FOIL
FORUM OF INSURANCE LAWYERS

the VOICE
of FOIL

Informing Progress - Shaping the Future

SPOTLIGHT

In this edition, we explore the disruptive effect and potential of artificial intelligence technology, for the insurance market and for aspects of the human condition

Publisher

Editors

Future Editions

If you are interested in contributing material to a future edition of the Voice, please contact info@foil.org.uk

Disclaimer

In this Edition

Welcome to the May 2025 edition.

Stratos Gatzouris (DWF and Editor in Chief)
Jeffrey Wale (FOIL Technical Director and Assistant Editor)

Welcome to the May 2025 edition of the Voice. We explore the disruptive effect, benefits and potential of artificial intelligence (AI) technology, both for the insurance market and the wider human condition.

The timing of this edition could not have been better: Spinnaker have recently published their **Technology and Innovation at the Bar Research Report for the Bar Standards Board**. Although the report highlights the possible benefits of AI technology for the Barristers' profession, it also acknowledges that '*the adoption of technology driven solutions has been patchy*'. This is probably a reality across many professions and organisations, although the Bar may be especially impacted by the way they have traditionally been organised and work. There is also understandable caution about the unqualified adoption of unproven or untested technology plus wider implications for the role of human agency in many aspects of our (working) lives.

We start with how FOIL is working to address the impact of AI with an article by Simon Murray (DWF). Then we hear from Karim Derrick (Kennedys IQ) about how we might support legal judgement with AI. The article highlights a new generation of legal technology that seeks to augment (rather than replace) human judgement. This is followed by two articles (including one from Mark Huxley) exploring the issue of neurodiversity in an AI/digital world.

Building on a recent FOIL event, Steven Brownlee (FOIL) offers an insurance and medico-legal perspective on the use of AI to predict injury risk in sport. Paul Finn (FOIL) considers the implications of the EU AI Act for

the UK Insurance Market. Finally on our core theme, we have an article from Fleur Rochester & Mya Wilhem (Kennedys) on silent artificial intelligence cover and the unforeseen risks for Insurers.

We also have all the usual content, and updates. We would also urge you to save the date for the next FOIL AGM and President's Conference on 27 November 2025.

Building on the previous edition of the VOICE, FOIL has organised a housing related disease event at the offices of RMP, London on the 17 June 2024. We have a great panel of speakers (including two from our sponsors) and would recommend early registration as spaces are limited. You can register for the event at the following link.

We hope that you enjoy reading the content and look forward to receiving your ideas for the next edition of the Voice. Once again, many thanks to Ian Thornhill for his work as the content coordinator on this edition.
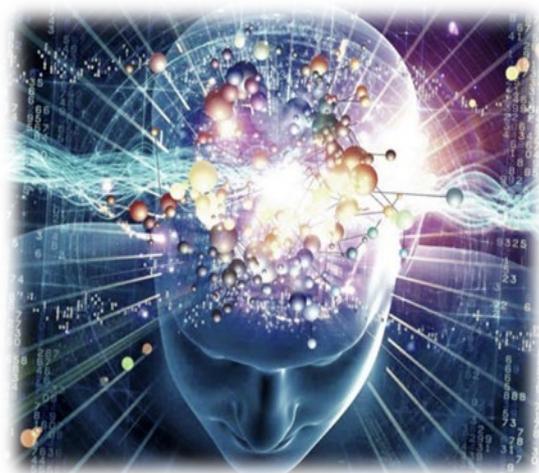
Stratos and Jeff

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The President's Page

Howard Dean (Keoghs and FOIL President)

What Lies Ahead for the Insurance Industry in the Second Half of 2025

Howard Dean, FOIL President

As we move into the second half of 2025, the insurance and legal sectors are facing an increasingly complex and volatile landscape—both politically and economically—on a national and international scale. With geopolitical tensions simmering abroad, insurers and their legal advisers must continue to show resilience, adaptability, and foresight.

International developments are presenting fresh challenges. The global inflationary outlook remains uncertain, particularly following the re-election of Donald Trump and the potential implementation of new US tariffs. These policies could have significant knock-on effects on global supply chains and inflationary pressures worldwide. Closer to home, instability in Russia and Ukraine continues, with escalating tensions between India and Pakistan being another source of concern. Any further deterioration in these regions risks further economic shocks, driving up costs for consumers and, inevitably, impacting insurance claims and premiums. In the UK, where the cost-of-living crisis shows no signs of abating, these global dynamics are keenly felt.

Closer to the sector, motor insurance developments remain firmly on the agenda. The Government's focus on the implementation of the Automated Vehicles Act (AVA) continues, with a target to see AVs on UK roads by 2027. The next six months will see the development of a Statement of Safety Principles and authorisation requirements—important steps in a highly complex regulatory rollout. However, critical questions remain, particularly around the handling and sharing of AV data in the event of accidents. For insurers and legal practitioners, clarity on these data governance issues will be key to ensuring a functioning liability and claims environment.

Elsewhere, we are watching the Financial Conduct Authority's Premium Finance Market Review with close interest. An interim report is expected in the coming months, and a final report before the end of the year. This review has the potential to shape how premium finance for both motor and property insurance is regulated and delivered, which could have implications for affordability and access to cover at a time when many consumers are feeling the squeeze.

The industry also continues to monitor developments with the Motor Insurance Taskforce. Since its inaugural meeting in October 2024, the group has yet to reconvene, and momentum appears to have stalled. Should the Taskforce resume its work in the coming months, we would not expect conclusions until well into 2026, given the delay.

Turning to the justice system, the Justice Committee's Inquiry into the work of the

County Court is a development of note. With oral evidence currently being taken and a report anticipated before the year's end, the Inquiry is shining a spotlight on serious backlogs in the civil courts—delays which continue to frustrate effective claims resolution.

The legislative pipeline also includes several key bills with relevance to insurers. The Government's Planning and Infrastructure Bill is expected to receive Royal Assent over the summer. It is part of a broader push to meet the Government's ambition to deliver 1.5 million new homes before the next general election. While welcome in principle, there are concerns about build quality and the increased risk of flooding—both of which may increase the volume and complexity of property-related claims. Additionally, legislation aimed at moving from leasehold to commonhold is anticipated in the latter half of the year, potentially reshaping property ownership and management structures.

On the employment front, the Employment Rights Bill is currently at Committee Stage. Once enacted, it will introduce significant changes, including expanded unfair dismissal protections set to take effect in Autumn 2026. These changes may impact employment disputes and related insurance lines.

Finally, the Crime and Policing Bill—expected to receive Royal Assent this summer—will create a standalone offence for assaulting retail workers. This new measure is aimed at stemming the tide of retail violence, which has surged post-pandemic and has worsened amid ongoing economic pressures. This is a welcome development for employers, staff and the insurance industry alike.

In short, the months ahead will be busy and complex for all of us involved in insurance and civil justice. FOIL will continue to engage closely with Government, regulators, and wider stakeholders to ensure the voice of the compensator is heard at every level.

Notice of the FOIL Annual General Meeting and President's Conference

The FOIL AGM will be held on **Thursday 27 November 2025 at** Keoghs - 60 Great Tower Street, Moorgate EC3R 5AZ. This will be followed by the President's Conference.

FOIL AI Working Groups

Simon Murray (DWF & AI Working Groups)

Whilst the timelines are a matter of hotly contested debate, few with an understanding of the current capabilities of Artificial Intelligence (AI) deny it will fundamentally disrupt almost every aspect of legal service delivery.

As Ethan Mollick, an Associate Professor at The Wharton School and author of Co-Intelligence suggests, if AI development stopped today – i.e. if we were limited to using the current crop of frontier models as our developmental foundations – there would be a decade of major change across entire professions and industries (medicine, law, education, coding and so forth) as we figure out how to actually use AI and adapt our systems and organisations to take full advantage of what it can do.

Put another way, it isn't so much that AI is yet to be capable enough to be embedded in legal processes so as to fundamentally change the way legal services are delivered, it's more that legal service providers are yet to fully optimise their businesses to take advantage of the full capabilities of the various types of AI.

I am sure that there are some who do not think that seeking to achieve an AI-enabled model is a good thing, a philosophical debate I'm happy to have but which I'll leave to another day. However, assuming we agree that working towards fully AI-enabled legal services is a good thing, there are many hurdles to achieving this aim. Briefly, these include:

Cultural and Human Factors

I have consciously included this as the first hurdle in this list, as I consider it the biggest challenge to making the most of what AI offers.

For many, AI has something of the unknown about it. Thus, organisations may face resistance to adopting these new technologies due to a lack of understanding or fear of job displacement.

Whilst AI is not on all fours with more traditional "determinative" software, average tool adoption rates are relevant. It is generally considered a very good outcome if a tool or piece of technology achieves 70% adoption. In 2023 according to the ONS "[T]he adoption rate was high for cloud-based computing systems and applications, and specialised software (at 69% and 61%, respectively), moderate for specialised equipment (36%) and low for artificial intelligence (AI) and robotics (at 9% and 4%, respectively)". Whilst these statistics relate to corporate rather than individual adoption and will be out of date by now, nevertheless the levels are instructive insofar as what qualifies as high and low technology adoption.

