

Professional indemnity and robo-advisers

Robo-advice is advice generated by an algorithm. Liability may arise from negligent advice given by a firm, but not by a human professional, who would be typically covered under a professional indemnity policy. This differs from product liability, as there may be no injury sustained or the system design may not be defective. However, the advice the AI gives out could still be negligent.

But what happens when AI is used to give professional advice? There have been advances in Robo-adviser capabilities. This ranges from Robo-advice for investments to potential applications in LawTech and even chatbots that teach Cognitive Behaviour Therapy (CBT), using algorithms to generate messages (Techemergence, 2018; Woebot, 2018; Hudsonmckenzie, 2018).

Robo-advice for investment tends to use a platform that takes some parameters given by the consumer and with algorithms, constructs a portfolio of assets (typically from buying Exchanged-Traded Funds). Such Robo-advisors use AI to varying extents in their selection, some using machine learning to simulate past performance (Techemergence, 2018).

To date there is not much 'advice' given to the consumer about what their risk appetite should be or how much they should invest. If this changes and Robo-advice takes on an increasingly professional dimension, then liability for negligent advice could arise.

This would also apply to any Robo-advisers giving legal advice, or any of the key areas where negligent advice amounts to a breach of contract or is tortious. This creates challenges and opportunities for professional indemnity insurers. It is complicated in the transition phase, where professionals use AI to assist rather than AI doing all the decision-making. This is where liability may still be assigned to the professional indemnity policy if the professional ultimately is at fault.

Some chatbots are being integrated into other platforms such as Facebook. A therapy chatbot like Woebot gives check-ins and offers step-by-step guidance. The human-like interaction is thought to help engage people and offer a compassionate, free psychological service (Woebot, 2018).

As with most existing chatbots, they do not give professional advice on which someone would act solely. This could change in the future as AI matures. Who would be liable for the advice given; the providers of the application or the designers?



There is a need for liability to be clearly outlined in the contract. If personal data is not limited to just simple details but enough data is used to provide a full psychological profile of someone, then any data breaches could be very serious and could potentially expose vulnerable individuals.

How these chat history records are stored also creates problems. If they are kept, this increases the chance of a significant data breach. However, if they are deleted, this could create problems in litigation, especially if there is a latency between the advice and the presentation of a claim, say for instance, medical advice.

Extract from Lloyd's publication "Taking control: artificial intelligence and insurance"

<https://www.lloyds.com/news-and-risk-insight/risk-reports/library/technology/taking-control>