Chartered Insurance Institute

Standards. Professionalism. Trust.

Insurance, technology and data: Trust through a regulatory lens

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Contents

Introduction

The evident and emerging impacts of financial technology (fintech) on insurance are profound and complex. What is unarguable is that fintech is now central to all financial services; as Kalifa says in the foreword to his *Kalifa Review of UK Fintech*[1]:

"Fintech is not a niche within financial services. Nor is it a sub-sector. It is a permanent, technological revolution, that is changing the way we do finance."

The focus of this report is on why and how regulatory developments across finance, technology and data feed directly into how insurance is viewed by customers and societal stakeholders. The impact of technology and data poses fresh challenges for insurance's longstanding 'trust issues' with consumers and SMEs. This requires a rethink internally within insurance firms of all shapes and sizes about how technology and data strategies are formulated, communicated and reviewed.

The COVID-19 pandemic revealed existing systemic inequalities and huge issues in financial resilience for individuals and SMEs in truly unprecedented and impactful ways. Insurance even had its own well-publicised COVID-specific reputational issues here, focused on business interruption[2]. In the UK, the 'cost of living crisis' is now established as a real-life phenomenon and includes truly shockingly widespread levels of food insecurity and energy poverty[3]. This has magnified and added new dimensions to societal disquiet around surveillance capitalism, Big Tech, data privacy issues and algo-powered bias that were already gathering momentum since 2018. At the time of writing, civil society organisation (CSO) activists, consumer groups and other stakeholders, including regulators, are asking questions about the place of technology in financial services, the purpose of digital markets and how they should be run.

The UK Government's flagship Financial Services Future Regulatory Review is under sustained campaigning pressure from a wide-ranging coalition of voices, consumerists, economists and others from civil society. Does this 'once-in-a-lifetime opportunity' to shape the future of financial services post-Brexit – notably its proposal to include a statutory objective to promote the UK's 'international competitiveness' for UK regulators – mitigate for or against the systemic stability and consumer trust required for a thriving, innovative financial services sector? As the open letter from more than 50 economists published to coincide with an important House of Lords debate on May 16 2022[4] articulates:

"Even if regulators could address all these questions effectively, a general competitiveness objective poses a further challenge, because it does not differentiate between "good" competitiveness and "bad" competitiveness. The "good" version might include, for example, situations where financial firms cut fees and costs, or provide higher-quality products and services, or promote greater probity and legal clarity, or create a financial system that more powerfully tackles climate change. Harmful competitiveness might involve (for example) watering down money-laundering rules, to attract Russian oligarchs' money. Or, one might try to attract global businesses that profit from "greenwashing"; or that engage in profitable risk-taking at taxpayers' expense. Recent pressure to weaken 'ring-fencing' safety rules for banks in the name of competitiveness, are an example. Moreover, the 'harmful' kind implies a 'beggar-thy-neighbour' race to the bottom competition with other nations, leaving everyone worse off."

Insurance is inextricably involved in live debates and challenges around technology, data and trust. But who is really benefitting from the widespread application of technology in financial services? How does the 'data value exchange' add up for consumers and SMEs in the 2020s? What needs to change in the way technology and data is used by firms to ensure that consumers and SMEs understand and have access to competitive products and services? How do we define, measure and ensure access, fairness and trust?

In the context of various regulatory efforts to (belatedly) codify and standardise digital markets and how technology and data is used – and to what ends – for consumers, insurance's eye must follow these larger-scale discussions, whilst not losing sight of sector-specific issues e.g., what is 'fair' in pricing, now? Is personalisation truly the only way?

This report has been written to support insurance professionals by sharing a range of relevant perspectives from outside the 'insurance bubble', to help individuals ask even more of their own questions, and find some answers.

1 https://www.gov.uk/government/publications/the-kalifa-review-of-uk-fintech

2 https://viewpoints.reedsmith.com/post/102hkjb/corbin-king-v-axa-many-business-interruption-policyholders-are-offered-a-life

3 https://www.theguardian.com/society/2022/may/09/more-than-2m-adults-in-uk-cannot-afford-to-eat-every-day-survey-finds

4 https://financeinnovationlab.org/economist-competitiveness-letter/

Insurance, technology and data

Throughout the 2000s, especially as insurtech emerged and changed from a 'phenomenon' into part of landscape, the insurance trade and technology press focused on investment trends, unicorns and initial public offerings (IPOs). They followed the well-trodden path of labelling incumbent insurers as tech and data 'dinosaurs', portrayed as a monolithic and increasingly irrelevant collection of an old-fashioned 'no-tech' or 'slow-tech' sector failing customers.