As a result of the need to fully remodel your method of delivery to truly take full advantage of AI an adoption rate of close to one hundred percent is required and as such buy in from colleagues needs to be wholesale. Even with colleagues fully behind the deployment of AI, training to use new tools effectively is a significant and on-going investment in terms of time and resources. Ensuring that all employees are adequately trained and comfortable with the new technology is crucial for successful implementation.

Regulatory and Ethical Considerations

Whilst there are some generally accepted principles of what constitutes the ethical use of AI, this is not a settled argument. Moreover, the global AI regulatory landscape is a varied and everchanging one and so navigating it, especially in the legal sector, is challenging. With firms needing to ensure their AI solutions comply with relevant laws

and ethical standards, environmental considerations, bias concerns and transparency expectations, an informed and empowered AI governance function is vital.

Technological Complexity

Law firms often use a variety of legacy systems, and integrating AI solutions with these can be complex and time-consuming. This integration requires significant technical expertise – some of that expertise is nascent as a result of GenAI's relatively short lifespan – and will almost certainly disrupt existing operations. Moreover, effective AI implementation requires high-quality data. Law firms may struggle with inconsistent data formats, unclear or varied levels of permission for the use of data and general data privacy concerns to name but a few. Getting your data ducks in a row is job number one to building an executable AI strategy.

Strategic Alignment

Talking of strategy, firms need a clear, executable AI strategy that aligns with their long-term goals as an enterprise. If you haven't undertaken this task as an organisation, I would recommend doing so regardless of where your business is on the AI journey.

For reasons explored above it is clearly arguable that many legal businesses are not scratching the surface when it comes to AI deployment, including those facing the insurance market, and that brings us (finally I'm sure many of you are thinking!) to our AI Working Group.

With the importance of AI to the legal profession clear, it was considered vital that FOIL try to help its membership and our industry partners, navigate the uncharted waters of AI. As a result, we established the AI Working Group. With such a vast subject, it would have been easy to achieve nothing by

trying to 'boil the ocean' in trying to look at every element of the subject. Consequently, we divided the group into the three sub-groups to cover the following foundational subjects: -

Operations

How will AI impact insurance law firm operations and what should members do about it?

Ethics

What are the ethical considerations for those in insurance and insurance law insofar as AI is concerned?

Coverage

What are the various considerations for those dealing with coverage and coverage disputes relating to AI?

The aim of the group is to produce a report for the membership over the course of this summer that wrestles with the above topics and provides actionable insights for members and our insurance industry partners, so watch this space.

In the meantime, if you haven't already, I urge you to start (safely) using AI to develop your skills with it and your understanding of what it can and can't – currently at least – do. If you're already using AI, double down on using it. I offer this encouragement as I firmly believe that AI will be central to running insurance facing legal services businesses and practicing insurance law in the coming years and so the quicker you get comfortable with using it, the better you will be placed to take advantage of the unquestionable benefits it has to offer.

Supporting Legal Judgement with AI: SmartRisk and the Path to Explainable Inference in Insurance Claims

Karim Derrick (Chief Product Officer, Kennedys IQ)

In Brief

As artificial intelligence (AI) continues to evolve, its application within legal and insurance contexts has become a topic of significant interest. Among these developments, large language models (LLMs), such as those powering well-known generative AI tools, have drawn particular attention. Yet, while these technologies demonstrate impressive capabilities in understanding and generating text, they have limitations in supporting legal inference — particularly in insurance claims.

The Limitations of Probabilistic Models in Legal Reasoning

LLMs operate by predicting the next most probable word or sequence of words, based on patterns in the data on which they have been trained. This probabilistic nature, although highly effective in language tasks, renders them unsuitable as standalone tools for legal inference. Legal decision-making requires more than pattern recognition; it depends on structured reasoning, consistency, and ultimately, accountability — qualities which probabilistic systems inherently lack.

In insurance claims handling, legal professionals routinely engage in decision-making under uncertainty, where evidence may be partial, contested, or ambiguous. Here, professional judgement plays a central role — a form of reasoning that is context-sensitive, normative, and often grounded in experience. These aspects present a significant challenge for machine learning systems that are, by design, statistical rather than interpretive. Professional judgement is not just about what is likely to be true, but what ought to be concluded based on law, logic, and justification.

A Historical Perspective on Judgement and Prediction

Concerns about the reliability of professional judgement are not new. In the 1950s, psychologist Paul Meehl demonstrated that, in certain cases, algorithmic methods could outperform human experts in tasks such as clinical diagnosis. His work raised enduring questions about the consistency of expert judgement and the role of data-driven tools in professional practice.

Nevertheless, despite these findings, professional judgement in complex decision-making domains such as law and medicine

and technology rarely uses technology to support judgement. This is due, in part, to the multifaceted nature of these decisions, but also to behavioural factors that influence the way professionals engage with technology.

Algorithmic Aversion: A Barrier to Adoption

Even when an algorithm demonstrates high levels of accuracy, there remains a documented reluctance among professionals to rely on its outputs — particularly if the system has previously made any error in the past. This phenomenon, often described as "algorithmic aversion," poses a significant obstacle to the adoption of AI-based tools in legal practice.

Trust in such systems is difficult to ensure when outputs are not easily explained or justified — a common issue with "black box" models. Legal professionals rightly require transparency and traceability, especially where decisions affect liability and the outcome of claims.

LLMs and Their Role in Evidence Analysis

It is important, however, to acknowledge the strengths of LLMs in legal workflows. Their ability to extract meaning from unstructured text and identify key patterns and attributes across large volumes of documentation makes them valuable tools for the insurance industry. When appropriately applied, they can offer significant efficiencies in the processing and triage of claims evidence.

SmartRisk: A Hybrid Approach to Legal Inference

SmartRisk, developed by Kennedys IQ, takes a hybrid approach to these challenges. Rather than relying on LLMs to deliver legal

conclusions, it deploys them in a focused capacity — namely, to identify and extract relevant evidential attributes from claims documentation with high accuracy.

These extracted elements are then passed into an evidential reasoning framework designed to support structured, explainable legal inference. Drawing inspiration from intelligence analysis methodologies, the SmartRisk system enables practitioners to understand how different pieces of evidence support or challenge various legal hypotheses. The weighting of attributes in a decision is initialised by experts but is ultimately refined by data.

The resulting framework offers a clear audit trail of reasoning, enhancing confidence in the process and enabling legal professionals to exercise their judgement with the support of a transparent, AI-assisted model.

Augmenting, Not Replacing, Professional Judgement

SmartRisk exemplifies a new generation of legal technology — one that seeks not to replace human judgement, but to augment it. By combining the analytical strengths of LLMs with a robust evidential reasoning model, it provides legal professionals with tools that support consistency, clarity, and speed in decision-making.

In doing so, it offers a practical and measured response to the challenges of applying AI in legal contexts. As the industry continues to evolve, systems like SmartRisk point the way forward — not by removing the professional from the process, but by enhancing their ability to make informed, defensible decisions under uncertainty.

Diversity, Equity and Inclusion

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Humans, non-humans, and post-humans: Rethinking neurodiversity in a digital world

Dr Jeffrey Wale (FOIL Technical Director)

'I grew increasingly frustrated as the AI pilot suggested ideas and advanced prompts that seemed alien to me. Why did it want me to do things in that order? The platform could not explain its rationale in a way that I could understand. The suggestions seemed counter-intuitive, but the system would not let me turn the prompts off. The more I had to use the platform at work, the more frustrated I became. I contacted IT support for help. However, after several minutes in chat mode, I realised that I was not speaking to a human agent at all. All I wanted was to speak to a human person and one that understood what I wanted to achieve…'

This quotation might describe a familiar situation. The need to be understood is commonly expressed as a typical human want. Narratives about neurodiversity tend to do so in terms of recognising and respecting the diverse ways people think, learn, communicate, and process information. The term 'people' is used in a human centric way, with diversity and atypicality viewed through a human lens. As we move to greater human/machine interactions in various aspects of our lives, it might be helpful to think about how we address neurodiversity in broader terms. Not just recognising and respecting different forms of human communication but accounting for the different forms that human/non-human interactions now take.

In the not-too-distant future, we are likely to encounter a range of non-human or post-human entities, from the synthetic person in a human (anthropomorphized) form to the online sentient platform with no singular or tangible form. Humans already interact with virtual assistants, using voice assisted technology like Alexa and Siri. I hesitate to call these interactions 'conversations' although you may perceive these exchanges as forms of communication. They are clearly interactions which use exchanges of information and produce a range of different outputs. Voice assisted technology uses verbal patterns and characteristics to draw inferences, and to learn from previous interactions with its human users.

