

Examination syllabus

Motor Insurance



At the end of this unit, candidates should be able to demonstrate an understanding of the:

- Risks and legal considerations associated with motor insurance;
- Scope of cover for motor car, motor cycle and commercial motor insurances;
- Key market practices related to motor insurance;
- Main underwriting considerations;
- Claims practices related to motor insurance.

Assumed Knowledge

It is assumed the candidate has knowledge of the fundamental principles of insurance as covered in IF1 Insurance, legal and regulatory, and P05 Insurance Law or equivalent exams.

Summary of learning outcomes

1. Know the nature of and main factors impacting on motor risk;
2. Understand the scope of cover available for motor cars, motor cycles, commercial vehicles and other motor risks;
3. Understand the market practices of motor insurance, including documentation;
4. Understand risk perception, evaluation and underwriting of motor insurance;
5. Understand the claims considerations and procedures of motor insurance.

Notes

- The syllabus is examined on English Law and practice
- The April session will test the legal position as of 31 August of the preceding year
- The October session will test the legal position as of 28 February of the same year

Examination syllabus

1. Know the nature of and main factors impacting on motor risk

- 1.1 Motor risk
 - 1.1.1 Different types of motor risk – third party liability, first party damage, terrorism, riot, war and nuclear risks;
 - 1.1.2 The typical frequency and severity of motor risks.
- 1.2 Legislation and other factors
 - 1.2.1 Key provisions of the Road Traffic Acts: principal road safety provisions, licensing of drivers, miscellaneous and general, relevant case law;
 - 1.2.2 Compulsory Motor insurance – Part VI of the Road Traffic Act – and how the underwriting of insurance helps control motor risk;
 - 1.2.3 Vehicle use and driving limitation;
 - 1.2.4 The Motor Insurers' Bureau – the Uninsured and Untraced Drivers Agreements, the effect of the Domestic Agreement (Article 75) and its influence on market practice;
 - 1.2.5 Insurance Offences; Void and voidable policies;
 - 1.2.6 Uninsured Driving – risk implications and controls.

2. Understand the scope of cover available for motor cars, motor cycles, commercial vehicles and other motor risks

- 2.1 Indemnity and main types of cover
 - 2.1.1 The motor car policy and its structure;
 - 2.1.2 Cover for third party liabilities – relevant exclusions and limitations;
 - 2.1.3 Cover for loss or damage to the insured vehicle – relevant exclusions and limitations;
 - 2.1.4 Personal accident benefits, cover for personal effects and medical expenses;
 - 2.1.5 Policy conditions and general exceptions;
 - 2.1.6 Minimum EU cover and foreign use extensions;
 - 2.1.7 Right of recovery clause;
 - 2.1.8 Uninsured loss recovery and legal expenses;
 - 2.1.9 Breakdown assistance.
- 2.2 Cover for motor cycles, commercial vehicles and other motor risks
 - 2.2.1 Motor cycles;
 - 2.2.2 Goods carrying commercial vehicles;
 - 2.2.3 Hire cars;
 - 2.2.4 Passenger carrying commercial vehicles;
 - 2.2.5 Special types;
 - 2.2.6 Agricultural and forestry vehicles;
 - 2.2.7 Motor trade.

3. Understand the practices of motor insurance, including documentation

- 3.1 The new business process – proposal declaration, policy document, schedule and Statements of Fact; the certificate of insurance and cover note
- 3.2 Mid-term policy alterations and documentation
- 3.3 The renewal process, including documentation and lapses
- 3.4 Legal issues arising from cancellation
- 3.5 Legal issues arising from documentation issued via intermediaries.

4. Understand risk perception, evaluation and underwriting of motor insurance

- 4.1 Rating and underwriting of motor vehicles and users
 - 4.1.1 Use of parameters, standard rates, rating models and pricing methods;
 - 4.1.2 Key risk assessment approaches and underwriting options;
 - 4.1.3 Proposal evaluation – legal considerations, validation methods and fair obtaining notices;
 - 4.1.4 Assessment of drivers and other users;
 - 4.1.5 Assessment of vehicles – groupings, modified vehicles, high performance and high valued vehicles;
 - 4.1.6 Application of loadings and discounts, including no claim discounts;
 - 4.1.7 Other rating and underwriting factors affecting the claims ratio;
 - 4.1.8 Factors affecting the expense ratio and operating ratio;
 - 4.1.9 Reinsurance applied to motor insurance.
- 4.2 Other types of vehicle and motor fleet
 - 4.2.1 Variations in underwriting for motor cycles, commercial vehicles and other motor risks;
 - 4.2.2 Underwriting fleet rated risks, contingent liability and occasional business use;
 - 4.2.3 Fleet risk management and its benefits in underwriting fleet risks.
- 4.3 Mid term and renewal underwriting
 - 4.3.1 Key issues in underwriting mid term changes – duty of disclosure, material facts and risk changes;
 - 4.3.2 Key issues in renewal underwriting;
 - 4.3.3 Importance of liaison between claims and underwriting functions.

5. Understand the claims considerations and procedures of motor insurance.

- 5.1 Claims management objectives and philosophy;
- 5.2 Validation and evaluation;
- 5.3 Counter fraud measures;
- 5.4 General claims handling principles applied to motor insurances;
- 5.5 Specific claims handling procedures applicable to private motor, commercial motor and motor trade insurance;
- 5.6 The role of the police in the claims process;
- 5.7 Market agreements and their effect: the ACPO agreement on fraud reporting, MIB Agreements;
- 5.8 The role of motor engineers, approved repairers and others involved in own vehicle and third party property repairs and replacements;
- 5.9 Procedure to assess bodily injury, accidental damage, fire and theft and third party losses;
- 5.10 Classification of damages and the use of single, provisional and structured settlements;
- 5.11 Dispute resolution – arbitration clauses and internal complaint processes, the Financial Ombudsman Service, Alternative Dispute Resolution.