At the same time, as a multi-faceted sector with a uniquely structured and complex value chain, insurance continued to ask itself the following questions:

- How can we rebuild public trust in the sector?
- Does the culture of insurance need to change?
- Can insurers use technology to become more transparent, relevant and trustworthy?
- How do we become 'Amazon'? Do we need to become technology companies?
- Is tech-enabled flexibility and personalisation the key to changing perceptions (as well as cost ratios)?

In the 2020s, insurance will no longer be left to debate, define and determine the answers to these questions in a professional vacuum. Insurance is under an unwavering multi-stakeholder spotlight precisely **because of** a recognition of insurance's massive economic, social and political relevancy, power and impact; and **because of** its enthusiastic adoption of technology and data-enabled business models and practices.

Insurance professionals will know at close hand how much further the sector has to progress in workplace culture and EDI (equity, diversity and inclusion). However, the sector also undoubtedly funded the insurtech phenomenon[5] and continues to do so (e.g. through corporate venturing and service partnerships). Insurance has built on the longstanding use of Robotic Process Automation (RPA), enthusiastically adopted artificial intelligence (AI)[6] and large-scale acquisition, mining and selling of customer

5 https://www.willistowerswatson.com/-/media/WTW/Insights/2021/10/quarterly-insurtech-briefing-q3-2021.pdf?modified=20211026222035

6 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/894170/CDEI_AI_Barometer.pdf

Insurance, technology and data - continued

data (directly and/or through partnering with others, as vendors or within agency agreements).

Financial services and AI

It is currently common for insurance firms of all shapes and sizes to be convinced of, and themselves extol, the virtues of AI-enabled technologies, including facial recognition, voice recognition and analytics.

For customer-facing functions, like first notification of loss (FNOL) and fraud management, more insurance professionals should be made aware that, despite the wealth of positive stories in the media and sales pitches, the lived experience of AI is demonstrably not always enhancing trust in tech-enabled data value generation. This is to such an extent that AI experts and insiders are seriously concerned about a 'tech-lash'.

AI insiders describe a community becoming increasingly cynical about this technology's potential to do good, oppressed and depressed by biases in 'unfettered AI systems' that have yielded wrongful arrests, sexist recruitment, erroneous grades, offensive and exclusionary language generators, and underperforming speech recognition systems, to name but a few high-profile and recurring negative impacts. Numerous studies suggest that the AI industry is built on geographic and social inequalities. Dataset preparations for AI research are highly inconsistent and few major AI researchers discuss the potential negative impacts of their work in published papers.

To address these and other 'trustkillers', the AI industry is seriously discussing the creation of a global community of hackers and 'threat modellers' dedicated to stress-testing the harm potential of new AI products to earn the trust of governments and the public.

Insurance professionals should also be aware that IT leaders in financial services also have their doubts: Research conducted by Qlik Embedded Analytics amongst 500 UK IT leaders showed[7]:

- Only 50% of respondents' trust decisions made by predictive analytics systems to be without bias.
- 44% said they feared they could be held personally responsible for decisions automatically triggered by predictive analytics software (this rose to 81% among those working in funds and investments).
- 46% reported the regulatory burden outweighed the benefit predictive analytics could offer.

Respondents said they were worried about:

- Data quality (40%)
- Data silos (40%)
- Data privacy (30%)
- Use of inaccurate or outdated datasets (30%)
- Not having the skills to implement predictive analytics (43%)

Another problem articulated by the respondents was a lack of 'requisite data literacy' in organisations. 76% of respondents said more data literacy was essential for employees both to recognise the limitations of the technology, and to enable them to explain to customers and other stakeholders how decisions using predictive analytics are made (77%). Civil society activism is also now having major impacts, notably in the US. Facial recognition bans had been introduced in at least 16 States, including Washington, Massachusetts and New Jersey as of July 2021. California lawmakers recently passed a law that will require warehouses to disclose the algorithms and metrics they use to track workers. A New York City Bill bans employers from using AI hiring tools unless a bias audit can show that they will not discriminate. Finally, in Illinois, the State's biometric information privacy act bans companies from obtaining and storing a person's biometrics without their consent.

It is becoming clearer that enthusiasm for putting AI technologies into use has outstripped the creation of the standards, structures and regulations that would define and enable trust. This is a viewpoint shared by a range of stakeholders, including the very experts responsible for building the underlying codes and propositions being sold at financial services boards and professionals every day.