To date, our core preoccupation around this kind of technology has tended to focus on privacy/intellectual property concerns and the risks associated with digital replication of human users. These concerns have only been amplified by the introduction of generative AI technology. The ability to replicate and recognise a diverse range of human sounds, phrases and languages can also be seen in a positive light. Indeed, there is slow recognition that non-human agents may have a role to play in terms of inclusion and facilitating workplace access and support (1). However, we do not tend to think about neurodiversity either in terms of non-humans or human interactions with these agents.

Robots are often designed by developers in non-diverse human-like forms, raising similar issues around diversity for virtual assistants and generative AI pilots. There is no good reason to think or guarantee that technology developers will be constructing online or digital interactive platforms that address diversity and atypicality from a range of perspectives.

To be clear, we have not arrived at the stage where there is a normative claim to respect the interests of non-human agents. The point being advanced is that as we digitise and introduce technological disruptors at a societal level, we alter the starting point for any conversation about neurodiversity. That is because the building blocks on which human interactions have been based are starting to shift. We can no longer have confidence that we are communicating with a human person, or at the very least, the individual we believe that we are communicating with. Moreover, our interactions with technology now have real world impacts – whether it be the outcomes of a chatbot job interview or our interactions with an AI health triage service. As we seek to unlock the potential of neurodiversity in education, the workplace and in the wider community, we should reflect on how those places will function and where humanity will fit into this landscape. If we fail to do so, there is a danger that we will be designing or responding to environments or circumstances that no longer exist. There is a real opportunity for us to think about neurodiversity in fresh terms and there is no better time to do so as the human condition faces unprecedented disruption in all that we are and do.

(12) Virtual Assistants: Enhancing Workforce Diversity and Inclusion | LinkedIn

(Previously published as a FOIL update)

The Double-Edged Sword: AI's Influence on Neurodivergent Employability and Roles in the Workplace

Mark Huxley (Huxley Advisory)

In Brief

The article discusses AI's dual impact on neurodivergent employability, highlighting its potential to enhance opportunities through automation and personalized support, while also posing risks like bias and job displacement. It emphasizes the need for inclusive AI development and workplace practices to ensure equity and inclusion

Artificial intelligence (AI) is rapidly transforming the landscape of work, and its influence on the employment prospects and with the roles of neurodivergent individuals often being a complex and multifaceted issue, the effects could become material.

To put some definition around this. neurodiversity encompasses a range of neurological differences, including but definitely not limited to autism, ADHD, dyslexia, dyspraxia, and Tourette's syndrome. While AI presents both challenges and opportunities for this population,

understanding its potential impact is crucial for creating a more inclusive and equitable workforce.

The Promise of AI: Enhancing Opportunities and Accommodations

AI offers several potential benefits for neurodivergent individuals in the workplace. Its capacity to automate routine tasks, customise learning and training, and provide personalised support can help leverage the unique strengths of neurodivergent employees while mitigating some of the challenges they may face.

- **Task Automation:**

Many neurodivergent individuals struggle with repetitive or mundane tasks. AI can automate these processes, freeing up employees to focus on more complex and creative work that aligns with their strengths. For example, AI-powered tools can handle data entry, scheduling, and other administrative tasks, allowing neurodivergent individuals to concentrate on problem-solving, analysis, and innovation.

- **Personalised Learning and Training:**

AI can adapt learning and training programs to individual needs and learning styles. This is particularly beneficial for neurodivergent individuals who may learn differently or require specific accommodations. AI-driven platforms can provide individual instruction, adjust the pace of learning, and offer various formats for information delivery, such as visual aids, auditory support, or interactive simulations.

- **Assistive Technologies:**

AI can power assistive technologies that address specific challenges faced by neurodivergent individuals. For instance, speech-to-text software can help those with dysgraphia or dyslexia, while text-to-speech tools can assist individuals with reading difficulties. AI-powered communication aids can also support those with autism in social interactions, helping them to interpret social cues and respond appropriately.

- **Job Matching and Recruitment**:

AI algorithms can analyse job seekers' skills and preferences to match them with suitable positions. This can be particularly helpful for neurodivergent individuals who may have difficulty navigating traditional job search methods or articulating their strengths in conventional interviews. AI can also help identify companies that are known for their inclusive hiring practices and supportive work environments.

- **Workplace Accommodations:**

AI can facilitate the provision of workplace accommodations by automating the process of identifying and implementing necessary adjustments. For example, AI-powered tools can adjust lighting, sound levels, and other environmental factors to create a more sensory-friendly workspace for individuals with sensory sensitivities.

The Perils of AI: Bias, Exclusion, and Deskilling

Despite its potential benefits, AI also poses significant risks to neurodivergent individuals in the workplace. If not developed and implemented carefully, AI systems can perpetuate existing biases, exclude qualified candidates, and deskill certain roles, potentially disadvantaging neurodivergent employees.

- **Algorithmic Bias:**

AI algorithms are trained on data, and if that data reflects societal biases against

neurodivergent individuals, the algorithms may perpetuate those biases in hiring and performance evaluations. For example, if an AI recruitment tool is trained on data that associates certain personality traits or communication styles with success, it may inadvertently screen out neurodivergent candidates who do not conform to those norms.

- **Standardised Assessments:**

AI-powered assessment tools, such as video interviews analysed for facial expressions or tone of voice, can disproportionately disadvantage neurodivergent individuals who may have difficulty with social cues or nonverbal communication. These tools often rely on neurotypical standards and may not accurately reflect the skills and abilities of neurodivergent candidates.

- **Lack of Human Oversight:**

Overreliance on AI in hiring and performance management can lead to a lack of human oversight, reducing opportunities for neurodivergent individuals to showcase their unique strengths and talents. Sentient human recruiters and managers are able to recognise the potential of candidates who may not fit the "ideal" profile and to make accommodations that allow employees to thrive.

- **Deskilling and Job Displacement:**

As AI automates routine tasks, some jobs that are often a good fit for neurodivergent individuals, such as data analysis or quality control, may be eliminated. This could lead to job displacement and limit employment opportunities for this population. Additionally, the focus on AI-driven efficiency may undervalue some of the unique skills that neurodivergent individuals bring to the workplace, such as attention to detail, pattern recognition, and creative problem-solving.

- **Increased Pressure to Conform:**

The increasing use of AI in the workplace may create neurotypical norms. For example, AI-powered communication tools may encourage individuals to adopt certain communication styles or suppress behaviours that are considered "unconventional." This may be detrimental to the well-being of neurodivergent employees and limit the diversity of thought within the organisations they work.

Navigating the Future: Ensuring Inclusion and Equity

To harness the benefits of AI while mitigating its risks, it is essential to adopt a proactive and inclusive approach. Organisations, policymakers, and technology developers must work together to ensure that AI systems are designed and implemented in a way that promotes neurodiversity and equity in the workplace.

- **Develop Inclusive AI:**

It is crucial to develop AI systems that are free from bias and that accurately assess the skills and abilities of all individuals, regardless of their neurological differences. This requires diverse development teams, careful selection of training data, and ongoing monitoring and auditing of AI algorithms.

- **Promote Neurodiversity in Tech:**

Increasing the representation of neurodivergent individuals in the technology industry is essential for ensuring that AI systems are designed with their needs and perspectives in mind. Organisations can actively recruit and support neurodivergent individuals providing the adaptive training and mentorship opportunities already mentioned.

- **Implement Inclusive Hiring Practices:**

Organisations should adopt hiring cultures that are inclusive of neurodivergent individuals, offering alternative interview formats, providing clear and detailed job descriptions, and focusing on skills and abilities rather than personality traits or communication styles.

● **Provide Reasonable Accommodations:**

Employers have a legal and ethical obligation to provide reasonable accommodations to neurodivergent employees*. AI can help facilitate this process by automating the identification and implementation of necessary adjustments, but human oversight is still crucial to ensure that individual needs are met.

● **Foster a Culture of Inclusion:**

Creating a workplace culture that values and celebrates neurodiversity is essential for ensuring that all employees feel welcome, respected, and supported. Organisations should provide training and education to raise awareness of neurodiversity, promote open communication, and encourage employees to embrace individual differences.

● **Invest in Training and Support:**

As AI transforms the nature of work, it is crucial to provide training and support to help all employees, including those who are neurodivergent, adapt to new roles and technologies. This may include training in digital literacy, critical thinking, and creative problem-solving, as well as support for developing social and communication skills.

● **Advocate for Policy Changes:**

Policymakers have a role to play in ensuring that AI is used in a way that promotes inclusion and equity in the workplace. This may involve enacting legislation to prevent discrimination based on neurodiversity, providing funding for research on neurodiversity and technology, and supporting initiatives that promote neurodiversity in education and employment.

Conclusion: Embracing the Potential, Mitigating the Risks

AI has the potential to be a powerful tool for promoting neurodiversity in the workplace, but it also poses significant risks. By understanding both the opportunities and challenges, and by taking proactive steps to ensure inclusion and equity, we can harness the benefits of AI while mitigating its negative impacts. It is crucial to remember that neurodivergent individuals bring unique strengths and perspectives to the workplace, and creating a more inclusive and equitable environment for them is not only a matter of social justice but also a key to unlocking innovation and driving organisational success in the age of AI.

