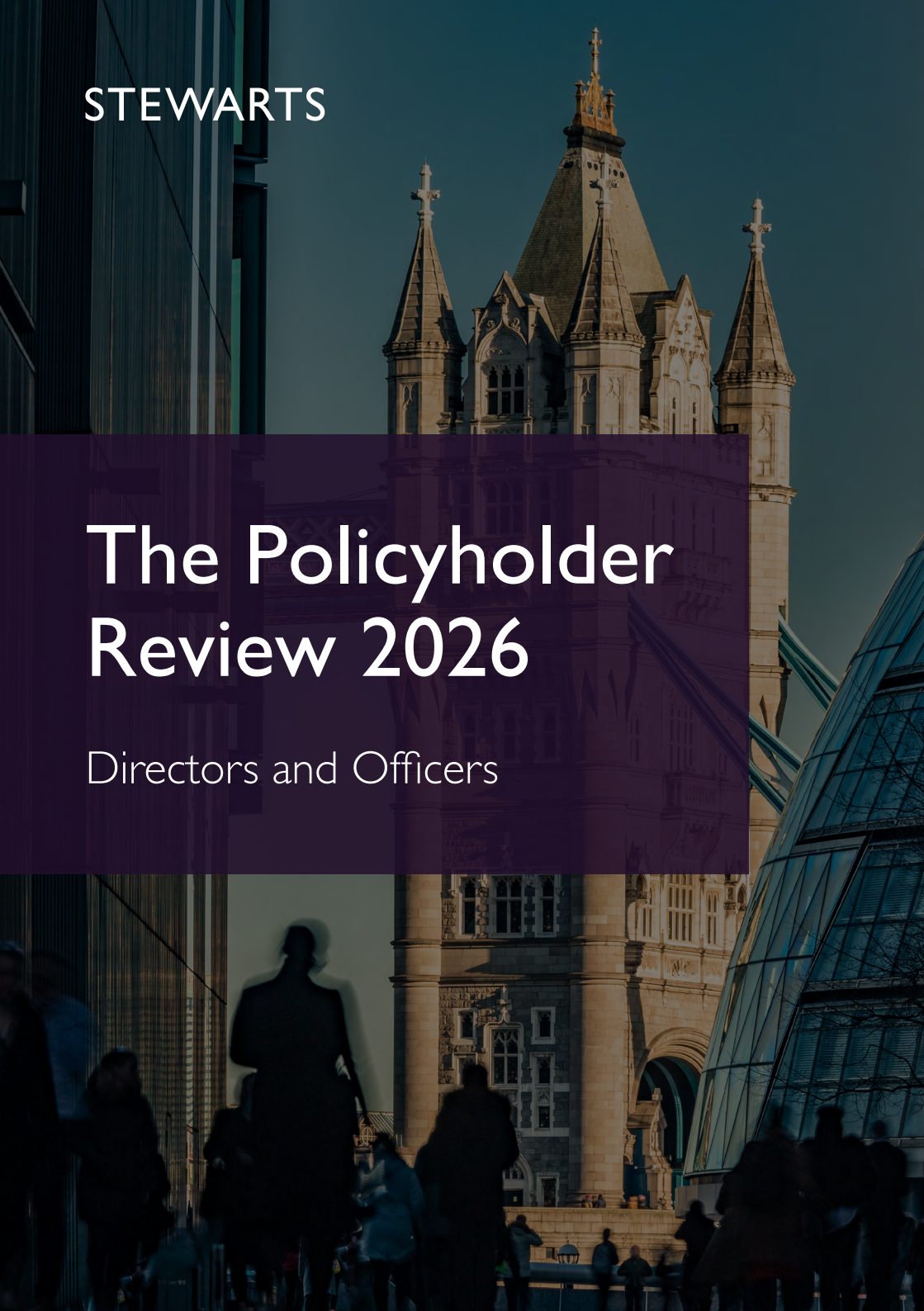
STEWARTS

The Policyholder Review 2026

Directors and Officers



Directors and Officers

James Breese and Arjun Dhar

For policyholders, the landscape of potential risks for directors and officers continues to evolve, including increased use of artificial intelligence tools, environmental and social governance obligations and the new "failure to prevent fraud" law discussed in detail in the latest edition of this Policyholder Review. Directors' and officers' ("D&O") policies, therefore, remain an essential risk management tool but continue to be a fertile ground for coverage disputes.

