

Horizon scanning and emerging insurance risks

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Identification and evaluation of risk is essential in decision-making. Some risk can be accepted, the rest must be managed. But risk is not static. Horizon scanning is about identifying, evaluating and managing change in risk, preferably before it manifests as a loss or becomes a threat to the business.

Every organisation will approach this in a different way, depending on resources, balance of risks, personalities and skills.

Asbestos was reported to cause health problems in the late 19th century but it was not until the 1930s when any reasonable employer should have been aware of the risk and not until the 1950s when small exposures were considered lethal. By then it had been used in vast quantities with hundreds of applications.

What of today's growth areas like mobile phones, nanotechnology or the emergence of concerns from shift working?

This "Issues Forum" discusses good practice in managing change in liability risks, the role insurance can play and practical advice on considering emerging risks.



Definitions

Emerging risks is a term applied to changes to current risks (and changes to the effectiveness of risk management measures) and to new risks. The relative importance of each will depend on circumstances but it is important that this term is fully understood before designing a formal response to it.

Current risks are numerous e.g. your chosen supplier may outsource to a lower quality supplier, interest rates may vary, data may be lost to a competitor etc. Each of these will already have defined tolerances and decision responses. The task is to trigger decisions at the right time. The more critical the decision the more effort you will put into foreseeing its arrival. The effect will be on the bottom line, this year or next year. The emerging risk function must identify changes in risk and changes in the efficiency of risk management measures.

New risks are those for which no explicit account has been made in risk management and which have the potential to stress the resources of the organisation. Prime examples of New Risks include changes in legal regime, new technology and new knowledge about current activities.

Date of Knowledge for the purposes of horizon scanning means industry knowledge about a given risk. In practice it is a date set, retrospectively, by the Court when an organisation ought to have known it should have taken remedial or preventative steps to control the risk.



Effective risk management

All organisations should consider the role of horizon scanning and emerging risks within their risk management structure such that policy, strategy, organisation and decision latitude can be defined and monitored.

The process for decision making will normally follow the model above.

Risk transfer and insurance

How proactive an organisation is in managing emerging risks will depend upon its policy. Significant investment may be required as expertise in emerging risks is relatively rare; it often requires knowledge of duty, causation, latency, drivers, underlying science, case law, drift in case law and scaling factors.

The presence of such knowledge or expertise within an organisation could lead to a greater duty or an earlier date of knowledge for a given risk that may not apply to other organisations. Whilst this could be viewed as burdensome, the readiness of the organisation to react to change will bring advantage over those organisations that chose simply to transfer the risk to insurance. In other words, by the time the organisation becomes aware of the practice they should have adopted e.g. by case law, it could well be too late, leaving the organisation exposed to past liabilities.

Identify and evaluate

The organisation's risk expert must identify and evaluate change to known and to new risks. The organisation will have already stated the degree of change which must be reported and the expert will already know what drivers for change there are.

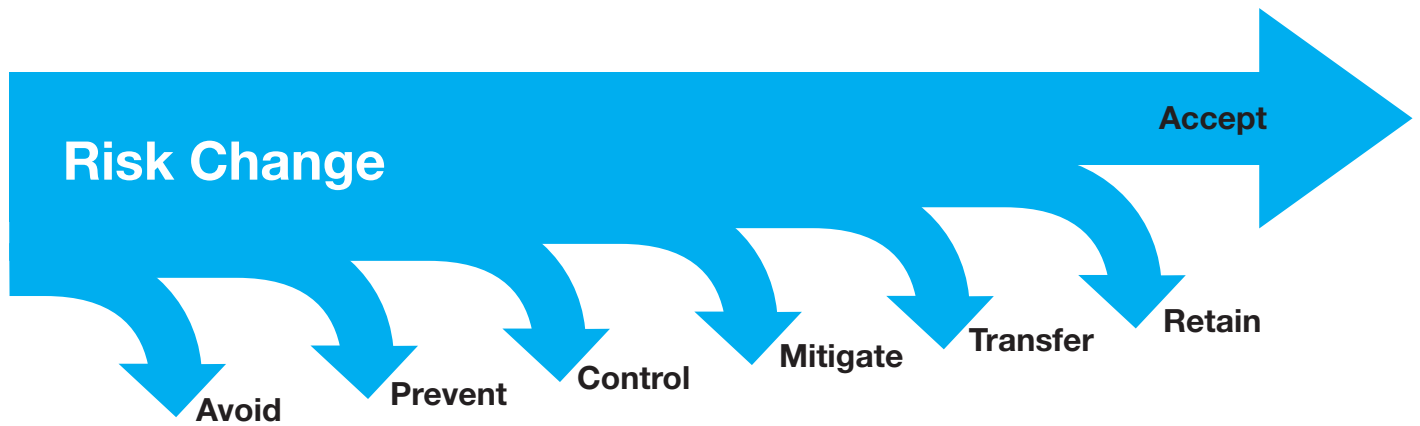
For liabilities, the key drivers will be in:

- duty of care standards
- date of knowledge
- causation
- remediation
- rehabilitation
- quantum.

Identifying new liability risks requires a keen interest in challenges to the status quo. This should involve surveying the right academic journals, official web sites, trade news and news "infotainment" sites, looking for changes to facts, principles, markets, opportunities, trends and concepts. Such research can take considerable effort and a balance between internal resource and outsourcing should be made. Initially, the aim is to understand the risk and how it works, occasionally a quantitative model is needed before advice or recommendations can be offered upwards. Companies should add analysis of claims data, specific regulatory activity and specific lobby group activity in their sector. Those with extreme sensitivity to risk might add searches of internet traffic concerning their products.



Alarmist reports in the media are of use in alerting the need for further thought and research but of little value in making decisions; what matters is objective information evaluated by the appropriate expert. Unfortunately the media thrive on plausible ideas, coincidences and word play; much time is wasted on red herrings. Equally unfortunately some liability exposures such as Directors and Officers can respond to media interest, as may regulatory activity.



The expert will already know there is rarely a definitive study or datum from research sources. Every piece of information needs to be evaluated and set in the context of other reports. The effect the datum has on exposure must be weighted by the reliability of that datum.

Perhaps fortunately, a “weight of evidence” is usually required before the status quo on date of knowledge or causation is altered by the courts. The effect is to make changes in liability exposure for new risks rather a slow process, giving plenty of time for response. But slow also encourages delay.

For example, the probability of causation being accepted (>50% probable) for VWF was predictable 14 years before any court so found. A lead time of 14 years couldn't have been predicted but immediate action to meet a reasonable standard of care could have eliminated 14 years' worth of harm and unfunded claims exposure. It could also have proved to be a waste of money if the courts had unexpectedly decided against causation when asked.

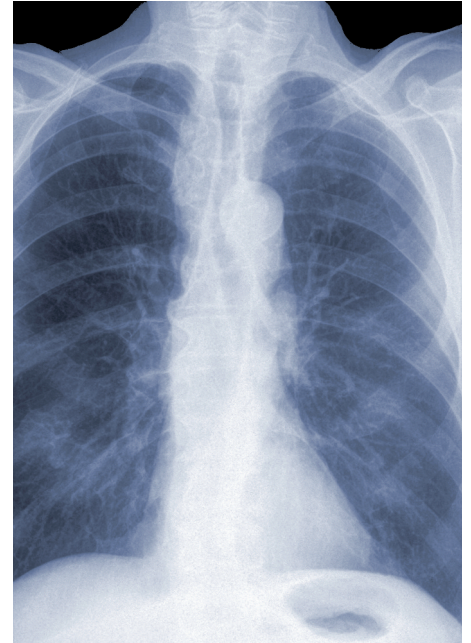
Act

The kinds of action that can be taken when risk changes ought to be fundamental to the design of a horizon-scanning system. There is no point detecting change if there is no possibility of responding to it. Accepting a risk or change of risk is a valid option if fully informed.

New information must be assessed against these available responses and the evaluation. Risk which cannot be managed at the business stream level can be offset at a more strategic level by diversification, sale of assets, cost cutting, investment returns, increasing low risk activity, stock market activity, price hikes, lobbying, increasing reserves, etc.