Published in June 2021, the UK's Alan Turing Institute's (ATI) *AI in Financial Services Report*[8] was written to "create essential foundations for the control of AI in financial services". Its goal is to establish a conceptual foundation for defining expectations and making decisions about AI transparency. It maps the potential challenges and concerns related to the use of AI in financial services, aiming to equip firms, regulators and consumers with the understanding needed to navigate an evolving landscape of "promising technological innovations and newly emerging challenges and risks" so that they can pursue "responsible and socially beneficial innovation". The context is that AI is already having transformative

7 https://www.qlik.com/us/company/press-room/press-releases/uk-finance-it-leaders-trust-predictive-analytics-to-manage-kids-money

8 https://www.turing.ac.uk/sites/default/files/2021-06/ati_ai_in_financial_services_lores.pdf

Insurance, technology and data - continued

impacts on the delivery of financial services, with its role is set to increase further.

The Ada Lovelace Institute's *Regulate to Innovate: A route to regulation that reflects the ambition of the UK AI Strategy*[9] is unequivocal in stating that creating a successful, safe and innovative AI-enabled economy will be dependent on the UK government's ability to establish the right approach to governing and regulating AI systems. It was published in late-November 2021, two months **after** the UK's National AI Strategy[10] ("Our ten-year plan to make the UK a global AI superpower").

As with so much in technology and data, the impacts are being felt ahead of the essential regulatory frameworks, standards and protections. And the resultant negative social impacts are being identified, quantified and evidenced in unprecedented ways in the 2020s, with trust at the very heart of the debates. Where BigTech brought with it an automatic 'halo effect' (hence the "we need to be a tech company" narratives that dominated externally-facing insurance corporate narratives in the 2010s), arguably that time is over.

Trust: The 'society factor'

Public trust in insurance in the 2020s encompasses big themes and issues. Many of them are underpinned, driven and/or magnified by the impact of technology and data on society that takes us beyond insurance-specific impacts and considerations.

This analysis from anti-Poverty campaigners Fair By Design[11] is a compelling example of how the sector's internal business practices, enabled by technology and data, are seen as perpetuating and worsening

9 https://www.adalovelaceinstitute.org/wp-content/uploads/2021/12/Regulate-to-innovate-Ada-report.pdf

10 https://www.gov.uk/government/publications/national-ai-strategy

11 https://fairbydesign.com/wp-content/uploads/2021/09/IFoA_Hidden_Risks_of_Being_Poor_Aug_21_v09.pdf

Insurance, technology and data - continued

social inequalities: they highlight the differences in pricing experienced by insurance customers and the uneven (unfair) impacts on those on low incomes:

*"People on low incomes pay more than high-earning customers for many essential products and services. Examples include energy, through prepayment meters or expensive default tariffs and credit, through high-interest loans and credit cards. This also includes insurance, through expensive premiums for living in postcode areas considered higher risk, or being charged extra due to a past health condition. These excess costs are collectively known as the 'poverty premium'...**Insurance has overtaken energy as the biggest contributor to the poverty premium.** For people living in a deprived area, car insurance can cost nearly £300 more a year than households in areas considered lower risk by an insurer. The poverty premium in insurance is a major problem that will only get worse as we move from a pooled risk approach in insurance to one of recognised risk."*

An important contextual background and transformational force for insurance (and financial services broadly) in the 2020s is the notion of the 'social licence'. This idea was first brought into the public sphere by Mark Carney during his tenure as Governor of the Bank of England[12]:

"Widespread mistrust has also had deeper, indirect costs. Markets are not ends in themselves, but powerful means for prosperity and security for all. As such they need to retain the consent of society – a social licence – to be allowed to operate, innovate and grow."

In his 2020 book, *The Social Licence for Financial Markets: Reaching for the End and Why it Counts*[13], David Rouch explains that this social licence is essentially permission given by society to the financial world to act in a way that serves the best interests of all. Like Carney, Rouch agrees that not only is this social licence essential for the continued functioning of Finance, but is also under real threat:

"Our failure to recognize that this (social) licence exists, and to conduct ourselves by reference to it allows narratives of self-interest to continue to inform, and even dictate, financial activity... Now we are at a hinge moment in history. Even before the pandemic, intuition was growing that something was badly wrong and needed fixing. There is a widespread belief that the financial world acts without regard for wider society. But the challenges we face today, from the pandemic to the climate crisis, demand an urgent solution in which the world of finance is key. We can restore trust and, as a society, meet humanity's greatest challenges with confidence. If we do not make that transition, then a catastrophe awaits."