*The Equality Act 2010 places a legal duty on employers to make reasonable adjustments for disabled employees. This includes many neurodivergent conditions if they meet the definition of disability under the Act, which is a physical or mental impairment that has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities. Reasonable adjustments can include changes to the work environment, working practices, or providing additional support to enable neurodivergent employees to perform their roles effectively. Examples of reasonable adjustments include providing assistive technology, offering flexible working hours, making physical adjustments to the workspace, and modifying communication methods.

Using AI to Predict Injury Risk in Sport – an Insurance and Medico-Legal Perspective

Steven Brownlee (FOIL Technical Author)

In Brief

AI is revolutionizing sports medicine by enhancing performance and predicting injuries. It raises insurance and medico-legal implications, with experts discussing data analytics, healthcare management, and legal issues. AI-driven injury prevention models and innovations are transforming athlete welfare, but ethical and regulatory challenges remain.

AI is fast becoming integral to operations in every professional domain, and elite sport is no exception. Developments in sports science and sports medicine are increasingly leveraging AI technology and data analytics to produce qualitative insight capable of enhancing performance and predicting injury on an individual level.

This increased application of AI presents insurance and medico-legal implications, and these were the focus of discussion among experts at a recent event hosted by FOIL at 39 Essex Chambers in London.

Chair Majid Hassan from Capsticks was joined by guest speakers who each shared their expertise in different areas of this subject:

- Dr James Brown, who is the Lead Performance Physician at UK Athletics, highlighted the use of data analytics and AI in elite sporting environments.

- Richard Blain, the CEO of Health Partners Europe Ltd and SEMPRIS Ltd, discussed the healthcare management of elite sportspeople and the associated indemnity risks.

- David Mitchell, Barrister at Essex Chambers, emphasised the legal and regulatory issues and types of liability present when using AI.

The Chair opened by referencing a research paper published by medics in Italy in 2018 that hinted at AI's potential in this space. The authors predicted AI would be integrated across various aspects of sport, but what stood out was the assertion that AI would play a significant role in training, performance monitoring, and, crucially, injury prediction.

Professional sports already utilise AI applications as part of performance monitoring; in the US, the NFL has partnered with Amazon Web Services (AWS) to develop a 'Digital Athlete' aimed at enhancing player health and safety by providing personalised injury prevention insights. In the UK, Liverpool FC adopted the Zone7 system during the 2021–22 Premier League season, which uses AI to monitor player data and predict injury risk. It offers the possibility of tailoring training plans and insurance premiums based on individual risk levels, introducing a paradigm shift in how athlete welfare is managed along with a more data-led approach to training and risk mitigation.

The insurance sector has always been rooted in the ability to assess and manage risk, but AI

is transforming underwriting by simulating future scenarios with far greater precision, improving risk estimation and enabling more accurate pricing. In the US, emerging Insurtech firms like Ping An are building world-leading AI capabilities that automate the underwriting process and reduce approval times from days to minutes.

The COVID-19 pandemic witnessed the convergence of sport, insurance, and risk management to ensure sport could continue safely, supported by appropriate insurance frameworks. AI now offers the potential to advance this work even further by supporting real-time decision-making and enhancing resilience in the face of future uncertainties.

However, these advancements also raise important legal and ethical questions related to the data on which AI depends. The more it has, the more effective it becomes and the more risk it creates. This raises questions about how the data is used and whether there is bias in datasets or algorithms. The legal implications of decisions made or supported by AI systems must also be considered, and they will become increasingly significant as AI adoption continues to expand.

All of this is unfolding against a backdrop of global regulatory change, where countries and corporations compete in what is being referred to as an 'AI arms race'. This will inevitably shape the regulatory environments in which these systems operate, creating a multitude of challenges and opportunities ahead.

AI and Sports Injuries

Injuries are an unavoidable part of elite sport; data from the 2010 World Cup, for instance, indicated that for every match played, two injuries were likely to occur, while every five training sessions resulted in at least one injury. These figures highlight the significant

impact injuries have on sports teams and how they can affect their performance, cohesion, and overall success.

Beyond team performance, injuries carry severe personal and financial consequences for athletes and sporting organisations. Athletes can suffer a long-term or career-ending injury that brings significant psychological stress to add to the physical trauma and financial implications. For organisations, injuries impact market valuations, transfer fees, sponsorship deals, and wages, making injury prevention a huge focus in protecting profitability.

Developing Injury Prevention Models

To mitigate injuries, practitioners must first understand the specific injury patterns in their sport through data collection and analysis, known as surveying. This process involves identifying the causes of injury and developing prevention strategies with methods to continually evaluate their effectiveness. Models have evolved to assess which athletes are predisposed to injury, considering factors such as muscle imbalances, psychological state, and exposure to external risk factors like coaching styles, referee decisions, and playing surfaces.

Historically, pre-season screening aimed at identifying at-risk athletes was a popular method of predetermining injuries. However, it has proven unreliable, as some athletes identified as high risk never sustain injuries, while others deemed low risk do. The other issue is that pre-season screening is static and only represents the situation at a given point in time. However, in reality, the situation is constantly evolving.

The future of injury prevention lies in dynamic, real-time monitoring using AI-driven systems to continuously track various data points, including biomechanical loads, sleep

patterns, fatigue, and psychological factors, to eliminate false classifications and ensure all players benefit from consistent preventative measures. This generates vast amounts of data that can be analysed through machine learning algorithms, enabling AI to detect subtle changes that precede injuries, delivering immediate alerts, and enabling preventative interventions before symptoms appear.

Companies like Zen7 utilise wearable sensors to collect large amounts of data, providing insights into muscle workload, recovery patterns, and overall athlete condition. By identifying high-risk individuals, sports medics, physios, and conditioning specialists can implement tailored interventions that reduce the risk of injury.

Challenges of AI

Despite their potential, many AI-driven injury prediction models rely on proprietary algorithms, meaning medical staff often receive risk assessments without understanding the rationale behind them. Lack of access to raw data makes it difficult for clinicians to justify interventions, which also raises ethical concerns, particularly when advising athletes to rest based on recommendations from unexplained AI-generated risk scores.

The data-driven nature of AI means it tends to be embraced by the sports science community. However, sports medicine practitioners require clear, evidence-based explanations before integrating AI recommendations into their decision-making. Without standardised data across sports, clubs, and leagues, inconsistencies can lead to flawed conclusions and biased injury predictions.

An important discussion in sports medicine revolves around open science versus

proprietary AI. Most sports injury data is analysed using closed systems, which severely inhibits external validation and peer review. Transparency is essential to ensure AI-generated insights are reliable and actionable, and open frameworks enable practitioners to interpret data meaningfully, improving the quality of injury prevention strategies.

Robust governance should dictate a clear pathway for how technology is adopted and why it is adopted, with decisions driven by a clear understanding of the data rather than merely the need to find a solution.

Innovations in AI

There is a healthy digital innovation pipeline in elite sports, and AI has driven significant advancements in injury prevention technology. One example is a pair of shorts featuring integrated Electromyography (EMG) that detects muscular contractions, force output, and nerve velocities to provide real-time movement analysis that helps detect neuromuscular abnormalities. Another innovation is smartphone-based motion capture, which can identify technique degradation in martial artists caused by fatigue. The technology studies patterns in data that can help identify where issues may develop in advance to allow techniques to be corrected for sustained performance.

In football, an intelligent knee sleeve with in-built sensors that detects the range of movement and movement patterns has been developed to prevent ACL injuries and deploys an airbag around the knee within 0.3 milliseconds - faster than the 0.6 milliseconds required to rupture an ACL. The creators of the technology believe it has the capacity to prevent up to 80% of ACL injuries, which is still an issue in certain professional sports.

These fascinating developments in AI show the synergy between engineering and

medicine that will allow doctors and physios to use data in an open way to drive decision-making. Rather than just highlighting a problem, it presents data open to clinical interpretation that can enhance athlete safety and safeguard performance.

The Future of AI in Sports Medicine

To maximise AI's potential, injury prediction models must be built on open, explainable frameworks. Doctors and physios must understand the context and the value of the information they have in order to use it effectively.

Deep learning analytical techniques, such as SHapley Additive exPlanation (SHAP) values, provide insights into how different factors interact to increase or decrease injury risk. By leveraging AI to understand these relationships, medical staff can make informed decisions on training adaptations, recovery strategies, and injury prevention measures.

Beyond AI, advancements in regenerative medicine, such as platelet-rich plasma therapy and micronised fat stem cell injections, have replaced steroid injections and are revolutionising athlete rehabilitation. Virtual reality is also being utilised in injury recovery, offering interactive simulations that make rehabilitation programmes understandable and relevant to athletes to help raise engagement and compliance.