The current claims environment suggests that insurers are managing this unpredictability by boosting their claims management capabilities and taking a more aggressive approach on claims. It is important that policyholders and their brokers continue to carefully check that their insurance programmes are adequate.

Legal updates – securities litigation

Securities litigation remains an increasingly contentious area and merits close attention. An evolving legal, regulatory and technological landscape means it continues to grow as a likely source of claims under D&O policies.

Securities litigation in the UK has accelerated in recent years. Common law rights of action were supplemented first by statutory rights under s90 of the Financial Services and Markets Act 2000 (FSMA) and subsequently under s90A. Companies are expressly permitted to indemnify directors under ss232(2)(b) and 234(1) Companies Act 2006, and to purchase insurance for them under ss232(2)(c) and 233.

Sections 90 and 90A of FSMA provide a remedy to those who have suffered loss in reliance on untrue or misleading statements in listing particulars, or where any required matters were excluded from those particulars. Stewarts has acted on some of the highest value and high-profile securities litigation in the UK, including the *RBS Rights Issue Litigation*.

With both issuers and their directors and officers exposed to securities claims in the UK, securities claims cover for individuals is included under a typical UK D&O wording under Sides A and B, with cover for the company under Side C usually available at an additional premium. Cover for US claims is often excluded due to the increased exposure.

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Current landscape

The acceleration in securities litigation over recent years comes in an environment of heightened shareholder activism, greater availability of litigation funding and artificial intelligence (AI) risks.

The Court of Appeal had to consider for the first time, in *Wirral Council v Indivior Plc* [2025] EWCA Civ 40, whether the representative action procedure (which enables opt-out 'class action'-style group litigation) was appropriate for a securities claim. The court dismissed the appeal, agreeing with the first instance court that the claims should proceed only by way of multi-party proceedings. While this decision may act as an obstacle for book-building claims on behalf of retail investors (whose claims may be more limited in value), it is likely to be temporary. The decision may help potential litigants (and their advisers) navigate a way through the procedural requirements for bringing class action style disputes such as we see in the United States.

For example, across the Atlantic, data from the North American market shows an unmistakable upward trend in securities class action lawsuits, particularly those alleging false or misleading statements related to artificial intelligence.

Frequent themes in these lawsuits are allegations of (i) exaggeration of AI capabilities; (ii) exaggeration of the effect of AI adoption on the companies' bottom lines; (iii) failure to disclose limitations associated with the adoption of AI; and (iv) misleading statements about risks associated with the adoption of AI.

Indeed, data from Law360 shows that in the United States, 2025 is on track to break the record for AI-related securities class action filings. It remains to be seen whether these represent an across-the-board increase in meritorious rather than speculative claims, as the courts' approach to these cases evolves.

The D&O claims environment in the UK often follows the trends seen across the pond. Where the potential defendants to a s90 claim could be any person responsible for the prospectus or listing particulars, an array of insured persons under a D&O policy might be part of the factual matrix for a securities claim, which could conceivably give rise to extensive claims under D&O policies. A key area to monitor will be whether the English courts accommodate the use of the representative action procedure in claims alleging harm from the use of AI tools, which could create a wider exposure that goes beyond potential claims from institutional investors only.

Common issues in D&O claims

International insurance programmes

D&O policies are frequently written as part of global programmes, with a master policy covering claims in a number of jurisdictions, often on a difference-in-conditions basis.

Issues can arise where there are legal or regulatory differences between the law of the state governing the policy and the law of the state in which the insured peril has occurred.