The early 2020s has already seen the emergence of ESG (environment, social and governance) as a dominant lens through which corporate activities are increasingly being measured, benchmarked and validated. Insurance (and financial services as a whole), like their clients in businesses in all economic sectors, are making sense of this fast-moving phenomenon, most noticeably right now in terms of the climate emergency and net zero. Societal and governance aspects may be comparatively slow to date, but it is clear that technology and data will be key ingredients in how these areas of ESG develop detail and application over the next couple of years, especially as formulated by regulators and lawmakers. This reinforces the importance of seeing technology, data and trust through a regulatory lens. These macro factors are reshaping the context in which **all** insurance professionals operate now, and in the years to come.

12 Mark Carney, Mansion House Speech as Governor of the Bank of England, June 2015

13 https://link.springer.com/book/10.1007/978-3-030-40220-4

Policy watchlist

2021's *The Kalifa Review of UK FinTech* was explicitly about identifying the action plan to protect the UK's global leadership role in creating, incubating and hosting fintech growth. But, it also stated as a fact that making the UK the 'best place in the world to start and grow a fintech business' will result in:

"Inclusion and Recovery: supporting citizens and small businesses to access more, better and cheaper financial services – and doing so in a sustainable way to help 'build back better'"

Subsequent regulatory activity can be seen through this lens. For example, the Department for Digital, Culture, Media and Sport's 2021 Plan for Digital Regulation[14] focused on 'reducing red tape' and a 'pro-innovation' approach to regulation. However, it did not define exactly what the 'red tape' was or even what 'pro-innovation' means. There was no mention of specific (improved) outcomes for consumers, instead referring to 'minimising harms'. But why recognise and not eradicate? What are these harms, and does this mean that any harm not meeting this threshold (whatever it is) will be tolerated?

There is a recognition within fintech and incumbent firms alike, that the notion that Fintech is in and of itself the key to financial resilience for customers is unsubstantiated by the data. For many CSOs it is not only an unproven hypothesis, but also a dangerous fallacy on which fundamental changes to financial regulation and consumer protections are being justified. Also, by adding the post-Brexit competitiveness agenda narrative (especially in the Financial Services Future Regulatory Framework), the signs are of a direction of travel of both deregulation, and light touch regulation, with little in the way of increased protections for consumers and/or constraints on the practices of digital and data services firms.

There is a deep concern amongst a wide coalition of CSOs and others that the overwhelming focus on ensuring the UK remains a 'global leader in financial services' by leading the fintech 'revolution', does not fully address harms visible in 2022; neither does it address predicted and predictable future harms. This seems to be in direct contradiction with ongoing developments (re)defining regulation for

14 https://www.gov.uk/government/publications/digital-regulation-driving-growth-and-unlocking-innovation

Policy watchlist - continued

the technology, data and Big Tech structures underpinning fintech, not just in other parts of the UK regulatory ecosystem, but globally.

This report spotlights seven such developments of especial significance to insurance, technology, data and trust:

1. Digital Regulation Cooperation Forum (UK)
2. Online Safety Bill (UK)
3. Banning Surveillance Advertising Act (BSAA) (US)
4. Algorithmic Accountability Act of 2022 (US)
5. European Commission's Artificial Intelligence Act (EU)
6. UNESCO Global Standard on AI Ethics
7. Financial Services Regulatory Framework Review (UK)

Digital Regulation Cooperation Forum (UK)

In recognition of 'a digital revolution', the Digital Regulation Cooperation Forum (DRCF)[15] was formed in 2020, with the aim of "bringing about greater cooperation to address the unique challenges posed by regulating online platforms". Formed by Ofcom, the Competition and Markets Authority (CMA) and the Information Commissioner's Office (ICO), the FCA joined as a full member in April 2021 (having initially started as an observer member). In their previous, foundation report, *Regulating in a digital world*, the Forum found:

- Regulators had not kept pace with advances in digital technologies
- There are gaps and overlaps in regulation due to the existing fragmented global approach
- New regulation was often driven by responses to media headlines rather than strategic thinking

Rather than simply creating more regulation, the Forum says that it is seeking a different approach. A key recommendation is for a Digital Authority to be established to co-ordinate regulators operating in the digital world. For this to be successful, they say that it should be politically impartial and independent of the government. Its board should consist of chief executives of relevant regulators with independent non-executives, and be chaired by an independent non-executive.

The Forum is also considering the following:

- How effective is digital regulators' horizon scanning and how could it be improved?
- How effective is parliamentary oversight of digital regulation?
- How effectively do UK regulators co-operate with international partners?
- Are there strategic approaches to digital regulation in other countries from which the UK could learn?