While AI is a powerful tool in injury prevention, trusted relationships between athletes, coaches, and medical teams remain central. Communication is key, and AI should be used to enhance rather than replace clinical expertise. For example, a study from the Champions League suggested clubs with strong relationships between staff and players experience fewer injuries, reinforcing the importance of human factors in elite sports.

While AI-driven insights can significantly reduce injury risk, transparency, ethical considerations, and data quality must first be addressed to ensure its effectiveness. Collaboration between sports medicine and sports science to integrate AI responsibly is essential to ensure that technology enhances decision-making without compromising clinical judgment.

Healthcare Management and Indemnity

The next topic discussed was the challenges of facilitating ongoing medical care to professional athletes and engaging third-party treatment providers where injuries dictate.

Accumulated over many years, an extensive database can provide valuable insights into injury trends and medical outcomes for a large number of athletes engaged in a wide variety of different sports. However, a key challenge practitioners face is ensuring that when players require treatment from third-party specialists, those performing these procedures are fully insured.

The stakes are high; for example, when a professional footballer with an astronomical market value requires knee surgery, the surgeon must ensure they have the right indemnity insurance in place. These are high-pressure situations with potentially career-ending consequences for all parties should any issues occur.

As we continue to explore its impact on sports medicine, there is significant potential for AI to bridge gaps in medical data to enhance injury prevention and treatment strategies. AI has already started to transform several aspects of sports healthcare, particularly in areas such as MRI and CT scan interpretation, but despite these advances, it is not yet at a stage where it can replace clinical expertise.

Surgeons and radiologists still rely on their own judgement rather than entrusting AI-

generated insights, with a primary concern ensuring that AI-driven outputs are accurate and reliable. Deep learning models require vast amounts of high-quality data, and where data gaps exist, the effectiveness of AI-driven predictions can be compromised. At present, making clinical decisions purely based on AI-generated assessments remains a challenge.

Despite these challenges, AI holds great promise in supporting medical professionals by improving injury risk assessment. If it can be refined to reliably assess risk factors, it could play a crucial role in helping clubs and medical teams make informed decisions about player management. Analysing historical injury data, biometric information, and training loads could potentially enable AI to identify patterns that indicate an increased likelihood of injury and allow pre-emptive intervention.

While AI is not yet a standalone solution, its role in sports medicine will undoubtedly continue to evolve. As technology advances and the reliability of data improves, AI-driven insights could enhance clinical decision-making to optimise injury prevention strategies and safeguard the long-term health of elite athletes. For now, however, AI should be viewed as a valuable tool that complements the expertise of medical professionals.

AI and the Law

The legal framework, deeply rooted in precedent and structured regulation, is struggling to keep pace with a continually advancing technology that operates beyond conventional regulatory foresight. This tension between established legal systems and the dynamic nature of AI raises several issues ranging from regulatory oversight to ethical considerations and liability.

Historically, law has evolved in response to societal and technological changes, often at a measured pace. However, legislative processes cannot keep pace with AI's rate of development, with models increasing in capability and reach every six months. This growth raises concerns about how regulatory bodies can effectively govern AI without restricting innovation.

In the UK, the General Data Protection Regulation (GDPR) continues to influence data protection laws and provides a structured approach to handling personal data, particularly relevant for professional athletes whose performance data is frequently monitored and analysed by entities beyond national borders. This legal framework extends to organisations outside the UK that process data related to individuals within its jurisdiction, but as players transfer between countries, the consistency and enforceability of their data rights become unclear.

Medical confidentiality and privacy laws introduce further complexity as jurisdictions maintain different approaches to medical privacy and create legal inconsistencies when AI-driven health assessments or injury risk analyses are undertaken across borders. This highlights the wider issue between AI's global uniformity and the fragmented nature of the legal systems attempting to regulate it.

Key Challenges

The lack of international consensus on regulatory frameworks represents a significant challenge in AI governance. Some jurisdictions adopt stringent AI oversight aimed at protecting privacy and fairness, while others prioritise commercial and strategic advantages and limit regulatory intervention. The US, for example, pursues a more market-driven approach, fostering AI innovation with minimal restrictions. This raises concerns about companies gaining commercial advantages by operating in jurisdictions with less oversight.

Discussions around AI treaties and cross-border regulations remain unresolved. While efforts exist to establish international guidelines, different commercial and political interests make uniform governance difficult to implement. The result is a fragmented landscape where legal uncertainties persist, leaving businesses, regulators, and professionals to navigate an unpredictable environment.

A fundamental legal issue in AI development is bias and discrimination within machine learning models. If the training data on which AI systems rely is unrepresentative or skewed, the outputs can reflect and reinforce biases. The FCA's Literature Review on Bias in Supervised Machine Learning further illustrates the risks of discriminatory outcomes in financial and insurance applications and emphasises the importance of scrutiny in AI deployment across sectors.

The reliability of AI-generated outputs is another concern, as AI systems have been known to produce false or misleading information, referred to as a 'hallucination.' These inaccuracies pose significant risks in certain professional settings where decisions based on erroneous AI-generated data could have serious liability issues.

For medical professionals, the British Medical Association (BMA) has emphasised that AI developers must bear clear legal liability and that doctors must be able to challenge AI-generated decisions. The challenge of the 'black box' problem, where AI systems provide outputs without transparency in their decision-making process, complicates this issue further. Without sufficient clarity and accountability, integrating AI into clinical decision-making will likely be restricted due to the considerable legal risks to which medical professionals are exposed.

Future Direction

While AI offers transformative potential, governments and legal institutions must establish clear and adaptive regulatory frameworks that balance fostering innovation and maintaining oversight to ensure AI applications remain accountable and ethical.

Given its global reach, international cooperation around AI is essential in securing alignment in cross-border data protection, liability, and ethical standards to prevent regulatory exploitation. Rigorous testing and auditing are needed to mitigate bias in AI systems, particularly in sensitive areas such as healthcare, finance, and law enforcement.

Additionally, developers must be held accountable for the output of their systems and provide legal indemnities to safeguard end-users from risks. Finally, legal professionals must remain well-informed about AI advancements to successfully navigate the evolving legal and ethical challenges associated with its use in decision-making.

Closing Thoughts

The discussion highlighted the immense potential, and the pressing challenges associated with using AI in predicting sports injuries. While its development continues at

an extraordinary pace, the regulatory and ethical frameworks governing AI simply cannot keep pace. There is, therefore, a clear need for robust policies to ensure data protection, accountability, and fairness in its application, particularly in elite sports, where the financial stakes are high, and there is a relentless pursuit of acquiring tools that can prevent injury and enhance performance.

All the signs point towards the continued integration of AI into sports medicine, but its role should be to complement existing human expertise. Medical professionals, sports scientists, and legal experts must work together to develop responsible guidelines that harness the capabilities of AI to inform injury prevention while safeguarding the protection and safety of athletes.

Professional sports are fundamentally unpredictable, and no matter how advanced technology becomes, injuries are unavoidable. AI can be invaluable in mitigating risks, optimising recovery, and personalising injury prevention measures, but it must be used as a tool to support rather than dictate medical decisions.

Looking ahead, the panel are cautiously optimistic that AI will be used to enhance processes rather than replace human judgment and to support clinicians in making more informed decisions. However, we must remain mindful of the risks of over-reliance on technology and ensure medical expertise and human intuition remain central to sports healthcare. While the future is uncertain, what is clear is that AI's role in sports medicine will continue to evolve, and how we choose to regulate and integrate it will define its success in safeguarding long-term athlete welfare.

Navigating Compliance with the EU AI Act: Implications for the UK Insurance Market
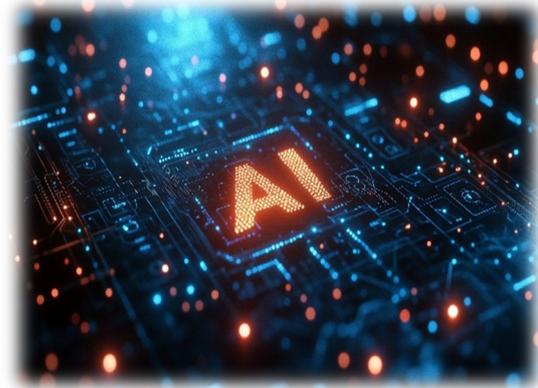
Paul Finn (FOIL Technical Author)

> **In Brief**
>
> The 2024 EU AI Act establishes a framework for ethical and transparent AI use across industries. For UK insurers, its extraterritorial scope adds compliance challenges, especially for high-risk applications like risk assessment and pricing. The Act prioritizes governance, transparency, and human oversight, requiring insurers to balance dual UK-EU regulatory standards effectively.

The EU Artificial Intelligence (AI) Act, adopted in 2024, represents a comprehensive regulatory framework aimed at ensuring the ethical, transparent, and safe use of AI across industries. For insurers in the UK, the extraterritorial application of the Act introduces significant compliance challenges, especially for those operating or interacting with EU markets. This article provides an in-

depth analysis of the Act's provisions and their implications for insurers and insurance lawyers.

