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# Technology and Data Use

## Risks for FI & D&O Insurers

*“AI is going to be the fourth revolution, and it is going to impact jobs, excellence, efficiency...It is a force for amazing good and also a potential force for not good.”*

Those were the words of Stephen Schwarzman, the CEO of Blackstone, who recently donated £150m to Oxford University to establish a new institute devoted to ethical issues in AI and to build a new Humanities Centre. Organisations are embracing the possibilities of AI and machine learning and there is an enormous potential for change both positive and negative such that the ethics of AI will likely become, in Mr Schwarzman’s words *“one of the major issues of our age”*. In some cases, such as how a driverless car should be programmed to respond in the event of an unavoidable crash, the ethical issues that need to be grappled with are perhaps more obvious – i.e. do you mount the pavement and hit a number of pedestrians to save the car’s sole occupant? Clearly, however, the myriad of opportunities as to how AI and other technologies will be developed means that there is a significant uncertainty over the ethical issues that we will need to grapple with.

Against this backdrop, it is unsurprising then that the foreword to the *FCA’s 2019/20 business plan* spotlights the changing risks that financial firms and their consumers face because of the innovation and advances in technology and data use in this sector. The Chair of the FCA, Charles Randall, cited specific concerns around the potential risk of consumer harm where:

- decisions are taken by machines; and
- the speed in which the use of such technology and data allows consumers to make decisions without adequate advice.

The FCA acknowledges that they face a *‘strategic challenge’* in understanding how data and technology are driving changes in financial markets and the potential for harm to consumers. One of the FCA’s priorities for 2019/20 is to better understand how the proliferation in the use of technology and data impacts on their



future role in shaping markets whilst protecting the interests of consumers. Given the pace of change, the uncertainty as to how AI might impact this sector and the potential ethical issues that might arise, it seems likely that this *'strategic challenge'* will, by necessity, remain a high priority for the FCA to grapple with for many years to come.

The question is whether the FCA will be able to keep up with the pace of change, be sufficiently skilled to identify those technologies that have the potential to harm consumers and be given the resources needed to effectively perform that role.

It is well reported that the FCA have been increasing the number of enforcement actions taken against firms and individuals and we do not expect that trend to be reversed given their stated intention to seek to diagnose misconduct at an early stage. However, given that the average length and costs of formal investigations are generally increasing, there is good reason to believe that the FCA may not have the skills and resources needed to understand the impact that the proliferation of these emerging technologies will have on the market and the associated risks and ethical issues that the use of such technologies pose to consumers.

What is clear is that there will be emerging risks arising from the innovation and advances in technology, AI and data use and the potential for consumer harm that will impact upon the notifications which FI and D&O insurers may have to deal with. These cases are likely to introduce novel and complex problems which both the FCA and insurers may not have understood and/or addressed before. It follows that the costs associated with defending FIs and D&Os against these new strands of claims will likely be significant. The claims also have the potential to pose a challenge for insurers in terms of defining the scope of cover and applicability of exclusions.

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