According to its published plan, the DCRF's key priorities for 2022-23 are supporting improvements in algorithmic transparency to promote benefits and reduce risks to consumers and competition, and enabling innovation in the industries it regulates.[16]

Online Safety Bill (UK)

As parts of the UK's financial services regulatory ecosystem proceed with an agenda that assumes consensus around established clarity and fundamental stability, as recently as 14 December 2021, the Joint Committee on the draft Online Safety Bill[17] concluded that:

- Big Tech has failed its chance to self-regulate.
- Ofcom should set the standards by which Big Tech will be accountable.
- Ofcom should draw up mandatory Codes of Practice for internet service providers and should also be able to introduce additional Codes as technology develops.
- Service providers should conduct internal risk assessments to record reasonably foreseeable threats to user safety, including the potential harmful impact of algorithms, not just content.

The Bill was introduced in the House of Commons on 17 March 2022, and in May entered the Committee Stage. After intense pressure from a coalition of consumer groups, charities and financial services industry bodies, paid-for scam adverts on social media and search engines were also brought into scope.

At the time of writing, the issue of accountability in Social Media and Big Tech for child harm continues to high-profile: the Coroner in the case of the suicide of 14 year-old Molly Russell in November 2017[18] has said the inquest must serve as a catalyst for protecting children from the risk that the internet has brought into family homes. Andrew Walker outlined a series of concerns about the impact of social media on children, including the use of algorithms to push content to their accounts, a lack of age verification and a lack of content regulation after an inquest ruled that harmful online content contributed to the 14-year-old's death. Molly's father has accused the Social Media firms involved of 'monetising misery'.

15 https://www.gov.uk/government/collections/the-digital-regulation-cooperation-forum

16 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071501/DRCF_Annual_Workplan.pdf

17 https://www.gov.uk/government/publications/draft-online-safety-bill

18 https://www.theguardian.com/technology/2022/sep/29/molly-russell-inquest-must-lead-to-action-on-internet-dangers-says-coroner

Policy watchlist - continued

Banning Surveillance Advertising Act (BSAA) (US)

The pace of regulatory action seems faster in the United States (US), the home of Big Tech platforms. The enthusiastic adoption of AI technologies there, in both private and public environments, gives a volume and velocity of lived experience that warrants a close watching brief, not least because of the global nature of UK-based Insurance firms' business and operational activities.

On 18 January 2022, the Banning Surveillance Advertising Act (BSAA)[19] was introduced into Congress. If passed, the resulting legislation would prohibit advertising networks and facilitators from using personal data to target advertisements, with the exception of broad location targeting to a recognised place (e.g. a municipality). It would also stop advertisers from targeting ads based on protected class information, such as race, gender, and religion, and personal data purchased from data brokers. The Bill makes explicit that contextual advertising, which is advertising based on the content a user is engaging with, is allowable. Speaking about current practices, Congresswoman Representative Anna Eshoo (D-CA) said[20]:

"The 'surveillance advertising' business model is premised on the unseemly collection and hoarding of personal data to enable ad targeting. This pernicious practice allows online platforms to chase user engagement at great cost to our society, and it fuels disinformation, discrimination, voter suppression, privacy abuses, and so many other harms. The surveillance advertising business model is broken. I'm proud to partner with Senator Booker and Congresswoman Schakowsky on legislation to ban this toxic business model that causes irreparable harm to consumers, businesses, and our democracy."

19 https://www.congress.gov/bill/117th-congress/house-bill/6416#

20 https://eshoo.house.gov/media/press-releases/eshoo-schakowsky-booker-introduce-bill-ban-surveillance-advertising

Policy watchlist - continued

Whether the BSAA passes into law or not, Eshoo powerfully articulates an impending judgement on the foundations of technology and the resultant (seemingly embedded) business models prevalent in financial services. The Bill remains referred to the Energy & Commerce Committee.

Algorithmic Accountability Act of 2022 (US)

In early February 2022, the Algorithmic Accountability Act of 2022[21] was introduced in the US. It requires companies using algorithmic technology to make "critical decisions" that have significant effects on people's lives relating to education, employment, financial planning, essential utilities, housing or legal services to conduct impact assessments. These evaluations will entail ongoing testing and analysis of decision-making processes. It will also require companies to supply documentation about the data used to develop, test or maintain algorithmic systems.

By requiring companies to assess the impacts of the automated systems they use and sell, the Act aims to create transparency about when and how automated systems are used and empower consumers to make informed choices.

If the Bill passes, a large number of companies in the healthcare, recruitment and human resources, real estate and financial-lending industries would be newly required to conduct assessments of the AI they use. Their suppliers will also have to conduct assessments if they expect them to be used for a critical decision. The key point is that this Bill focuses on the real-world impacts of the algorithmic systems being used by firms, and not potentially bound up in arguments about what does or does not constitute a 'high-risk' system.