Overview of the EU AI Act

The EU AI Act categorises AI systems into four risk levels—unacceptable, high, limited, and minimal—and imposes varying requirements based on these classifications. High-risk systems, particularly relevant to insurance, are subject to stringent obligations due to their potential impact on fundamental rights, health, and safety.

Key Objectives

- Protect fundamental rights and prevent discrimination.
- Ensure transparency and accountability in AI systems.
- Harmonise AI governance across member states.

Scope

The Act applies to providers and users of AI systems within the EU and extends to non-EU entities whose AI systems impact individuals in the EU.

High-Risk AI Systems in Insurance - Definition and Classification

The Act explicitly identifies certain applications in insurance as high-risk. These include:

- Risk assessment and pricing: Systems used in life and health insurance that evaluate personal data for underwriting or premium calculations.
- Creditworthiness evaluation: Systems assessing financial reliability are also classified as high-risk.

These classifications stem from concerns about discrimination, financial exclusion, and privacy violations.

Compliance Requirements

Insurers deploying high-risk AI systems must adhere to extensive technical and governance measures:

1. Risk Management System:

Establish robust frameworks for identifying, monitoring, and mitigating risks associated with AI models.

Conduct post-market monitoring to ensure ongoing compliance.

2. Transparency Obligations:

Provide clear documentation of algorithms used for risk assessment or pricing.

Ensure explainability to regulators and customers regarding decision-making processes.

3. External Audits:

Subject systems to regular audits by independent bodies to verify compliance with EU standards.

4. Registration:

Register high-risk AI systems in the EU's AI database before deployment.

5. Corrective Measures:

Suspend or modify systems if serious incidents or non-compliance are identified.

6. Human Oversight:

Implement mechanisms allowing human intervention in automated decisions affecting customers' rights or financial outcomes.

Limited Risk Systems

For limited-risk applications like chatbots or personalised marketing tools, insurers face lighter obligations:

- Transparency: Customers must be informed when interacting with AI systems.
- Labelling: AI-generated content must be clearly marked.

While less burdensome than high-risk requirements, these measures still demand attention to customer trust and ethical considerations.

Challenges for UK Insurers

Extraterritorial Application

The Act applies to UK insurers offering services within the EU or whose systems impact EU residents. This requires dual compliance with both UK regulations and the EU AI Act.

Operational Adjustments

Insurers must adapt their governance frameworks to meet stricter requirements for high-risk systems while maintaining flexibility under UK law. This includes harmonising data protection protocols with GDPR standards.

Compliance Costs

Implementing risk management systems, conducting audits, and registering systems will incur significant costs. Smaller firms may struggle with these financial burdens compared to larger insurers with established compliance infrastructures.

Regulatory Divergence

The UK's principles-based approach contrasts sharply with the prescriptive nature of the EU

AI Act. Navigating these differences will require careful planning by insurers operating across jurisdictions.

Legal Implications

Non-compliance with the Act can result in severe penalties:

- Up to €35 million or 7% of global turnover for violations involving prohibited applications.
- Lesser fines for breaches of transparency or registration requirements.

Role of Insurance Lawyers

Insurance lawyers play a critical role in advising clients on:

- Risk assessments for existing AI applications.
- Drafting contracts that incorporate compliance obligations.
- Representing insurers during audits or investigations under the Act.

Preparing for Compliance

To navigate these challenges effectively, insurers should take proactive steps:

1.   Conduct Risk Assessments:

Evaluate all existing and planned AI applications against the risk classifications outlined in the Act.

2.   Develop Governance Frameworks:

Establish internal policies aligned with both UK and EU regulations.

Train staff on AI literacy to ensure proper oversight of high-risk systems.

3.   Engage Legal Expertise: Consult insurance lawyers to interpret complex provisions of the Act and ensure contracts reflect compliance requirements.

4.   Monitor Regulatory Updates:

Stay informed about guidance from national competent authorities as implementation progresses.

Conclusion

The EU AI Act represents a paradigm shift in regulating artificial intelligence across industries, including insurance. For UK insurers operating within its scope, compliance is not just a legal obligation but an opportunity to build trust through ethical practices. By investing in robust governance frameworks and legal expertise, insurers can navigate this complex regulatory landscape while fostering innovation responsibly.

Are you interested in writing for the VOICE?

We rely on contributions from our members, sponsors, trade partners and others to produce each issue of the Voice. We are also interested in learning what subjects or themes you would like to see covered in the future.

If you are interested in contributing material to a future edition of the Voice or have any ideas for content, please feel free to contact info@foil.org.uk or any of the editors.

Many thanks.

THE FOIL EDITORIAL TEAM

LONDON MARKET FOIL
FORUM OF INSURANCE LAWYERS

Informing Progress - Shaping the Future

Silent artificial intelligence (AI) cover: the unforeseen risks for Insurers

Fleur Rochester (London Market FOIL President & Kennedys) & Mya Wilhem (Kennedys)

This article explores silent AI within the professional indemnity insurance space. It highlights the hidden risks of AI that insurance policies may not explicitly cover, and identifies risk mitigation strategies to address these AI-driven exposures.

Silent AI in Insurance

Whilst AI offers opportunities to improve efficiency and assess risk, it also presents challenges, including the potential for Insurers to face unintended liabilities. 'Silent AI' refers to AI-driven risks that are neither explicitly included nor excluded in insurance policies, leaving room for potential coverage gaps. This ambiguity can lead to significant financial losses for insurers. Avoiding these unforeseen claims should be to be a priority for PI underwriters.

Silent AI is reminiscent of 'silent cyber', which became an issue when cyberattacks began. Insurers faced growing numbers of claims made under non-cyber insurance policies, simply because they had not explicitly excluded or included coverage of cyber-related incidents. Likewise, as AI is still new and constantly developing, a similar discrepancy between what is happening and what insurance policies cover has arisen.

The Challenges of Silent AI within Professional Indemnity

1.   Undetected Errors and Liability Disputes

AI is commonly used to analyse data and make recommendations, although if a professional follows an AI-generated recommendation without sufficient scrutiny, questions arise over who is responsible if this advice is incorrect - the professional, the AI developer, or both. Insurers need to assess whether such risks fall for cover under their existing policies.

2.   Bias and Discrimination

AI systems trained on biased data can produce discriminatory outcomes, so it is essential that insurers evaluate whether their policies account for liability arising from biased AI outputs. Silent AI makes it difficult to trace the origin of such biases, further complicating liability and remediation efforts.

3.   AI as 'Professionals'

Whilst professional indemnity policies traditionally cover errors made by human professionals, as AI tools continue to take on advisory roles, the line between AI as a software tool and AI as a 'professional' becomes blurred. This creates a grey area

between the trigger of professional liability and product liability cover.

4.   Policy Exclusions and Coverage Gaps

Many professional indemnity policies may not explicitly cover AI-related errors or omissions. If AI causes a loss, insurers may argue that the claim falls outside coverage, leaving professionals exposed to significant financial risks.

The Future of Silent AI

Due to the increasing presence of AI in the insurance industry, insurers must regularly review and update their policies to explicitly define AI-related exposures. This includes clarifying whether errors caused by AI would fall within traditional professional indemnity coverage, or whether this requires specialised endorsements, wordings or products. Insurers will need to ask insureds more questions about their use of AI tools, and in the event of an issue arising, about the surrounding processes, in order to determine whether there has been a 'human error' that might be covered.

These concerns inevitably highlight the need for robust governance and regulation, ensuring that AI-related risks are managed appropriately by the insurance industry. On 29 March 2023, the UK Government set out its current position in its AI Regulation White Paper, which reinforces that the UK's regulatory framework will adopt a 'context-specific' approach. The aim of this is to allow regulators to respond to AI risks in a proportionate manner, whilst avoiding an unnecessary blanket approach. Although the UK does not currently have a central AI regulator, on 4 March 2025, the Artificial Intelligence (Regulation) Private Members' Bill was re-introduced into the House of Lords, and, if enacted, will establish a new regulatory body, the 'AI Authority'.

Conclusion

Silent AI presents a growing challenge in the insurance space, and it is therefore key at this stage that insurers actively participate in developing industry standards for AI risk management and collaborate with regulators to ensure alignment with evolving guidelines.

TOMORROW'S FOIL
FORUM OF INSURANCE LAWYERS

Informing Progress - Shaping the Future

Rebecca Barton (Tomorrow's FOIL President & Forbes)

Tomorrow's FOIL

Tomorrow's FOIL was launched in 2012 to cater for lawyers at member firms with less than 5 years' post qualification experience. This division runs learning and social events, helping to build career long relationships with fellow practitioners and counterpart insurance professionals.

Tomorrow's FOIL has again been working hard to create new ideas on how to generate interest into the working life of insurance law and being a young lawyer within the insurance sector.

I have recorded a podcast with the Student Lawyer, and this is now on LinkedIn. This podcast highlights my current position within my working life and how I ended up working within the insurance sector. I talk about my working day to day life within Forbes Solicitors' Insurance Team. Head over to the FOIL and Tomorrow's FOIL LinkedIn pages and have a listen.

