsurance)

## Key contacts



**[Jenny Boldon](#)**

Partner, London

t +44 20 7667 9038

[Jennifer.boldon@kennedyslaw.com](mailto:Jennifer.boldon@kennedyslaw.com)



**[Matt Deaville](#)**

Partner, London

t +44 20 7667 9078

[matt.deaville@kennedyslaw.com](mailto:matt.deaville@kennedyslaw.com)



**[Ollie Dent](#)**

EMEA Cyber & Data Privacy Lead, Manchester

t +44 161 829 7462

[oliver.dent@kennedyslaw.com](mailto:oliver.dent@kennedyslaw.com)



**[Karim Derrick](#)**

Product & Innovation Director, London

t +44 20 7667 9776

[karim.derrick@kennedyslaw.com](mailto:karim.derrick@kennedyslaw.com)



**[Christopher Dunn](#)**

Partner, London

t +44 20 7667 9855

[Christopher.dunn@kennedyslaw.com](mailto:Christopher.dunn@kennedyslaw.com)



**[Graham Gowland](#)**

Senior Associate, London

t +44 20 7667 9150

[graham.gowland@kennedyslaw.com](mailto:graham.gowland@kennedyslaw.com)



**[Ingrid Hobbs](#)**

Partner, London

t +44 20 7667 9620

[Ingrid.hobbs@kennedyslaw.com](mailto:Ingrid.hobbs@kennedyslaw.com)



**[Joanna Manthorpe](#)**

Corporate Affairs Lawyer, London

t +44 20 7667 9863

[Joanna.manthorpe@kennedyslaw.com](mailto:Joanna.manthorpe@kennedyslaw.com)



**[Deborah Newberry](#)**

Corporate Affairs Director, London

t +44 20 7667 9508

[Deborah.newberry@kennedyslaw.com](mailto:Deborah.newberry@kennedyslaw.com)



**[Samantha Silver](#)**

Partner, London

t +44 20 7667 9358

[Samantha.silver@kennedyslaw.com](mailto:Samantha.silver@kennedyslaw.com)

The information contained in this publication is for general information purposes only and does not claim to provide a definitive statement of the law. It is not intended to constitute legal or other professional advice, and does not establish a solicitor-client relationship. It should not be relied on or treated as a substitute for specific advice relevant to particular circumstances. Kennedys does not accept responsibility for any errors, omissions or misleading statements within this publication.