The Act was reintroduced in April 2022 in both the House and Senate after undergoing modifications.

The European Commission Artificial Intelligence Act (EU)

The proposal for a European Commission's Artificial Intelligence Act[22] ('the AI Act'), drafted in April 2021, is significant as the world's first comprehensive attempt to regulate AI and took the risk ratings of 'systems' approach.

For example, Article 49 of the Act requires high-risk AI and data-driven systems, products and services to comply with EU benchmarks, including safety and compliance assessments. This is crucial because it requires AI-infused products and services to meet the high technical, legal and ethical standards that reflect the core values of trustworthy AI. Only then will they receive a CE marking[23] that allows them to enter the European markets. This pre-market conformity mechanism works in the same manner as the existing CE marking as safety certification for products traded in the European Economic Area (EEA). This stance was commended for forcing US and Chinese companies to conform to values-based EU standards before their AI products and services can access the European market with its 450 million consumers.

However, civil society stakeholders wanted more. In November 2021, CSO experts European Digital Rights (EDRi), Access Now, Panoptykon Foundation, epicenter.works, AlgorithmWatch, European Disability Forum (EDF), Bits of Freedom, Fair Trials, PICUM, and ANEC produced a statement signed by 115 not-for-profits from across Europe and beyond.[24]

They called for key amendments to the Act that apply to users and focus on impacts, which is similar to the US regulatory approach. These CSOs, who constitute in effect simultaneously guardians and definers of public trust, are increasingly very important but generally unconsidered actors in the 'insurance trust ecosystem'. It is also worth noting how trust issues relating to AI technologies overlap with trust issues relating to sustainability and ESG (environmental, social and governance). How firms engage with ESG is becomingly an increasingly important factor in how trustworthy they are deemed by their customers.

The Act is expected to be passed in the first half of 2023, with a significant number of amendments.

UNESCO Global Standard on AI Ethics

In November 2021, the first ever global standard on the ethics of artificial intelligence was adopted by the member states of United Nations' Educational, Scientific and Cultural Organization (UNESCO) at the General Conference. Approving a series of recommendations for AI ethics, including regular impact assessments and enforcement mechanisms to protect human rights, 193 member countries (including Russia and China) agreed to conduct AI impact assessments and place "strong enforcement mechanisms and remedial actions" to protect human rights. The UNESCO recommendations also explicitly ban the use of AI for social scoring and mass surveillanc. They call for stronger data protections to provide stakeholders with transparency, agency, and control over their personal data. Gabriela Ramos, Assistant Director- General for the Social and Human Sciences of UNESCO said, "[UNESCO's

21 https://www.congress.gov/bill/117th-congress/house-bill/6580/text?r=2&s=1

22 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206

23 https://ec.europa.eu/growth/single-market/ce-marking_en

24 https://edri.org/wp-content/uploads/2021/12/Political-statement-on-AI-Act.pdf

Policy watchlist - continued

recommendations are] ***the code to change the [AI sector's] business model, more than anything***"[25].

Financial Services Future Regulatory Review (UK)

In November 2021, the UK government published its proposals for the overall Regulatory Framework for Finance. An extremely important process, it aims to change the way that Financial Services are regulated in the UK, including fundamental questions such as:

- What the regulators' statutory objectives should be
- How should accountability to the public be effected?
- What should be the role of Parliament and the Treasury?

The proposal is to follow the FSMA model (introduced by the Financial Services and Markets Act 2000) which is based on:

- A major delegation of power to regulators who will make and amend rules and oversee implementation.
- Setting of the policy framework by the government, largely through secondary legislation and HM Treasury policy. The plan is to repeal all retained legislation and replace it with devolved powers to regulators under the framework of secondary legislation.

The Future Regulatory Framework was included in The Financial Services Bill 2022. It began its journey into law with the Queen's Speech on 10 May 2022[26], and as expected, it introduced new, statutory "growth and international competitiveness" objectives for the Prudential Regulation Authority (PRA) and Financial Conduct Authority (FCA). For many CSOs, this amounts to a lobbying coup for 'big finance', because it means regulators would be charged with helping the UK financial sector grow as an end in itself. Some say that this might constitute regulatory capture (Reg Capture) where a regulatory agency created to act in the public interest, instead advances the commercial or political concerns of special interest groups that dominate an industry or sector the agency is charged with regulating.

As noted, civil society has galvanised into campaigning action, and on a number of fronts, illustrated by the following quotes from signatories of the Open Letter from 58 leading economists have written an open letter to the Chancellor, Rishi Sunak MP, and the Economic Secretary to the Treasury, John Glen MP, outlining their concerns regarding proposals to make 'competitiveness' a greater focus in financial regulation, as announced at the Queen's Speech.