Examination syllabus

Reading list

The following list provides details of various publications which may assist with your studies. Periodicals and publications listed as additional reading will be of value in ensuring candidates keep up to date with developments and in providing a wider coverage of syllabus topics. Any reference materials cited are authoritative, detailed works which should be used selectively as and when required.

Note: The examination will test the syllabus alone. The reading list is provided for guidance only and is not in itself the subject of the examination.

CII/Personal Finance Society members can borrow most of these additional study materials from CII Knowledge Services and may be able to purchase some at a special discount. For further information on lending and discounts go to www.cii.co.uk/knowledge

Motor Insurance. London: CII. Coursebook P94.

Motor insurance: theory and practice. Kenneth Cannar. 2nd ed. London: Witherby, 1994.

Reference materials

Bingham & Berryman's Personal Injury and Motor Claims Cases. 12th edition.

Beardsell, G. Brown, D. et al. Pether, M., Butterworths, 2008.

Dictionary of insurance, C.Bennett. London: Pearson Education, 2004. Also available online at www.cii.co.uk/knowledge/doi (CII/Personal Finance Society members only).

Guide to MIB claims: uninsured and untraced drivers. Andrew Ritchie. 3rd ed. Bristol: Jordan, 2008.

Handbook of motor insurance. London: Sweet and Maxwell, 1982-2002. Looseleaf.

The law of motor insurance. Robert M Merkin, Jeremy Stuart-Smith. 1st ed. London: Sweet and Maxwell, 2004.

Road Traffic Act 1988. London: HMSO, 1988.

Also available online at www.opsi.gov.uk/acts/acts/1988/Ukpga19880052_en_1.htm.

Periodicals

The Journal. London: The CII. Six issues a year. Also available online (CII/Personal Finance Society members only) at www.cii.co.uk/knowledge/journal

Post Magazine. London: Incisive Financial Publishing. Weekly.

Insurance Times. London: Newsquest Financial Media. Weekly. Also available on line at www.insurancetimes.co.uk

Websites

CII Knowledge Services, www.cii.co.uk/knowledge.

Association of British Insurers – www.abi.org.uk.

Examination guides

Guides are produced for each sitting of written answer examinations. These include the exam questions, examiners' comments on candidates' performance and key points for inclusion in answers. You are strongly advised to study guides for the last two sittings. Please visit www.cii.co.uk to buy online or contact CII Customer Service for further information on 020 8989 8464. Older examination guides are available (for members only) at www.cii.co.uk/knowledge/examguides.

Exam technique/study skills

There are many modestly priced guides available in bookshops. You should choose one which suits your requirements. You will also find advice at www.cii.co.uk/knowledge/careersupport (CII/Personal Finance Society members only).

For a more interactive approach, you should consider: Winning the brain game. London: CII, 2006. CD-ROM.

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P94: Motor insurance

Of all the classes of general insurance, Motor is one of the most interesting, spanning the insurance of customers' own vehicles, their third party liability and a range of other benefits arising from a multitude of different types of motor vehicles and the risks created from their use. Additionally, it is the class most talked about as, for most individuals, it is the only form of insurance which is compulsory by law, albeit the vast majority select wider cover than the minimum required by law.

Motor is also one of the most important classes for the insurance industry in terms of premium income, generating about £10.5 billion in annual premiums for UK business alone. It is, therefore, not surprising that, for the most part, it is a fiercely competitive market, with only limited opportunity for sustained profitable underwriting.

This study text is structured to provide you with an understanding of the risks and legal considerations associated with the insurance of motor vehicles and how insurers provide the cover required to meet the varied needs of their wide range of customers. It includes an examination of the law relating to compulsory motor insurance, together with the variations in cover provided for different types of risk and the key practices and processes involved in providing and servicing that cover. Finally, it addresses the important areas of how motor risk is priced, evaluated and underwritten and how motor claims are managed, together with the principles and practice associated with those key activities.

This study text will, therefore, be of value not only to those studying for the CII examinations but others engaged in the insurance industry with an interest in the subject of motor insurance.

It is assumed you have knowledge of the fundamental principles of insurance as covered in the CII courses IF1 Insurance, legal and regulatory, and P05 Insurance law.

Making the most of your course

You will see that throughout this study text we make references to potential sources of further information and have set some practical exercises for you to do. These activities have been designed to help you develop and practice some useful learning strategies which will reinforce your understanding and encourage you to apply what you have learnt to your daily work.

At the end of each chapter we have included a set of short-answer questions to help you test your understanding.

Additional learning resources

It is important for a practical subject such as this that you recognise that to gain the most from your studies, you need to build on your formal learning by drawing on the additional resources that are available in your field of study. This may include talking to your colleagues at work, reading workplace publications and referring to professional journals and websites.

Don't forget that the syllabus in the front of your study text also contains a list of useful additional reading.

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1: Motor risk and legal considerations

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A Motor risk	1.1.1
B Level of risk	1.1.2
C Legislation and other factors	1.2.1, 1.2.3
D Compulsory motor insurance	1.2.2, 1.2.5

Learning objectives

After studying this chapter, you should be able to:

- ☐ explain the nature of motor risk, the various forms this can take and the levels of severity risk can represent;
- ☐ outline the legislation which serves to limit risk and how this is achieved;
- ☐ describe the role and functions of the Motor Insurers' Bureau;
- ☐ describe the incidence and consequences of uninsured driving and the measures taken to combat this;
- ☐ outline ways in which risk can be minimised through the nature of insurance which is available.

A Motor risk

Rarely a week goes by without a motor accident featuring in the national press, often as headline news. Some of these are considered newsworthy simply due to unusual circumstances and can be quite minor, whilst others are tragic events involving death and serious injury. An example of the latter was an incident in 2001 when a car careered off the M62 at Selby in Yorkshire and travelled down a railway embankment on to the east coast main line. The stranded car was hit by an express train travelling at 117 mph and some of the train's carriages derailed before it entered the path of an oncoming freight train. In addition to the tragic loss of ten lives and injuries to others, considerable damage was caused to the locomotives, carriages and track. The total cost of the resultant claims was in excess of £30 million.