We also see issues arise in cross-border D&O claims where the insured person may be the subject of some civil, criminal or regulatory investigation (or allegations) in another jurisdiction (often the US) and is concerned about providing disclosure of documents to their D&O insurers when that documentation may become disclosable/discoverable at a later stage in the underlying proceedings to which the insured person is subject. This is a complex issue to navigate when, on the one hand, the insured person is concerned to ensure that any privilege over documents is retained, while on the other hand, they are trying to unlock coverage for defence costs that may be essential to defending the underlying allegations.

Allocation

Another common issue arises when D&O claims are made in respect of both covered and uncovered matters or made jointly against covered and uncovered individuals or companies. Establishing the proportion of covered loss in such cases is not straightforward and is referred to as "allocation". It is a common issue for a variety of D&O claims, not just those that arise out of securities litigation or potential litigation.

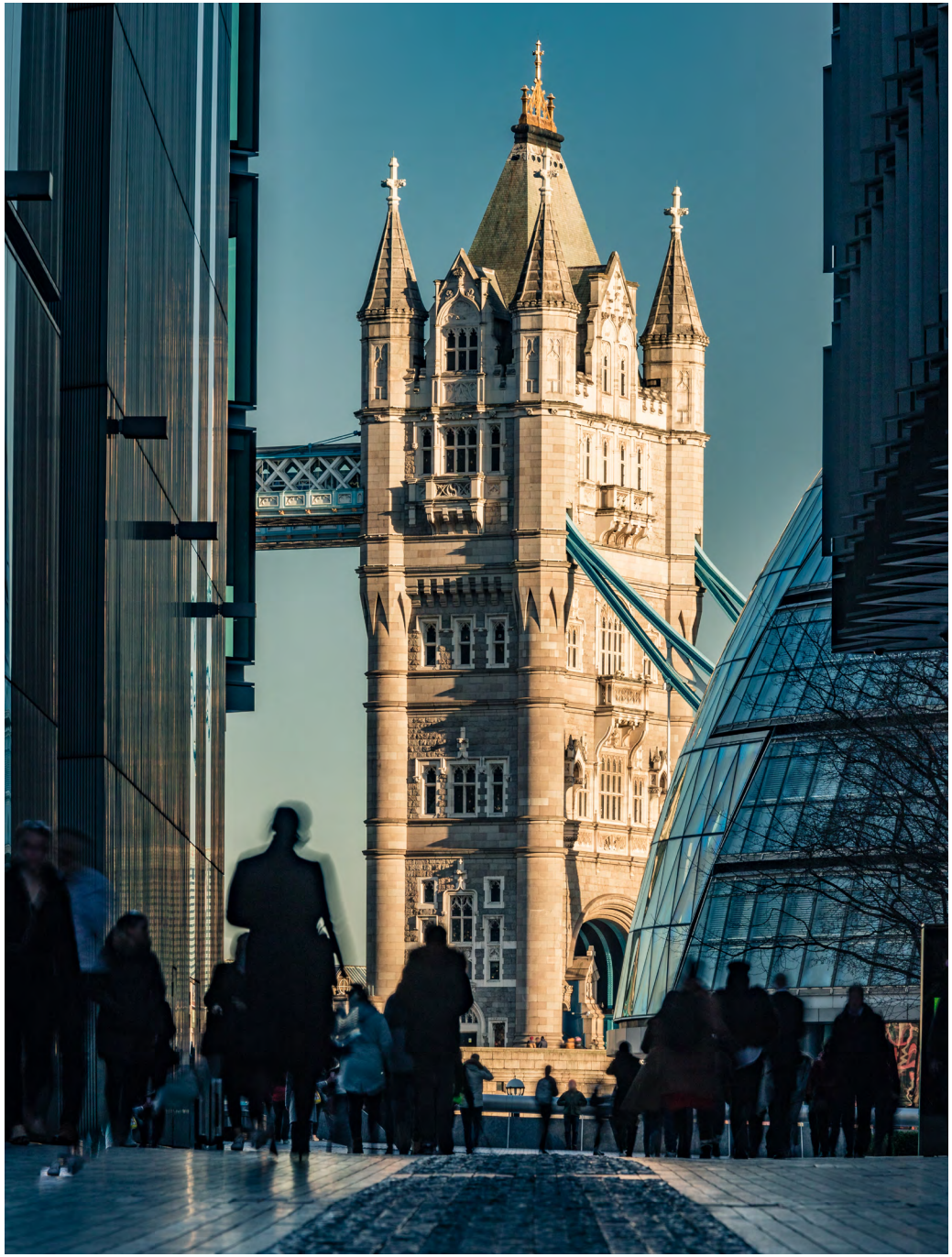
In *International Energy Group Ltd v Zurich Insurance plc UK Branch (Association of British Insurers and another intervening)* [2015] UKSC 33, the Supreme Court approved and applied the allocation principle established by the Privy Council in *New Zealand Forest Products Ltd v New Zealand Insurance Co Ltd* [1997] 1 WLR 1237. In that case, the insured had incurred defence costs jointly on its own behalf and that of an uninsured defendant. Because the insured was able to demonstrate that the costs actually incurred would have been the same regardless of the representation of the uninsured defendant, the court found that all of the costs were proximately caused by an insured peril and therefore covered in full, notwithstanding that they also benefited an uninsured party.