"Competition to serve customers better and more cheaply should be a key regulatory objective. Competitiveness has in practice meant a regulatory race to the bottom. The distinction is vital and should be maintained."

Sir John Kay, Economist

"It is extraordinary that the lessons of the financial crisis are being forgotten already, despite the massive harm that was done. The proposed government legislation of financial services and the new emphasis on "competitiveness" rather than stability and safety is an ominous warning that those who forget their history are doomed to repeat it."

Sir Vince Cable, Former Secretary of State for Business, Energy and Industrial Strategy

"The FCA has driven up standards of conduct in UK financial services. We have the most effective conduct regulator in the global financial system. The government's proposals would seriously compromise the independence of the FCA and reverse the gains we have made over the years."

Mick McAteer, former FSA and FCA Board member

"Regulators should be encouraging firms to provide full employment and increase productivity. Encouraging international competitiveness is a policy to benefit the City of London, further deepening the disparity between the capital city and other parts of the UK. In these tough economic times, the government should focus its attention on providing support for households to manage the cost-of-living crisis."

Ann Pettifor, Progressive Economy Forum

"Competitiveness in practice means taking resources away from other parts of the UK and handing it to the financial sector so it can compete globally. There is no way to make this formula work for the people of the UK."

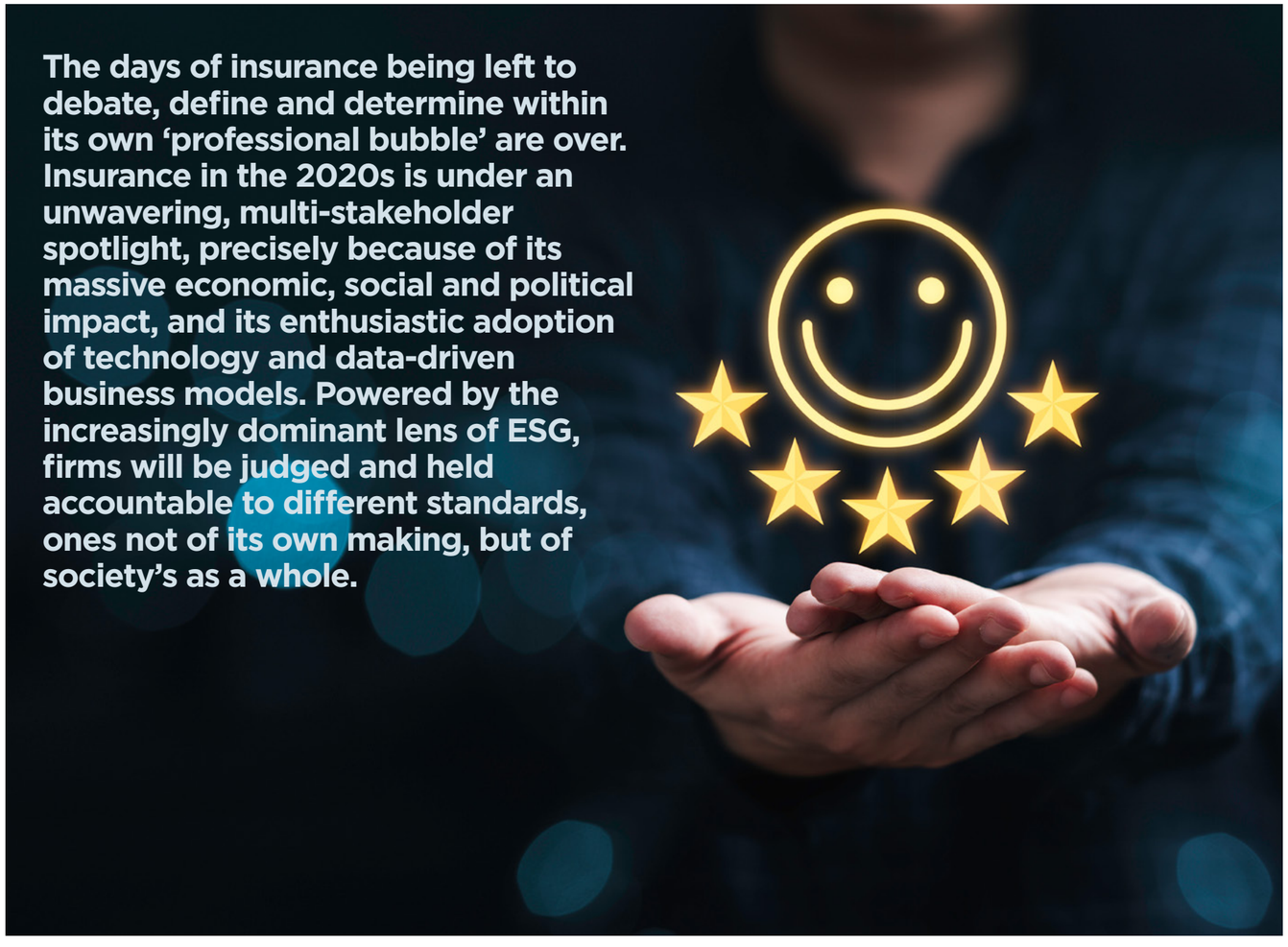
Nicholas Shaxson, Balanced Economy Project