In the article there was mention of a "day in the life of a young lawyer" and content had been created by Tatiana Dall. Tomorrow's FOIL are looking into creating more videos like this so keep an eye out for these on LinkedIn.

Tomorrow's FOIL has also created a new podcast for the "So you want to be a partner" series. In this latest episode Laurence Besemer, FOIL talks to David Mayor, Partner at Forbes Solicitors about David's journey to becoming a partner and the interesting types of cases that he handles within the sports and leisure sector. They also touch on the future of insurance law and the impact that AI could have on this. Head over to the FOIL Website for a listen.

Finally, I will attend the FOIL Unlocking Neurodiversity event taking place at DAC Beachcroft's office in London on Thursday 1 May 2025. There will be the following speakers: Rt Hon Sir Robert Buckland, Robert Annis and Maeve Monaghan. They will be exploring the unique strengths and capabilities of neurodiverse individuals and aims to foster understanding, acceptance and inclusion of neurodiversity. Further light will be shed on this event following attendance.

Reset for justice system in Northern Ireland?

Cathal O'Neill (Carson McDowell LLP and Chair of FOIL NI)

Amongst a backdrop of striking criminal barristers and what has been deemed a 'crisis' in Legal Aid by the Law Society of Northern Ireland, the Justice Minister has commenced consultations on a major overhaul and reform of the civil and criminal justice systems in Northern Ireland.

The project, titled the '*Enabling Access to Justice Reform Programme'* was launched on 2nd December 2024 under five key themes:

- Improving Access to Justice;

- Ensuring Appropriate Quality Services;

- Ensuring Value;

- Managing Public Funds; and

- Oversight.

Proposals include an amendment to the financial eligibility rules for legal aid funding, rates paid to legal representatives and greater use of private finance to fund claims (including conditional fee agreements, insurance and other commercial financial products).

In addition to funding, the Programme will give consideration to providing access to justice via non-traditional means. Those mediums include information, support, advice, mandatory mediation and online resolution tools. All are to run in conjunction with the traditional Court litigation routes.

Online claim submission, such as that found in England & Wales in the form of the 'Official Injury Claim' portal is not currently available in Northern Ireland, and this is one of many areas being considered by the NI Department of Justice. Another proposal of note is the exercise of higher rights of audience by solicitors.

The window for consultation responses on the delivery plan and proposed timetable closed on 27th March 2025. Aware of the scope and ambition of the project, the Department of Justice have acknowledged that the Programme is expected to evolve over time as further evidence emerges through subsequent consultations and concept testing pilots.

The provisional timetable set by the Department of Justice includes the publication of a post-consultation report in May 2025. Thereafter, proposals to reform the merits testing for legal aid eligibility are due by September 2025, along with the publication of a 'Strategy for Access to Justice' document, also in September 2025.

Legislative proposals are to commence in May 2025 (to amend the legal aid remuneration rates), and those legislative introductions are scheduled to continue until Q1 2028. Other key dates for practitioners include Q2 2026, when

proposals to increase the range of funding mechanisms, such as conditional fee agreements and insurance are scheduled to be put forward.

The scale of the project is at a level not seen in this jurisdiction for some time. All stakeholders await the outcome with keen interest.

Update on developments in Ireland

Ciara Lehane, Senior Associate at J. W. O'Donovan LLP

In the recent High Court ruling of Quinlan v Quinlan (Ex Tempore, Egan J., 12 March 2025), Ms. Justice Emily Egan provided a clear and carefully reasoned judgment concerning the application of section 17(5) of the Courts Act 1981 (amended by s. 14 of the Courts Act 1991), highlighting the importance of issuing prompt costs warning letters and the potential for discretion, even when High Court proceedings result in damages at the Circuit Court level.

This case — which arose from a personal injuries claim following an assault in a domestic context — provides significant guidance for defence solicitors and insurers seeking to resist High Court costs awards when a claim has been brought in the wrong jurisdiction.

Background

The plaintiff, the estranged wife of the defendant, initiated legal proceedings for assault, battery and trespass to the person following an incident in the family home in 2013. While particulars of personal injury were pleaded based on reports from her GP and orthopaedic specialist, no medical expert

was called at trial, and the reports were not admitted in evidence. In the absence of such evidence, the Court was unable to assess the long-term impact of the alleged injuries and awarded €25,000 for general damages — well within the Circuit Court jurisdiction.

Costs Submissions

At the subsequent costs hearing, the defendant sought a differential costs order (DCO) under Section 17(5) on the basis that proceedings had been unnecessarily issued in the High Court. He relied in particular on a costs warning letter issued on 5 February 2025 — several weeks before the hearing date. The plaintiff sought Circuit Court costs with a certificate for Senior Counsel and resisted the DCO, pointing to the traumatic nature of the case and the appropriateness of High Court proceedings at the outset.

The Court's Analysis

Ms. Justice Egan carried out a meticulous review of the principles from recent Court of Appeal authorities including *Moin v Sicika*, *O'Malley v McEvoy*, *McKeown v Crosby*, and *Rafter v Edmund Rice Schools Trust*, identifying eight key considerations for trial judges when determining whether to make a DCO.

Crucially, she noted that:

- The legislative purpose of Section 17(5) is to discourage unnecessary High Court proceedings and promote proportionality in litigation costs.
- A court has discretion to decline a DCO even where the €60k threshold for High Court jurisdiction was not reached, particularly if developments during litigation (e.g., inadmissible evidence) reduced the value of the claim.

- The timing and content of a defendant's warning letter can be persuasive — but not determinative.

Applying these principles, the Court concluded that:

- It was appropriate to initiate and maintain proceedings in the High Court based on the medical evidence available in October 2024.
- The value of the claim only crystallised below the High Court threshold very shortly before trial, due to evidential and procedural difficulties — including the absence of medical witnesses and the defendant's refusal to admit reports.
- However, once it became clear by mid-February 2025 that no medical evidence would be admitted, the plaintiff should have considered remitting the case to the Circuit Court.

Accordingly, the Court awarded:

- Costs to the plaintiff on the Circuit Court scale with a certificate for Senior Counsel;
- A modest differential cost order in the defendant's favour of €1,476 (being the estimated additional solicitor trial attendance costs for a High Court versus Circuit Court hearing);
- No order as to the costs of the costs hearing.

Practical Takeaways for Insurers and Defence Solicitors

1. <u>Timing is everything</u>**.** Ms Justice Egan declined to reduce costs for any period prior to the 5 February warning letter, stressing that all costs incurred up to that point were properly incurred in the High Court. Late-stage warnings — particularly post-listing —

may limit a defendant's entitlement to differential costs.

2. <u>Keep detailed cost comparisons.</u> The Court was willing to estimate the cost differential itself without requiring adjudication, awarding a measured figure based on the difference in trial attendances. Defence firms should maintain clear records to support such submissions.

3. <u>Don't assume 'bad faith' is required.</u> The Court accepted that the plaintiff acted reasonably at all material times up to a late point. Nevertheless, the DCO was still granted — albeit in a modest amount. The outcome demonstrates that differential costs can be awarded even without any finding of misconduct or exaggeration.

4. <u>Jurisdiction is not solely about quantum.</u> The decision emphasises that jurisdictional appropriateness includes consideration of the nature of the claim. An assault in a domestic context — where personal safety and dignity are at issue — was not inappropriate for the High Court at the outset.

5. <u>Senior Counsel certificates are not off-limits.</u> Interestingly, the Court expressly confirmed that the engagement of Senior Counsel was reasonable in a case of this nature, despite the low award. This may reassure insurers that the mere involvement of SCs will not necessarily render costs disproportionate.

Conclusion

Quinlan v Quinlan serves as a timely reminder that applications under Section 17(5) of the Courts Act 1981 will be closely scrutinised. The timing of jurisdictional objections, the clarity of any warning correspondence, and the supporting evidence on differential costs will all carry weight. While the amount awarded here was relatively modest, the

Court's reasoning provides guidance on how discretion may be exercised in future — particularly in cases where defendants are required to incur High Court-level costs to defend claims that, on their face, fall well within the jurisdiction of the Circuit Court.

It's not every day that a differential cost order is made in a personal injuries case — but when it is, defendants should be prepared to meet the evidential threshold. The decision will be of interest to insurers and defence solicitors alike, especially in an era where the selection of forum is increasingly strategic.

Operations Update

Ian Thornhill (FOIL Ops Manager)

It's great to see FOIL's LinkedIn presence growing, now boasting 1,152 followers. While this is a fantastic milestone, it's worth considering how we can further extend our audience reach to ensure our updates and news connect with even more followers, especially when we look at the numbers following some of our member firms.

With this issue's theme centered on AI, I'd like to highlight a recent FOIL event: AI Using AI to Predict Injury Risk in Sport – An Insurance and Medico-Legal Perspective. This thought-provoking session delved into how AI technology and data analytics are being used to predict injury risks at an individual level. Be sure to check out our detailed write-up featured in this issue.