Many policies now contain express allocation clauses, providing that where claims are made in relation to both covered and uncovered matters, or against both covered and uncovered persons, the insured and insurer agree to use commercially reasonable efforts to agree a fair and reasonable allocation of covered vs uncovered costs, in the absence of which the matter is referred for determination by a third-party expert.

While it will be in insurers' interest to argue that such provisions oust the *New Zealand Forest* principle, it is far from clear that they can do so. It ought to remain fair and reasonable to apply the reasoning set out by the court in that case, as followed by the Supreme Court in *International Energy Group*.

The insured versus insured exclusion

Many policies contain an exclusion of liability for loss flowing from claims brought by one insured against another. The exclusion is by no means included as standard, and its scope is often limited to claims brought by a major shareholder of the insured, claims brought in the USA or collaborative claims. The exclusion derives from public policy and commercial considerations to avoid collusion between insured persons and entities seeking to access an insurer's capital by generating claims against themselves.



Composite policies: update following Bath Racecourse

A typical D&O policy will include, at a minimum, a single corporate entity and its director(s), whose interests under the policy are several and not joint. This can range in complexity, particularly where D&O cover purchased by an investment fund is extended to cover newly acquired subsidiaries/ portfolio companies.

The disparate nature of the insureds means that the policy will likely be treated as composite in nature; indeed, it is probably the archetypal example of a composite policy. In other words, the policy is regarded as a single document evidencing a bundle of bilateral contracts between the insurer(s) and each of the insureds, whose respective rights and obligations may be enforced independently.

It is common practice for a parent company to purchase a policy in its own name for the benefit of its subsidiaries and affiliates. The subsidiary companies may be individually named in a policy schedule, incorporated by naming the insured as "XCo plc and its subsidiaries and affiliates", or by defining "insured" or "company" in a similar way. Either method can be effective to ensure that all group companies are insured under the policy, as the Court of Appeal confirmed in *Bath Racecourse v Liberty Mutual SE*. EWCA Civ 153.

The significance of a composite policy is found in the application of the limits and sub-limits of indemnity that are available under such a policy.

Aggregation and limits

In the context of both fidelity and business interruption insurance, the Court of Appeal has found that the composite nature of a policy insuring a group of companies was a decisive factor that led to the specified limit of liability being available to each of the insured companies separately rather than shared between them *(New Hampshire Insurance v MGN* [1997] L.R.L.R. 24, *Bath Racecourse v Liberty Mutual Insurance Europe SE* [2025] EWCA Civ 153).

The basic principle behind establishing how limits of liability apply to insureds under a composite policy is ultimately that it is a matter of policy construction and determining the objective intention of the parties at the time the terms were agreed. The objective intention of the parties in the context of a D&O policy may well be found to produce a different outcome from that in the cases previously decided, given the possible concurrent claims against multiple directors in relation to a single incident and given that the cover is all purchased by the company to cover its employees. However, certainly there can be no presumption that a limit is intended to apply on an aggregate basis in the absence of words to that effect.