This type of accident, whilst infrequent, is not unique for there are a number of reported cases each year involving vehicles encroaching onto railway lines, albeit with less serious consequences. They do, however, illustrate the potential magnitude of loss which can arise from the use of a single privately owned vehicle. Motor risk is not limited to 'driving' accidents. Fire and theft are common causes of loss and recent severe flooding and storms have played their part in adding to the substantial risk associated with motor vehicles.

We shall explore the various perils and hazards that generate the risk

Motor risk is the foundation of this study text and in this chapter we shall explore the various perils and hazards that generate the risk, together with the legislation that exists to minimise and control it, including the compulsory insurance requirements which, in turn, help create the demand for third party motor insurance.

You will be aware of the principles and various categories of risk from your study of the CII study text IF1 and it is recommended that the relevant chapter of that course is now revisited to aid your understanding of this section.



Activity

Look up Selby on the internet and study the facts of this accident and how it happened (Google 'Selby Rail Crash').

Look to see how many different types of property were damaged.

A1 Particular and fundamental risks

Particular risks are localised in their cause and effect and can produce losses ranging from minor to major outlays, like the example above. By contrast, some risks can occur on such a large scale that they become uninsurable because of the insurance market's inability to cater for them. War is considered to be a fundamental risk and is not covered by motor policies. Similarly, damage by nuclear explosion or contamination is considered to be a catastrophic risk which is unsuitable for insurance. Despite this, some catastrophes, such as flood and storm, can be insured and feature as insured perils within the accidental damage protection section in a conventional comprehensive motor policy.

A2 Peril and hazard

You will recall from study of IF1 that the components of risk include peril and hazard. Risks arising from motor vehicles can be classified under five main categories of perils (i.e. those things giving rise to a loss):

- Death of or bodily injury to the occupants of a vehicle.
- Death of or bodily injury to other road users, including cyclists and pedestrians.
- Damage to the property of others (including vehicles and animals).
- Damage to the vehicle in use by accident (including storm, flood and vandalism).
- Damage by fire and theft (including attempted theft and deception).

In addition to the immediate loss or damage, all can give rise to consequential loss, such as loss of use of the damaged vehicle or other property or inability to carry out normal employment.

Hazard is something which influences the operation of the peril (i.e. the cause). The physical hazard is the physical nature of the risk and is something measurable, for example, the vehicle to be insured or the age and qualification of the driver. Moral hazard relates to the conduct and attitude of the insured person, reflected in failure to take reasonable precautions to prevent loss or driving carelessly, evidenced by claims or convictions.

Physical hazard is the physical nature of the risk

The following are examples of perils and hazard in motor risk. Most, but not all, of these are insurable by motor insurance policies or are provided for by other insurances.

A3 Third party liability

From your study of CII study text P05 (Insurance law) you will be familiar with the law of tort. Of particular relevance to motor liability is negligence, for most actions are founded in that tort. Less common are actions in nuisance and trespass. The tort of conversion has relevance to first party risk and will be considered in later chapters.

A4 Negligence

You will recall that negligence has been defined as 'the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do' (*Blyth v. Birmingham Waterworks Company* (1856)). The three essentials necessary to support a successful action are a duty to the injured party, a breach of that duty and foreseeability of loss. Furthermore, damage must have been suffered by the claimant for the action to succeed.

There is a duty on the driver of a motor vehicle to observe ordinary care or skill towards others using the road, whom he could reasonably foresee as likely to be affected as a result of a breach of that duty of care. Thus, the driver of car A, travelling too fast and failing to pay sufficient attention, in applying its brakes too late to avoid a collision with the preceding vehicle B, would be legally liable in negligence for the damage to vehicle B and injury to its occupants, together with costs flowing from the loss of use of vehicle B, for example, reimbursement of the cost of hire of alternative transport. The subject of damages is covered in chapter 7.

It is not uncommon for passengers in a vehicle to incur liability, typically, by carelessly opening a car door into a passing vehicle, cyclist or pedestrian, or throwing an object from the vehicle.

Remember that, whilst liability may be incurred for economic loss accompanying physical damage and resulting directly from it, it would not attach if the economic loss is too remote. In *Electrochrome Ltd v. Welsh Plastics* (1968), the defendant's employee, driving a lorry, carelessly damaged a fire hydrant, causing the water supply to be cut off from the claimant's nearby factory. The hydrant did not belong to the claimants and was not on their premises. It was held that whilst a duty of care was owed to the owners of the hydrant (as this was physical damage), it did not apply to the loss of profits suffered by the claimant.

Persons who suffer shock through fear for their own safety

Motor accidents have been a common source of actions in 'nervous shock' cases. It will be recalled that a person developing a psychiatric illness following the shock of witnessing an accident caused by another's negligence needs to fall within the two main categories of persons to whom a duty of care is owed; namely, persons who suffer shock through fear for their own safety (primary victims) and those who fear for the safety of others (secondary victims). The test of foreseeability has tended to be influenced by the claimant's proximity to the scene of the incident; in *Boardman v. Sanderson* (1964) the defendant knew that the injured party's father (the claimant) was in the vicinity of the accident and likely to witness the immediate aftermath of the incident involving injury to his son and the claimant was successful, whereas in *King v. Phillips* (1953) the mother of a child injured by the defendant's taxi was considered to be situated outside the range of physical expectation; she was in a house some 70 yards distant and saw the taxi reversing into the child's tricycle but not the contact with the child, who suffered only minor injury and was able to run from the scene.



Activity

For further examples of 'remoteness' see the P05 study text.

Hint. Look at *Bourhill v. Young* and *Alcock v. Chief Constable of South Yorkshire Police*.

