



Motor Predictions 2022

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1. Repair delays impacting hire costs

The repair industry is currently facing numerous challenges thanks to a combination of Brexit, COVID-19 and supply issues. This is resulting in problems sourcing parts; parts being delayed; and a lack of skilled workforce. Consequently, repair times continue to increase, which is impacting credit hire durations and overall costs. Intervention and making proactive attempts to place the claimant into an insurer's own network will be more important than ever, as well as working with a fully resourced supply chain. In addition, any credit hire protocols which do not allow period challenges will need to be reviewed.

2. Accidental damage fraud set to increase

In response to insurers having a tried and tested strategy to tackle fraudulent claims in the motor, personal injury and credit hire arenas, fraudsters are turning their attention to accidental damage (AD) fraud. In the wake of the recent Official Injury Claims (whiplash) reform changes, we predict a marked increase in AD, recovery, storage, costs layering and damage to property claims that have a fraudulent element needing investigation, with or without an additional credit hire or bodily injury claim component.

3. New motoring offences will see an increase in custodial sentences

The proposed new offence of causing serious injury by careless driving has been put forward by the Government "to close a gap in the law that fails to recognise the harm caused where drivers cause serious injury by their careless driving." This new offence could lead to a maximum of 2 years' imprisonment for drivers who hitherto could have been dealt with by way of penalty points on their licence and a fine. The offence, which forms part of the Police, Crime, Sentencing and Courts Bill, will mean that the consequences of a driver's momentary inattention, lapse of concentration or error in judgement will potentially be far more significant than their culpability.

4. The brakes will be put on automated lane keeping systems

Despite the UK Government's appetite to find a first use case for automated driving under Part 1 of the Automated and Electric Vehicles Act 2018 in the form of automated lane keeping systems (ALKS), concerns have been voiced by industry stakeholders about the safe deployment of these technologies under the current UN-ECE Regulation 157 which does not allow for lateral movements out of lane. The Department for Transport's Centre for Connected and Autonomous Vehicles recently announced that Thatcham Research and Zenzic are working on a proof of concept for an Automated Driving System Consumer Rating to be delivered in the Spring of 2022. We do not expect the Secretary of State for Transport to list any vehicles as automated any time soon, nor do we expect manufacturers to release ALKS vehicles for use on UK roads before late 2022 at the earliest.



5. Expect more automated evidence gathering in low value claims

Part of the widespread reform around the management of low value whiplash claims was the introduction of the Official Injury Claim portal, designed to simplify the process and reduce the costs associated with soft tissue injuries arising out of road traffic accidents. Under the new rules, insurers must upload a compliant signed statement from their driver to the portal within 30 working days if they wish to dispute liability, failing which they will be deemed to admit. Expect to see new digital solutions that use automation to speed up the collation of evidence in portal claims, such as the Automated Compiling of Evidence solution jointly developed by DAC Beachcroft and Automated Insurance Solutions.

6. Cross-border fraud will increase in the wake of new regulations in England and Scotland

The implementation of Qualified One Way Costs Shifting (QOCS) in Scotland and the Whiplash Reforms in England and Wales will drive an increase in fraud across the English / Scottish border. The combined effect of these changes gives claimant solicitors a jurisdiction in Scotland with more significant damages for routine whiplash injuries, together with an entitlement to costs - with no real adverse costs risk. Without the concept of fundamental dishonesty and with no equivalent to s57 Criminal Justice and Courts Act 2015 despite the introduction of QOCS, this could well be seen as an invitation to bring unmeritorious claims whether they arise from genuine accidents without injury or accidents staged purely for financial gain.

7. Expect more cross-jurisdiction litigation in the English courts

The Supreme Court decision in *Brownlie* will see the return of proceedings being issued in the English courts for claims arising from accidents overseas - something which, for the most part, ceased temporarily post-Brexit, as automatic jurisdictional rights were lost. It was held that 'damage' sustained within the jurisdiction ought to be interpreted in its broadest sense so that, where consequential effects of an accident are felt here, it is sufficient for jurisdiction to be established. There remains, however, uncertainty as to the extent to which the more trivial consequences of minor injury can legitimately be said to be harm within the jurisdiction and it remains open to overseas defendants to challenge whether England is the most appropriate forum. We anticipate a high volume of satellite litigation on such points as the parameters of *Brownlie* are tested.