Artificial intelligence and D&O cover

We have commented above on some of the risks posed under D&O policies from the perspective of securities litigation borne out of allegations relating to the use of, or commentary on, AI. The increased use of AI can also engage a D&O policy in a traditional way, however, with the volume of claim notifications only likely to rise with over half of the UK's businesses now adopting some form of AI.

On one view, there will be familiar arguments around the extent of 'silent' cover available, such as we saw years ago in relation to cyber risks and the extent to which D&O policies could respond. On the other, on the face of a typical D&O policy and the widely drafted provisions therein, there may be affirmative cover for losses caused by the use and deployment of AI.

Whether there is or is not cover is clearly going to turn on the precise drafting of the policy and the extent of the long list of exclusion clauses that a D&O policy invariably contains. In an evolving area, and with one eye on the nature of AI-related litigation that is already being seen in the US, D&Os and their advisers will do well to think carefully about the scope of cover they require.

Concluding remarks

Between the 2025 and 2026 editions of this Policyholder Review, we have commented on the following risks:

1. The Economic Crime and Corporate Transparency Act 2023.
2. Significant new precedents in relation to directors' duties.
3. Claims arising out of increasing numbers of company insolvencies.
4. Climate change-related risks.
5. Claims arising out of AI, including 'AI-washing', as increasingly seen in the US.
6. Increased regulatory activity (and fines) and accountability for individuals.
7. Increase in securities litigation.

This extensive list speaks volumes about the challenging environment for D&O claims, reflecting the rapidly evolving underlying risk landscape, which will not abate. For the most part, the claims market for these risks in this jurisdiction is in its infancy, but insureds are still at risk through international markets and stakeholders.

Policyholders and their brokers must be increasingly precise about the cover that is required and understand where the gaps in cover may be. There is a myriad of ways that a business and its insured persons could find themselves the subject of unwanted scrutiny by a variety of third parties, which will quickly drain resources if inadequate cover was purchased in the first place and/or if a claim is not appropriately managed from the minute it first arises.

Meet the team

Aaron Le Marquer

Head of Policyholder Disputes

With over twenty years' experience in insurance law on both the policyholder and insurer side, Aaron is a leading advocate for policyholders in diverse sectors including financial services, hospitality and retail, energy and construction, and sports and entertainment. Known for leading a series of high-profile Covid-19 business interruption test case litigation in recent years, he is experienced in all commercial lines of business, including business interruption, directors and officers, professional liability, cyber, environmental risks, and construction. Aaron spent eight years practising in the Asia Pacific region and is particularly experienced at resolving international and reinsurance disputes, often via arbitration.

Aaron has been ranked as a leading insurance practitioner in the Legal 500, Chambers, and Lexology Index (formerly Who's Who Legal) since 2013. He was named as The Times Lawyer of the Week in 2023, and listed in The Lawyer Hot 100 in 2025.

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> **Aaron Le Marquer is genuinely outstanding. … A standout name in the market."**
>
> *Legal 500 2026*

Chloe Derrick

Partner

Chloe specialises in insurance coverage and professional negligence. Having previously acted for insurers, she now acts exclusively for businesses and individuals in high-value disputes against the insurance market and the financial and professional services sectors. Chloe has successfully recovered significant funds for clients across insurance lines, and has represented clients in disputes spanning a number of jurisdictions (including the United States, Canada, South Africa, Mauritius, Gibraltar, and countries across the Channel Islands and Europe).

Before joining Stewarts, Chloe advised Lloyd's and London market insurers on their high-profile market loss exposures and drafted policy wordings for existing and new insurance products. Chloe is ranked by both Chambers and Legal 500.

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> **Chloe is wonderful to work with. She has deep expertise in her specialism and is very personable and conscientious. She is able to explain things in a clear way to non-lawyers and lawyers alike."**
>
> *Chambers 2026*

James Breese

Partner

James is ranked by Chambers and Legal 500 as an 'Up and Coming' and 'Next Generation Partner'. He has represented policyholders in the UK and internationally for eight years, having previously acted on the insurer-side. James uses his knowledge of both sides of the market to strategically advance policyholders' complex insurance disputes.