A5 Onus of proof

In general, the onus of proof for actions based in negligence lies with the claimant but this is reversed where the duty is so plain that the thing 'speaks for itself' (the legal maxim *res ipsa loquitur*). A good example is found where a motor vehicle leaves the road, mounts the footpath and strikes a pedestrian. Here the onus of proof transfers to the defendant. Strict liability is a further example of this onus of proof reversal, demonstrated by the rule in *Rylands v. Fletcher* (1868), whereby something 'escapes', typically from one person's property, causing damage to that of another. For that rule to apply there must be a non-natural use of land (viz. a special use bringing with it increased danger to others). The case in point concerned the escape of water but the principle has been held to apply where fire escaped from premises housing a motor car, from which the fire emanated (*Musgrave v. Pandelis* (1919)). It follows that the vehicle does not have to be moving to create a liability. Furthermore, liability can arise from the use of a vehicle as a tool of trade (whether it is moving or stationary), such as mechanical diggers, which are prone to damaging underground cables when working below their wheelbase. The scope of this risk is considered in more detail in subsequent chapters.



Activity

Look up *Rylands v. Fletcher* in P05 and remind yourself of its facts.

A6 Vicarious liability

Vicarious liability attaches where one party becomes liable for the liabilities of another, due to the relationship of master and servant, a good example of which is employer and employee. This means that where an employee, in the course of their employment, injures a fellow employee or other party, the claimant has the option of bringing the action against the employee or the employer. The employer is invariably selected as it will have the means of meeting the claim; employers' liability insurance is compulsory by law, whereas the employee's personal liability cover, if it exists at all, would not ordinarily apply to this liability. By way of example, where an employee is using their own transport on behalf of their employer in the course of their employment, a vicarious liability would attach to the employer if the employee was found liable in tort. As we shall see later, in most cases such liability would be met by the motor, rather than employers' liability insurer. Other examples of where motor vicarious liability can arise are the owner who hires out a vehicle on a hire/driving basis and a firm which hires in a vehicle with driver, a common occurrence for site vehicles (e.g. diggers and dumpers).

A vicarious liability would attach to the employer

A6A Corporate liability

The incidence of death of, and injuries to, employees from work-related incidents is significant and a number of these arise from the use of motor vehicles in the course of employment. This can arise not only from an employee being injured as a passenger or whilst driving a vehicle on company business but, for example, by being run over or from being struck by a falling object (e.g. a load falling from a goods vehicle). **The Health and Safety at Work Etc. Act 1974** requires that employers ensure as far as is reasonably practicable the health and safety of employees at work; essentially this means examining what the risks are and taking appropriate measures to tackle them by employing good management. This would apply not only to the workplace but, for example, to ensuring drivers follow good practice in terms of avoiding fatigue by limiting driving hours appropriate to length of journeys.

This corporate responsibility of employers has been enhanced by the introduction of **The Corporate Manslaughter and Corporate Homicide Act 2007**, whereby a company (rather than an individual) can be found guilty of manslaughter in the same way an individual can be prosecuted, thus embracing senior directors and management in larger organisations, whereas previously prosecutions tended to succeed only against management in smaller firms. The Act came into force in 2008 and the first prosecution under it was brought in 2009, albeit this one did not involve a motor-related incident.

Activity

Refer to CII Knowledge Services Underwriting Faculty Technical Focus No1 – Corporate Manslaughter – for more information (available to CII members only).



A7 Contributory negligence

You will be aware of the general defences in tort from your study of P05. Of particular importance in motor cases is the defence of contributory negligence, whereby damages awarded to the claimant are reduced to the extent they were themselves to blame for them. This is illustrated in the case of a motorcyclist not wearing a crash helmet; in *O'Connell v. Jackson* (1972) the claimant suffered severe head injuries upon being thrown off his motor cycle whilst travelling along a main road, following impact from the defendant's car emerging from a side road. He was not wearing a crash helmet and there was evidence from three doctors that the injury would have been less serious had he been wearing one. The defendant was held solely to blame for the collision between the vehicles but the plaintiff was held contributorily negligent in that he was partly to blame for the additional injury he sustained by not wearing a helmet and damages were reduced by 15%.



Activity

Refer to study text P05 and note the circumstances of *Froom v. Butcher* (1975), including the findings in regard to the percentages of deduction applied in that case.

A8 Limitation of actions

Under the **Limitation Act 1980**, an action must be commenced within six years of the date when the cause of action accrued (three years for claims involving personal injury); this is usually the date when the damage was sustained by the claimant but there are exceptions and the courts have the power to extend these time limits. If the person with the right of action was under a disability, the limitation period would commence when that disability ceases. An example is a victim of a road accident in a coma. Another is minors, where the time limit begins from the time they reach their majority. The **Latent Damage Act 1986** applies solely to property damage and has the effect of extending the six year period by a further three years from the time the damage is discovered with an overall limit of fifteen years from the date of cause.



Question 1

Where a child aged 3 is injured, when is the claim out of time under the Limitation Act 1980? Why do you think it is important that solicitors have efficient diary systems?

A9 Trespass

You will recall that trespass takes three forms – trespass to the person, to goods and to land. When a car strikes a pedestrian or cyclist there is a trespass to the person, whilst the damage to the cycle is trespass to goods; driving a vehicle onto another's land without permission is a trespass to land. The relevance of trespass to motor liability has, however, become less relevant as the tort of negligence has evolved. It has been held that an action for trespass to property arising from a road accident would succeed only if the claimant could also show that the defendant was negligent and in *Letang v. Cooper* (1965), which involved a motorist negligently driving his car over the legs of a sunbather, an action in trespass failed due to the act being negligent and not intentional. This action had been brought in trespass (for which a limitation period of six years applied) rather than negligence, because the action had not been commenced within the statutory limit of three years. The tort of trespass, therefore, arises rarely in actions involving motor risks.