The campaigning, debates and the Review's progress through Parliamentary processes continues.

25 https://www.politico.eu/article/china-artificial-intelligence-ai-ban-social-scoring-united-nations-unesco-ethical-ai/

26 https://www.gov.uk/government/speeches/queens-speech-2022

Conclusion: Critical thinking and how customer voices really matter



What is regulated – why and how – is a strong manifestation of societal priorities and tolerances. It is currently at an inflection point for technology and data, which is what makes looking at insurance and trust through a regulatory lens right now so instructive.

The analysis of the ‘Policy watchlist’ reinforces the meaning of ‘personal data’ being reshaped under our feet, as this is what constitutes a trustworthy data regime. ‘Trust competitiveness’ will be the critical battleground in the 2020s, to say nothing about the practical fundamentals for tech and data-enabled sectors, like insurance, of simply being able to trade, in the EU, the US and beyond.

In addition to the information and ideas in this report, two key ideas that explore how individual professionals can define what ‘trust competitiveness’ means for them are:

1. Tune in to CSOs

Consumerists, lived experience experts and other civil society activists represent the true voice of the consumer and the barometer of trust. This report spotlights several of them including, Finance Innovation Lab[27] and Fair By Design[28].

2. Be a critical thinker on technology and data

Much of the so-called ‘analysis’ relating to insurance is hyperbolic, contradictory, partial and/or undiluted marketing. Therefore, it is important to be cautious, especially for those new or inexperienced in this area.

27 https://financeinnovationlab.org
28 https://fairbydesign.com/

Conclusion: Critical thinking and how customer voices really matter - continued

For example, in May 2021, Lemonade, the poster-child for machine-learning powered insurance, was forced into a comprehensive apology after a series of social media posts described how they used AI to reject claims. Their AI interpreted non-verbal cues, like eye movements during video interactions with customers, to decide whether the claimant was being fraudulent. Not only was this a problematic process, but:

- the consumer was not told their biometric data was being collected
- the consumer was not told this biometric data was being used to determine the outcome of their claim
- Lemonade did not explain how this decisioning works
- the reliability of biometric data is questionable, as there is no consensus about whether it works or not

This caused a backlash on social media, resulting in Lemonade deleting their posts. This also highlighted key 'trust killers' for customers:

- companies using AI to increase profits with no regard for peoples' privacy or the bias inherent in the algorithms
- insurance claims being assessed by AI
- products and services determined by use of personal data unknowingly provided
- use of highly suspect and inherently biased "emotion recognition" systems, which claim to detect a person's mood or mental state.

As tech-focused resource, Motherboard: Tech by VICE, commented:

"In attempting to clarify the situation, Lemonade has still left widespread confusion about how the technology at the foundation of its business works. The post says the company uses facial recognition technology, for example, but in its privacy policy it claims that it will never collect customers' biometric information. And how it achieves 1,600 data points from a video of a person answering 13 questions without biometric information also isn't clear"[29].

If it cannot be explained, or if the customer does not approve, then what might be good for business, will be devastating for trust.

For the firm, the new Consumer Duty requires a fundamental shift in focus – from rules-based to outcomes-based operations — with the highest priority on verifiably positive impacts for the (SME and individual consumer) Customer. For the majority of firms (large and small), this change in regulatory approach to 'show me, don't tell me' engenders a business-wide Transformation project with impacts on every function within the firm. Consumer Duty is designed to be a powerful codifier, enabler and proof point of trust in action: the ramifications in Technology and Data will be, arguably, potentially even more impactful than any other single area, as it fundamentally underpins so much activity in every other function.

As Society and the global regulatory community continue to work out what trust in Technology and Data really means in the 2020s, all professionals in Financial Services, not least in Insurance, need to develop their own working knowledge and understanding, and that all-important questioning voice.

29 https://www.vice.com/en/article/z3x47y/an-insurance-startup-bragged-it-uses-ai-to-detect-fraud-it-didnt-go-well

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