James' clients range from listed companies, private equity houses, asset managers and multinational enterprises, to high-net-worth individuals and directors of companies. He is regularly instructed to resolve coverage disputes under W&I, D&O, cyber, and investment management insurance policies.

Since 2020, James has also represented policyholders in the leading Covid-19 insurance litigation in the Commercial Court and Court of Appeal. James is widely regarded for his strong business interruption insurance expertise having recovered tens of millions from insurers, including for distressed or insolvent businesses.

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> **James is easy to work with, pragmatic and clear, and he produces great results."**
>
> *Chambers 2026*

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Policyholder Disputes at Stewarts

We act exclusively for policyholders in high-value, complex insurance disputes.

Our market-leading Policyholder Disputes team represents businesses in insurance coverage disputes, including cyber, financial and professional risks, construction, business interruption and property losses.

We only represent policyholders in disputes against insurers. Our team has experience acting for local and multinational clients in all sectors, including financial services, entertainment, property, construction, hospitality, retail, logistics, manufacturing, energy and sports.

We do not act for London market insurers, and so are free to pursue claims against the insurance market.

We are one of the largest dedicated policyholder teams in the UK market, and all three of our partners are ranked as leading practitioners in the main legal directories. Our team's cases have been listed in The Lawyer's Top 20 Cases and Top 10 Appeals for the last four years consecutively.

Stewarts is a litigation powerhouse, and we leverage the firm's broader resources where subject matter experts are required, including in tax, insolvency and asset recovery, securities, fraud and employment law. Our combined resources in these areas provide a unique one-stop-shop for insured companies and their directors and officers.

We regularly act in English litigation and arbitration for clients based in overseas jurisdictions with insurance placed through the London market. Our team is experienced in handling disputes with a broad international reach with a particular focus on the US, and Middle East and Asia Pacific regions.

Our firm has unrivalled experience in putting together innovative costs arrangements to help with insurance disputes. The use of third-party funding, after-the-event insurance and risk-sharing fee agreements enables our clients to manage risk and litigate from a position of financial strength.

> **Stewarts' insurance team is one of the leading policyholder teams in the country."**
>
> *Legal 500 2026*

> **Stewarts know how to get the best possible results for their clients. The team are extremely knowledgeable and we have complete trust in their ability to handle the most complex insurance matters."**
>
> *Chambers 2026*

About Stewarts

Stewarts is the UK's largest disputes-only law firm acting in some of the most high-profile and ground-breaking cases.

Specialist expertise

We are widely recognised for our innovative and cutting-edge approach to high-value and complex litigation. Clients instruct us when the stakes are high and where genuine disputes experts are needed.

Our strength and depth rivals that of many disputes teams across the elite UK, US and international firms.

Conflict-free status

As a disputes-only firm, we are conflict-free and uniquely placed to advise where other law firms may be conflicted.

Client service

We get to the core of the dispute at hand as well as our clients' underlying commercial and strategic objectives so that our advice is tailored and holistic.

Our lawyers handle a small number of cases to ensure that they give our clients the care and responsiveness they need to go against the most well-resourced opponents.

Reputation

Our reputation is confirmed by our rankings in the leading legal directories as well as The Times Best Law Firms. We are consistently recognised as a "truly client-focused outfit whose calibre and experience is second to none".

International reach

The great majority of our work is international. As an independent law firm, we are free to work with our clients' existing advisers and can also draw on our strategic alliances with leading international law firms. This enables us to work in a global counsel role to coordinate complex multi-jurisdictional

Depth

We have over 200 lawyers, including 90 partners, and 480 staff across our London and Leeds offices.

Clients

We act for corporates and individuals in high-value and complex disputes in the UK and around the globe.