A10 Nuisance

There are two types of nuisance – public and private. Public nuisance is the carrying on of an activity likely to cause inconvenience or annoyance to the public (or a section of the public) or interference with a right common to all and is a crime. If, however, an individual can show that he has incurred harm or inconvenience greater than that suffered by the public at large a civil action in private nuisance is possible.

There are two types of nuisance – public and private

A vehicle carelessly parked overnight on an unlit road in a precarious position is a potential obstruction and, therefore, an unlawful interference with the passage of other road users. *Parish v. Judd (1960)* involved a collision with a parked car that had broken down and its lights would not operate; here it was held that the temporary presence of an unlit vehicle on a road at night did not constitute nuisance and there had to be an element of fault on the part of the defendant. In this case it had been towed to a position near a lit street lamp. Actions based on nuisance, without negligence, are consequently also rare in motor liability cases.

A11 First party damage and injury (i.e. the policyholder and their own property)

Innocent passengers in motor vehicles who suffer injury in those vehicles will usually have a right of action against one or more drivers of the vehicles involved. The injured driver too will have a right of action if the third party was responsible. These are the subjects of the third party liabilities discussed above.

The injured driver who was responsible for the incident naturally has no cause of action against another party, though they could have an element of protection for a possible capital sum payment or weekly benefit under a motor or personal accident policy making provision for such loss.

Likewise, there is no right of recovery for the cost of repairs/replacement of a damaged vehicle (and its accessories) if the driver themselves is responsible, unless accidental damage cover has been arranged. Similarly, damage by an unknown third party could leave the motorist with no right of recourse, but special arrangements apply where damage or injury is caused by an uninsured vehicle. This is covered in more detail later.

Damage to vehicles can range from minor scratches and dents to severe damage, sometimes rendering the vehicle beyond economic repair. Values too can range from modest amounts of several hundred pounds to refrigerated and agricultural vehicles worth amounts into six figures. The main cause of accidental damage arises from collisions between one or more moving vehicles and vehicles colliding with stationary objects. Apart from these, other perils and causes of first party loss include the following.

The main cause of accidental damage arises from collisions

A12 Theft and theft-related risk

A common cause of loss is theft or attempted theft of motor vehicles and their accessories, typically accounting for approximately 7% of total motor claims. Approximately 70% of theft claims by number are theft of the vehicle itself with the balance comprising theft from vehicles. The ratio for theft of motor cycles is about 95%. The development of robust alarms and immobilisers has helped curtail theft of unoccupied vehicles but there has been a consequent increase in vehicle hijacking and housebreaking, enabling the thief to obtain the keys by stealth or threat of violence to the owner. Particularly vulnerable to the latter are high valued vehicles 'stolen to order'. Vehicle plant (i.e. site vehicles) is particularly vulnerable as the vehicles can be of high value (often £100,000 or above) and there is a high demand for them, including from developing countries outside the UK. Another means of obtaining keys is by trickery, an example of which are impostors (complete with uniforms) presenting themselves as employees of car parks to entice the owner to voluntarily hand over cars for parking. The fitting of tracking devices to targeted vehicles and their consequent recovery following theft helps reduce the impact of these types of crime.

The **Theft Act 1968** provides that a person is guilty of theft if they dishonestly appropriate property belong to another with the intention of permanently depriving them of it. Vehicles taken without the owner's authority by untraced persons are generally regarded as 'stolen', even if subsequently recovered, as there is usually no evidence to show whether or not the intention to permanently deprive existed. Recovered vehicles have often been damaged during the time they were in the hands of the thieves and some, having been used in other crimes, are burnt out to destroy evidence which might identify the culprits.

The taking of a vehicle without the owner's consent by individuals known to the owner is an offence distinct from theft, as there is usually ample evidence there was no intention to permanently deprive. The culprit could have access to the keys by virtue of their association with the owner and would typically be a member of the same household. Handling of claims for this type of loss can be complicated and this is addressed in more detail in chapters 3 and 6.

Another related peril is theft by deception. There is a series of legal cases involving the sale of motor vehicles and other property, where the buyer's cheque proves to be worthless. It has been argued in some of these that the loss to the owner is not the vehicle but the value of the cheque and it is usual for this type of loss to be excluded from motor policies.

A13 Fire

Approximately 65% of all car fires are started deliberately to cover criminal activity, to make a fraudulent insurance claim or as an act of vandalism. The majority of accidental fires are caused by a faulty electrical component such as a bad connection or worn wiring and defective, or poorly connected, fuel lines, allowing fuel to leak and ignite on contact with hot exhaust manifolds or engine parts. A further risk arises from the use of heat or naked flames during welding near the fuel tank or feed pipes. Another is fire resulting from explosion or lightning. Apart from damage to the subject vehicle, there is the risk of spread of fire to other property, as in the Musgrave case above. Like thefts, fire often results in the vehicle being rendered beyond economical repair.

A14 Damage by animals

Motor accidents caused by animals straying onto the highway are common and there is a deal of case law on the subject. You will recall from study of P05 that damage caused by straying animals can provide a source of strict liability on the keeper by virtue of the **Animals Act 1971**. There are, however, exceptions to the strict liability rules for animals straying on to the highway and for this purpose the claimant must prove negligence and breach of duty. In *Donaldson v. Wilson* (2004) cattle escaped through a gate left open by a walker and were struck by the claimant motorcyclist, who suffered injuries. The gate led to a public right of way which crossed the field and was frequently used. Although the act of a third party (in this case, the walker) is a defence to an allegation of animals escaping on to the highway it was held on the facts of this case that there was a duty to undertake a risk assessment and the farmer was liable.