Monitor and review

Each aspect of the emerging risks system can be monitored. Too much emphasis on identifying minor change in risk leads to wasted management time and responses, but missing an important change not only exposes the organisation to the risk but also suggests the system is underperforming. Recommendations from the system are either accepted or rejected, too many rejections suggests the need for greater alignment between evaluations and business goals. Compliance with accepted recommendations must also be monitored.



Regular review would begin with a reassessment of the vulnerability of the organisation to risk. Areas of particular vulnerability or aggregations of risk ought to be the main focus of the emerging risk work. Vulnerabilities and the expertise needed to care for them vary as for example, markets, products, regulations and personnel change.

Examples of current liability issues

Pleural plaques:	In 1986, civil law gave credence to the concept of combined effects, i.e. biological change combined with anxiety, being sufficient to give rise to a cause of action. The recommended date of injury-in-fact for public liability was therefore the date the medical opinion caused the anxiety. This was unacceptable as a solution for liability insurers but it favoured the conclusion that there was in fact no injury. The recommendation was therefore to challenge the inaccurate legal precedents. Following recent judgements pleural plaques are now compensable in Scotland but not within England and Wales.
Nanotechnology:	Uncertainty in liability risk shows no sign of being addressed by regulators or toxicologists for at least another 5 years. Toxicological approaches show no signs of being reliable for regulation either. Current recommended action is to develop a risk rating system which does not depend on uncertain toxicological data and favours primary control of exposure.
Shift work:	Associations between cardiovascular disease and shift work are increasingly credible. Where these are cumulative in pathogenesis but indivisible in outcome it is likely (assuming Bailey v MOD stands) that claims will be made and paid. There are precautionary and non-specific guidelines already in place. Insurers will consider reserving now for incurred but not yet reported claims (IBNR), and premium change may follow with development of claims experience. The association between breast cancer and shift work remains more speculative but is of greater interest to regulators.
Whiplash:	Current models of causation, prognosis, rehabilitation and diagnosis are not supported by coherent evidence. However, case law has not been well positioned for change in claims strategy. Current strategy is to increase the use of objective data in diagnosis and prognosis and keep looking for objective coherent approaches to adopt.
Fructose:	Knowledge of causation of two kinds of disease is developing. Regulatory standards permit exposure at levels higher than those where risk is detectable. All stakeholders should anticipate changes in regulatory standards and there will be date of knowledge implications.
EMFs and mobile phones:	Exposure is everywhere but is there any harm done? Thus far all serious reviews of causation have failed to find sufficient evidence to cause concern except at very unlikely levels of exposure. However, reputation risk varies quickly with media attention and mishandling concerns could be very damaging.
MSD/Manual handling:	The almost complete failure of regulations to reduce the incidence of unexplained pains and disability continues to baffle the regulators. They therefore believe there must be high levels of non-compliance or there is a need for even more regulation or even rehabilitation. More regulation is on the way but is as lacking in supportive evidence as was the original "six pack". Powerful risk factors for unexplained pains and disability have been identified but don't suit the model of the world that the regulator is happy with. Organisations could choose to manage the real risks in addition to complying with ineffective regulations.
GM foods:	The first GM foods have proved commercially successful, safe to eat and more or less equivalent to non-GM foods. So far no superweeds or superpests have emerged. Uncertainties remain, particularly in relation to effects on microorganisms in the gut and what would happen if GM was universally adopted. New GM foods are being developed to deliver greater nutritional or medical effects. Volatile public opinion is the main risk at present, but the GM organisms in development have greater potential to affect the environment.
Ageing population:	There are very many risks associated with this demographic trend. Among them, the increased likelihood that occupational or product exposure leads to disease in old age. In addition, as retirement ages increase, the number of people at work with illness will increase. The new "Fit note" will potentially increase this further.



Summary

Horizon scanning permits risk volatility to be foreseen and planned for. Known risks will change and risks for which no specific action has yet been taken will emerge. Liability horizon scanning is particularly complex but manageable by combining expertise and a keen interest in challenges to the status quo.

Organisations who are proactive will be well placed to react to change prior to the date of knowledge being established in the courts, and can therefore reduce their future liabilities.

Author

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