Practices

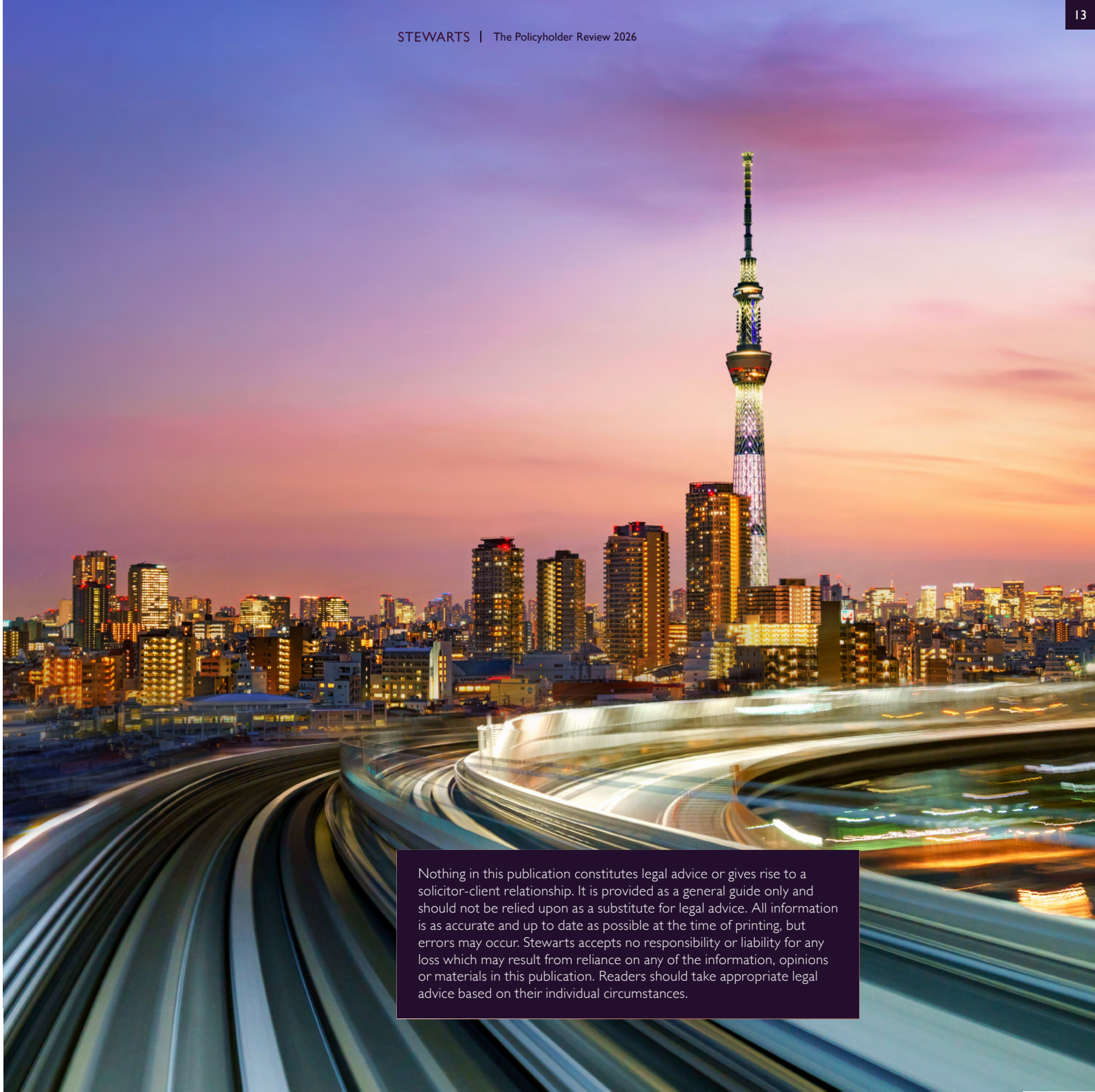
We have 15 practice areas across Commercial Disputes, Private Client Disputes and Injury Disputes.

Rankings

All of our practices are highly ranked in the Chambers and Legal 500 guides

Stewarts would like to thank the following for their contributions to The Policyholder Review 2026:

- Howden
- Hemsley Wynne Furlonge Partners Limited
- Lockton
- Marsh
- Solomonic
- Westgate Communications
- Simon Manuel



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