A15 Defective highways

Another common source of motor accidents is defective highways. The **Highways Act 1980** imposes a direct duty on highway authorities to maintain all adopted roads within its jurisdiction and it is expected that regular inspections of roads and pavements will be undertaken. In *Goodes v. East Sussex CC* (2000), 'maintain' was held not to include a duty to remove ice and snow and, following that case, the Highways Act was amended in 2003 (via the **Railways and Transport Safety Act 2003**) imposing a duty to ensure as far as is reasonably practicable that safe passage along a highway is not endangered by snow or ice. The adequacy of the frequency of inspections is a matter for consideration on the facts of the case and has spawned considerable case law.

The subject came under renewed scrutiny during the Winter of 2009/10 (the most severe winter for 30 years) when the adverse conditions, coupled with a shortage of road gritting salt, resulted in the need for critical prioritisation by some local authorities and the number of roads initially remaining untreated was reported to be generally greater than in previous years. Following the thaw there was an unprecedented demand for repairing pot holes in road surfaces which, during the time they remained unrepaired, resulted in a significant increase in vehicle damage claims.

A16 Riot and civil commotion

Although riot and civil commotion is rare in mainland UK, there have been incidents where cars have been used as roadblocks or set on fire when a riot takes place and insurance cover is usually available where the event occurs within Great Britain, the Isle of Man and the Channel Islands, but has historically been excluded for Northern Ireland and elsewhere in the world. You will recall from study of P05 that a statutory right of recovery by the property owner (or their insurers) for riot damaged property can exist against the police authorities under the **Riot (Damages) Act 1886**, if certain criteria are fulfilled.

A17 Terrorism

The planting of bombs in unattended vehicles in the UK began with the Troubles of the late 1960s and persists to this day, albeit the incidence is low. In almost all cases the vehicle is stolen and damage caused not only to the bomb laden vehicle but to surrounding property, often including other vehicles in the vicinity. A terrorist bomb caused considerable loss of life and serious injury to passengers on a bus, as part of the series of attacks on public transport in London in July 2005. Subsequent placing of bombs in parked vehicles in London in 2007 fortunately did not result in explosion, whilst in the same year a car was driven into an airport building in Glasgow by a terrorist.

A18 Earthquake

Earthquakes in the UK are relatively minor in terms of damage, injury and loss of life, compared to those in tropical regions of the world. Their incidence has, however, increased in recent times. An earthquake in 2008, affecting parts of England and Wales, measured 5.2 on the Richter scale and was the largest since a 6.1 reading in 1984. Given its size, the resultant damage was estimated to be quite small, mainly from cracks caused to buildings and toppling chimneys but the risk to vehicles is evident from the latter. Generally regarded as a fundamental risk, which is duly excluded from some motor policies, it is nevertheless a normal feature of household policies.

A19 Flood

Flood has become a significant and increasing risk to homes and vehicles in the UK in recent years. The estimated total cost of vehicle damage from the 2007 UK floods was to the order of £110m which, whilst of less significance than the buildings and contents element of the estimated total £3bn cost, is, nevertheless, a substantial risk to consider in the wider context of possible future events and representations by the industry for more effective flood defences.



Activity

Compare the risks of flooding to motor insurers with that of household and property insurers. Identify areas that insurers consider to be at serious risk from flooding. Look at www.environment-agency.gov.uk

A20 Storm and high winds

Particularly vulnerable were those high sided commercial vehicles

Damage to vehicles and injury to their occupants are common consequences of storms and high winds, typically from falling trees and displaced roof tiles or, less commonly, as in a recent example, from an unsecured car park barrier blown by a gust of wind through the car's windscreen, fatally injuring its driver. The hurricanes which swept the UK in 1987 and 1990 were of sufficient force to overturn some vehicles; particularly vulnerable were those high sided commercial vehicles, which lacked stability due to their being minus their loads.

A series of hailstorms in the 1980s, featuring giant-sized hailstones, caused widespread damage to vehicles parked near a major European airport and prompted reinsurers to introduce physical damage limits to treaties as the norm, for the first time.

A21 Damage by falling objects

Aside from falling trees and roof materials, which can fall on vehicles without the effects of storm, there are other objects and substances to consider, such as those arising from aircraft incidents. Past aircraft losses include the tragic Lockerbie air disaster of 1988 and an aircraft crashing into a house and garage near Biggin Hill in 2008, together with some crash landings, one of which involved an aircraft narrowly missing a motorway. Less substantial in size than an aircraft itself, but capable of inflicting fatal injury and damage is the discharge of blue ice from aircraft, whilst a further cause of damage is the inadvertent discharge of aviation fuel which, in one case, caused widespread damage to vehicles parked at an airport car park.

A22 Vehicles in transit

Transport of vehicles by other road vehicles arises from recovery services and vehicle transporters used for collection and delivery, both of which are specially adapted for that purpose. The risk from the former was demonstrated by a major accident on the M4 motorway in 2007, which resulted in major damage and loss of life.

A popular means of transporting vehicles overseas is by the ferries operating between UK and other European ports. The risks are those of fire (including spread of fire) and collision between inadequately secured vehicles, but there is the extra hazard of submersion in the event the ferry should capsize or sink. Such events are fortunately rare but when they do occur the consequences are often severe. An example is the tragic capsizing of the *Herald of Free Enterprise* at Zeebrugge in 1987, which claimed the lives of 193 people, some of whom were on the vehicle deck. The ferry had a total complement of over 500 passengers and crew, and was carrying over 130 vehicles, including cars, buses and goods vehicles.

Due to the high cost, it is rare for motor vehicles (other than military vehicles) to be transported by air, but transport by rail has been available for many years and has increased substantially with the opening of the Channel Tunnel, which conveys millions of vehicles between England and France each year. As with ferries, serious incidents are rare but can cause severe damage and loss. In 2008 fire spread from a lorry to other vehicles during its transit by rail in the tunnel, causing severe damage and disruption and requiring medical treatment to a number of people for smoke inhalation.