8. Legislative change in the UK to reverse the effects of Vnuk

We may finally see legislative change in the UK to reverse the effects of the ECJ ruling in *Damijan Vnuk v Zavarovalnica Triglav*, which will limit the potential scope of compulsory motor insurance to the definition as contained within the Road Traffic Act 1988. While the Motor Vehicle (Compulsory Insurance) Bill, which seeks to remove *Vnuk* liabilities, is currently progressing in the House of Commons, as a Private Members' Bill, this may not progress much further. Nevertheless, the UK Government pledged in February 2021 to remove from UK law the effects of the ruling and while this is unlikely to be a high priority, there may be some substantive progress by late 2022.

9. Expect to see new forms of ADR in high volume claims handling

A high volume of trials and hearings are still being postponed due to a general lack of judges, particularly in the more remote courts, due to the ongoing impact of COVID-19 and the attempts to catch up on the current backlog. Whilst the court services have worked hard during the pandemic, with innovations such as the Nightingale Courts and moving to remote hearings, the sheer volume of cases in the system means that issues will continue long into 2022. Expect to see further innovations in alternative dispute resolution methods in low value claims to compensate for this.

10. Greater collaboration in the drive to zero emissions

With the recent COP26 summit highlighting the need for urgent global collaboration to achieve the ambitious targets set in respect of global warming, there is a renewed vigour in the commitment to banning the sale of carbon emitting vehicles by 2040. Expect greater collaboration between automotive industry stakeholders to leverage economies of scale, and governments of leading markets to provide greater support to those in emerging and developing economies. But with key nations including China and the United States, as well as various car manufacturers, failing to put their names to the Glasgow pledge, it remains to be seen if there is sufficient political will to realise the ambitions of the Paris Agreement.



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11. New legislation for electric scooters in Ireland

The legalising of e-scooters in Ireland will create new underwriting opportunity. Currently under Irish law, the use of electric scooters is not specifically regulated and by default is covered under the Road Traffic Act 1961. In an attempt to formally legalise their use, the Irish Government is set to enact new legislation in the form of the Road Traffic (Miscellaneous Provisions) Bill. The Bill would create a new vehicle category called Powered Personal Transporters (PPTs) that would not need a driving licence, tax or insurance. It is expected that a significant number of e-scooter service providers will start to operate rental services in major towns and cities. This will create an opportunity for insurers who can underwrite schemes for e-scooter sharing platforms and provide personal accident products without the requirement to have regard to road traffic legislation and regulations. In the UK, e-scooter trials are already in operation as part of the Government's strategy to tackle both the future and green mobility agendas, with legislation expected to follow an analysis of the data collected. It remains to be seen if the UK Government will follow Ireland's lead in legislating to legalise private e-scooters akin to electrically assisted pedal cycles (e-bikes), without mandating the provision of insurance against third party liabilities, nor the use of helmets.

Contributed by our Dublin office.

12. Electric vehicles heading for repair capacity crunch

The Institute of the Motor Industry predicts that by 2030 the UK will need around 90,000 qualified technicians to service the rapid growth of electric vehicles (EV) as the government ban on the sale of new petrol and diesel vehicles from 2030 - and hybrids from 2035 - approaches. Based on current growth estimates, there could be a shortfall of 35,700 technicians trained to handle EV. With the technology constantly evolving, the challenge of ensuring enough skilled repair technicians are available can only grow. Scarcity of skilled labour is pushing up repair costs, already higher because of the complexity of the vehicles. The cost of EV claims is also influenced by repair delays, with an EV repair taking significantly longer to complete than one on a vehicle with an internal combustion engine. Insurers are rushing to collect data to help them rate EVs more accurately but they need to be sensitive to the public policy demands to encourage EV.



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