Some of our other recent events include:

- Fraud in Catastrophic Injury Claims: Hosted in collaboration with Nine Chambers, this February online session explored topics such as; faking catastrophic injuries, insights from Shaw v Wilde, and understanding when dishonesty becomes fundamental. You can watch it on our website under Streamed Events.
- Pre-Litigation Issues & Litigation Tactics: Sheila Reidy BL presented on PIAB, statute of limitations, and negotiation strategies in Ireland.
- Navigating E-Scooter Legislation – UK & Ireland 2025: Gillian O'Hanlon BL compared legal frameworks for e-scooters in both regions. Both sessions are available on our Streamed Events page.
- So You Want to Be a Partner: David Mayor joined the fourth episode of this popular series, which is also available to stream.
- Unlocking the Potential of Neurodiversity: Held on 1st May at DAC Beachcroft, this event featured Rt Hon Sir Robert Buckland KBE KC, Robert Annis, and Maeve Monaghan as speakers. Look for a full review in the next issue of The Voice.

Looking ahead, we're excited about several upcoming events:

- London Market FOIL Summer Celebration: Join us on 10th July at The Old Library at Lloyd's as we unveil our vision for a stronger focus on the London and International (re)insurance markets.
- FOIL Ireland's Unlocking Legal Insights: Scheduled for 22nd May at Kennedys, Dublin, with talks from James Burke BL on construction-related professional indemnity claims and Fred Gilligan BL on data breaches and GDPR.

Finally, don't miss this year's Golf Charity Event on 27th June where we will be raising funds for The Insurance Museum (see page 31). It promises to be a fantastic day, and we'd love as many teams as possible to join. If you can't attend, donations and raffle prizes are always welcome—reach out to me at ian.thornhill@foil.org.uk

FOIL in the Media (February 2025 – April 2025)

FOIL members regularly contribute to external media publications. Here are the contributions over the last quarter:

Shirley Denyer, Technical Consultant, and Pete Allchorne, FOIL Past President, of DAC Beachcroft, discuss the privatisation of justice in **Insurance Day**. *23 January 2025*

William Balfry, Motor SFT, of DWF, shared motor insurance predictions for 2025 in **Insurance Edge**. *7 February 2025*

Kari Hansen, Retail SFT, of Keoghs, provided commentary on retail violence in **The Legal Diary**. *7 February 2025*

Howard Dean, President of FOIL, of Keoghs, gave an interview as the new FOIL President in **Insurance Post**. *21 February 2025*

Howard Dean (including comment from Howard Benge, Director of the Insurance Museum) also wrote about why insurance law is an exciting career option in **Insurance Day**. *3 March 2025*

Laurence Besemer, CEO of FOIL, discussed e-scooter regulation in **Insurance Day**. *14 March 2025*

Howard Dean and Shirley Denyer, FOIL Technical Consultant, discuss the CJC consultation on litigation funding in the **Solicitors Journal**. *17 March 2025*

Howard Dean (including comment from Howard Benge, Director of the Insurance Museum), wrote about why insurance law is an exciting career option in **Insurance Edge**. *31 March 2025*

Howard Dean and Shirley Denyer discuss the CJC consultation on litigation funding in **The Law Society Gazette**. *4 April 2025*

Cathal O'Neill, President of FOIL Northern Ireland and Partner at Carson McDowell, analysed the proposed reforms to the justice system in Northern Ireland in **The Legal Diary**. *11 April 2025*

William Balfry, Motor SFT, of DWF, shared motor insurance predictions for 2025 in **Insurance Day**. *11 April 2024*

Laurence Besemer authored a byline in **Solicitors Journal** on the potential impact of funding cuts to legal apprenticeships. *29 April 2025*

Latest News

Dr Jeffrey Wale (FOIL Technical Director)

Consultations

The Civil Justice Council have published their final report on Enforcement. They recommend the creation of a single unified digital court for enforcement of judgments, regardless of whether a judgment is obtained in the High Court or the County Court. They have also suggested various smaller reforms in the interim including: (1) steps to improve compliance with the Pre-action Protocol for Debt Claims; (2) better advice for debtors; (3) better access to information (which would include the implementation of Part 4 of the Tribunals, Courts and Enforcement Act 2007) and (4) possible reform of CPR Part 71.

In the Open Justice space, we await the CPRC draft pilot Practice Direction for non-party access to court documents shortly. We must wait to see whether the PD addresses earlier concerns about access to documentation by non-parties. FOIL have consistently lobbied that undue burden should not be placed on litigants in respect of such requests and that non-parties should ordinarily bear the specific costs associated with access requests.

In respect of the Personal Injury Discount Rate, FOIL's attention has turned to monitoring behaviours around PPOs and the ongoing work of the Ogden Working Party and

CAVOL (Centre for Actuarial Compensation and Valuation of Life) regarding the development of third-generation reduction factors for the next edition of the Ogden Tables. This is a key concern for compensators in the context of employment multipliers.

Serious Injury Guide

In Autumn 2025, we will have reached the 10th anniversary of the Serious Injury Guide. We have seen the Guide receive positive attention by the Court of Appeal in *Hadley v Przybylo* [2024] EWCA Civ 250. The Civil Justice Council have also recommended that the main Personal Injury PAP should have better alignment (and give greater prominence) to the Serious Injury Guide and the Rehabilitation Code. FOIL (alongside the SIG Steering Committee) intends to run various media activities to celebrate/promote the 10th anniversary of the Guide across the membership and insurers. The aim is to promote the guide to non-signatories and to more junior claims handlers within existing signatory firms.

If you have any ideas about how the Serious Injury Guide could be better promoted within your organisation, please drop an email to jeffrey.wale@foil.org.uk.

Trade and Industry Partners Spotlight

THE QUEST PARTNERSHIP
Performance with Integrity
since 1991

The Quest Partnership, head quartered in Maidstone, Kent, is a leading provider of innovative claims management and liability solutions tailored to meet the needs of defendant solicitors. With decades of experience, the company specialises in investigating and resolving all classes of liability claims and property disputes. Their expertise also extends to handling claims for major organisations such as football clubs, local authorities and insurance firms, ensuring equitable and cost-effective outcomes.

Quest offers a unique range of services designed to support defendant solicitors in achieving successful case resolutions. Their meticulous approach includes thorough investigations, detailed reports on liability and witness credibility, and advanced reserving techniques. Additionally, Quest's cutting-edge technology facilitates efficient claims tracking and analysis, enhancing case management.

Defendant solicitors benefit from Quest's no-win-no-fee subrogation services and tailored training programmes covering legal developments and negotiation strategies. The firm's strategic alliance with Pinnacle Loss Adjusters Ltd in Scotland further expands its geographic reach and capabilities across the UK. Quest also has an office in Gibraltar.

By combining integrity, innovation, and professionalism, The Quest Partnership provides defendant solicitors with invaluable resources to navigate any legal challenges effectively, ensuring optimal results for their clients.

CONFLICT INTERNATIONAL
INVESTIGATION | SECURITY | INTELLIGENCE

The Importance of Compliance in International Surveillance for Insurance Claims

In the fight against insurance fraud, covert surveillance remains a vital tool for verifying the legitimacy of personal injury claims. However, insurers and their legal representatives must remain acutely aware of the legal complexities involved when conducting surveillance in overseas jurisdictions. Failure to comply with local compliance and licensing laws can render crucial evidence inadmissible, or worse, expose insurers to significant legal risks.

At Conflict International we specialise in the lawful gathering of surveillance evidence across multiple jurisdictions. With partners in an unprecedented 80 countries and holding the requisite licenses to operate in a number of key U.S. states—each with its own regulatory framework—we ensure compliance is at the forefront of every operation. In some countries, such as those within the UAE, surveillance is strictly prohibited, with severe legal consequences including arrest and imprisonment. In others, undertaking surveillance without the appropriate licensing can jeopardise a case before it even reaches court.

It is vital when navigating these complexities that Defendant Insurance lawyers choose a trusted partner to act in such circumstances. That partner should provide assurance that all evidence gathered is legally obtained and admissible, safeguarding the integrity of claims investigations.

The message is simple, when operating internationally, choosing an experienced, fully compliant investigative surveillance partner is not just important—it's essential – the liberty of those involved could even be at risk!

Roger Bescoby is Director of Client Relations at Conflict International and Vice President of the World Association of Detectives.

New Trade and Industry Partners

FOIL is pleased to announce two new members to our list of partners.

'RGI have been working within the insurance sector for over 30 years so it was a natural fit for us to become a Trade & Industry partner of FOIL.

We look forward to engaging in meaningful activities, learning from others, and contributing to the organisation's mission while building lasting relationships and experiences'

Chris Moore

Counter Fraud Manager

Jervis ICI Expert Witness is very pleased to be part of the FOIL community and looks forward to meeting members at future events.

Alan Jervis, *its principal, has been an insurance practitioner for over 45 years specialising as an underwriter in marine, energy and general liability insurance in the London, North American and Continental insurance markets.*

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