A23 Mis-fuelling

It is estimated some 120,000 motorists each year fill their vehicles with the wrong fuel, with resultant total repair bills to the order of £50m. Most incidents involve filling diesel engined cars with petrol, as the reverse is prevented by the design of diesel nozzles, which are too large to fit petrol tanks. Where the driver realises their mistake before driving off, the wrong fuel usually merely needs pumping and flushing out but in other cases, where the car is started or driven off, the fuel can cause serious damage to the engine and other components of the fuel system.

B Level of risk

Another component of risk is the level of risk, which is assessed in terms of frequency and severity of loss.

B1 Frequency

Thirty years ago there were an estimated 17 million vehicles on the roads of the UK, compared to over 30 million today. Not surprisingly the incidence of motor accidents and losses has tended to increase as the number of vehicles has risen. It is, however, too simplistic to expect the accident rate to increase exactly in tandem with the volume of registered vehicles and there have been exceptions to the trend, sometimes attributable to underlying causes unconnected with the negligent use of motor vehicles. For example, a recession in the early 1990s had the effect of increasing the incidence of theft and fraudulent claims, whilst oil shortages arising from international conflicts have led to lower usage and lower speeds, resulting in relatively fewer claims. Changes in legislation, such as the introduction of the breathalyser laws and compulsory wearing of seat belts improved claims experience, whereas the introduction of stricter MOT requirements for windscreen damage had the opposite effect.

When we discuss frequency we are not referring to the sheer volume of claims or accidents but the ratio of occurrences to the exposure, namely the vehicles exposed to risk. The latter is measured in 'vehicle years'. One vehicle insured for twelve months is a vehicle year; two vehicles each insured for six months would comprise a vehicle year and so on. The claims frequency for comprehensively insured private cars in 2004 was to the order of 17% (approximately one claim in every six vehicle years); the corresponding frequency for non-comprehensively insured cars (i.e. third party only and third party fire and theft combined) was approximately 11% (one in nine) and for commercial vehicles 13% (one in eight).

A single incident often produces a claim under two or more policies

A distinction must be drawn between accidents/losses and insurance claims. A single incident often produces a claim under two or more policies, so the total number of reported insurance claims would not correspond with published government statistics. Similarly, not all accidents/losses result in insurance claims and most government statistics are drawn from incidents reported to the police, invariably featuring injuries, fatalities and theft of property.

B2 Severity

The financial cost resulting from an incident can range from a fairly insignificant sum to very large amounts. The rail accident mentioned above is a case in point. Very low cost incidents, involving solely own damage rarely feature as claims because of the existence of excesses and the effect of no claim discount (NCD), discussed later in the course.

Average claims cost is derived simply from dividing the total cost of claims by the number of claims. The corresponding average claims costs for the 2004 frequency figures for the whole motor market were £1,700 for comprehensive private car, £2,800 for non-comprehensive and £2,700 for commercial motor. The non-comprehensive figure is relatively high, due to the bias toward third party bodily injury payments, the generally high cost of which forces up the average claims cost. The record payment for a single injured person in the UK is in excess of £8m.

**Activity**

Try these.

1. Calculate the frequency in the following cases:

Vehicle years	No. of accidents
500	250
650	240
846	23

2. Calculate the average claim cost in the following cases:

Total claims	No. of claims
£250,000	600
£580,750	275
£1,368,964	937

The answers to the above are at the end of the chapter.

B3 Relative level of risk

In considering the level of risk, in terms of the combined effect of frequency and severity, we would conclude that catastrophes such as floods and storms, whilst involving collectively a large number of losses to individuals, have a low frequency and high average cost, when regarded as a single major event. Single incidents, such as the Zeebrugge and Selby incidents, similarly have a low frequency and high average cost. Results at this level are of particular interest to reinsurers. By contrast, glass claims (comprising mostly repairs and replacement of damaged windscreens) have a high frequency and low average cost.

In between these extremes is a plethora of types of accident and loss, which collectively form the bulk of an insurer's total outlay. These can usefully be measured by factors, such as cover, types of vehicle and the driver's age.

The relative level of risk, including analysis by factor, will be addressed in more detail in chapter 5.

C Legislation and other factors

In this section we will consider how legislation limits risk and examine the compulsory insurance requirements, how they are enforced and their impact on motor insurance and insurers.

C1 Development of motor legislation

The advent of mechanically propelled vehicles in the nineteenth century led to the call for legislation to protect other road users. The first dates from 1865 and further legislation followed with the introduction of the internal combustion engine towards the end of the century, but it was not until the surge in motor vehicle ownership and usage in the years following World War I that the first of the Road Traffic Acts appeared in the forms we know them today.

The **Road Traffic Act 1930**, introduced compulsory motor insurance for the first time and there followed a series of Acts, the latest consolidated version of which is the **Road Traffic Act 1988** (RTA), which itself has been subject to subsequent amendments.

C2 Criminal and civil law

The UK legal system is covered in course P05. It will be recalled that civil law (including tort and contract) governs the relationship between legal persons whereas criminal law seeks to control the behaviour which harms or threatens the stability of the community at large. The civil law compensates and protects by awarding damages and injunctions, whereas the criminal law punishes wrongdoers by fines, prohibitions (e.g. driving suspensions) and imprisonment.

Taking the example of the motor accident in section A4, the driver of vehicle A, having driven negligently, would be liable in tort for damages suffered by the owner of vehicle B and its occupants, as well as any passengers in their own car. Driver A would also be liable to prosecution for driving without due care and attention, for which the criminal law provides for prosecution and imposition of penalties, including fine, driving licence endorsement and possibly disqualification from driving. Certain, more serious, offences or an accumulation of convictions can result in imprisonment.



Activity

Obtain a copy of DVLA leaflet IN557P or look it up on the DVLA website (www.Direct.gov.uk/motoring). Study the different motoring offences, their codes and penalty points. Also establish how long endorsements remain on the licence. Is it the same period for all offences?

C3 Key provisions of the RTA

Aside from dealing with drivers and driving standards, legislation covers vehicle construction and use, vehicle registration and traffic regulation. It should be noted that, in addition to the RTA, there are a number of other statutes governing the use and ownership of motor vehicles; a study of all these is beyond the scope of this course, as is the main body of the RTA, which is summarised below from the risk limitation perspective. Part VI of the RTA deals with compulsory insurance requirements and is considered in more detail.

The RTA has seven parts, comprising:

- Part I – Principal Road Safety Provisions.
- Part II – Construction and Use of Vehicles and Equipment.
- Part III – Licensing of Drivers of Vehicles.
- Part IV – Licensing of Drivers of Heavy Goods Vehicles.
- Part V – Driving Instruction.
- Part VI – Third-Party Liabilities.
- Part VII – Miscellaneous and General.

C3A Part I – Principal Road Safety Provisions

This covers driving offences, protective measures (such as seat belts and safety helmets) and the promotion of road safety. The 1991 RTA created the new offences of causing death by dangerous driving and causing death whilst under the influence of drink or drugs and the provisions were further enhanced by the **Road Traffic (New Drivers) Act 1995**, which introduced a sanction whereby any person accumulating six penalty points on their licence within two years of passing the driving test will automatically have their licence revoked and will need to apply for a provisional licence again and take a further driving test before they can drive unaccompanied.

Question 2

Which Act first introduced compulsory motor insurance?

**C3B Part II – Construction and Use of Vehicles and Equipment**

This covers regulations for construction and use (including maintenance and loading of goods), the testing of vehicles and their design, construction, equipment and marking.

C3C Part III – Licensing of Drivers of Vehicles

This includes the driving test and physical fitness of drivers, together with the minimum ages for obtaining a driving licence for different types of vehicles. The age limits are featured in s. 101 of the Act.

Activity

Look up and list the six classes of motor vehicle and the respective minimum ages by referring to S. 101 of the RTA www.opsi.gov.uk/acts/acts1988/ukpga_19880052_en_1.

**Activity**

Look up and note the definitions of small goods vehicles, medium-sized goods vehicles, large goods vehicles and passenger vehicles in s. 108 of this part of the RTA.

**Physical fitness of drivers**

The physical fitness of drivers is dealt with in ss. 92–96. If the holder of a driving licence becomes aware of a 'relevant or prospective disability', they must notify the Secretary of State.

'Disability' includes disease. 'Relevant disability' is any prescribed disability and any other disability likely to cause danger to the public if the person who had such a disability drives. 'Prospective disability' is a disability which, by its nature, is intermittent or progressive and may in future become a relevant disability.

'Disability'
includes disease



Activity

Refer to www.direct.gov.uk/motoring for details of how DVLA deal with drivers who have disclosed medical conditions which could affect their driving.

What categories are the various 'conditions' divided into?

Hint. Look up 'Medical Aspects of Fitness to Drive' and INF94.

Section 95 provides that an insurer who refuses to issue a policy of motor insurance on the ground (or including the ground) of the state of health of an individual must as soon as practicable notify the Secretary of State of the refusal, giving the name, address, sex and date of birth of the person as disclosed to the insurer.

C3D Part IV – Licensing of Drivers of Heavy Goods Vehicles

This contains the rules and regulations concerned with the driving of large goods vehicles and passenger-carrying vehicles.

C3E Part V – Driving Instruction

Part V prescribes the rules for giving professional driving instruction. Such tuition can only be provided by licensed instructors enrolled on the Register of Approved Instructors.

C3F Part VI – Third Party Liabilities

These are covered in detail in the following section. It covers, amongst other things, the need for insurance to be evidenced by a certificate of motor insurance, which features in Part VII below.

C3G Part VII – Miscellaneous and General

This includes the power of the police to stop vehicles and require production of documents, including driving licences, evidence of insurance and test certificates. It also covers the duty of a driver to stop, report an accident and give information:

- Section 165 specifies the requirement to produce a certificate of insurance or security.
- Section 170 refers to the duty of a driver to stop, report accidents and give information or documents.
- Section 171 requires the owner of a motor vehicle to give such information as may be required by the police for the purpose of determining whether a motor vehicle was or was not being driven in contravention of the compulsory insurance requirements (specified in s.143 (part VI) below).
- Section 172 requires the owner of a motor vehicle to give details of the driver if the driver is alleged to be guilty of an offence.
- Section 173 makes it an offence to forge, alter or use documents (including evidence of insurance), with intent to deceive or allows a document to be used by another.
- Section 174 makes it an offence to make a false statement or withhold any material information for the purpose of obtaining the issue of a certificate of insurance.
- Section 175 makes it an offence to issue a certificate of insurance which to the issuer's knowledge is false in some particular.

- Section 183 states which provisions of the RTA apply to the Crown and effectively exempts Crown vehicles from the need to be insured, the government taking the place of the insurer for this purpose. In practice, some government departments do effect conventional insurance cover for economic reasons.
- Section 185 contains a number of definitions which are important when considering insurance wordings, including the definition of 'motor car', whilst s.192 defines 'road'.

Question 3

Under the Road Traffic (New Drivers) Act 1995, how many penalty points must a driver have accumulated within two years of passing the driving test to have their licence revoked?



D Compulsory motor insurance

In this section we shall examine Part VI of the RTA, as amended by subsequent legislation, which deals with the compulsory insurance requirements (and permitted alternatives to insurance) for liability for third-party risks. Some sections of Part VI will be summarised, whilst others of particular significance to insurance practice will be examined in more detail.

Much of the wording of the RTA, like other statutes, is necessarily complex. Certain sections of Part VI have accordingly been paraphrased, as appropriate, to aid this study. The full text of Part VI (including amendments arising from subsequent legislation) is shown as appendix 1 to this chapter and should be used for cross-reference, as necessary, whilst studying this section.

D1 Road Traffic Act, 1988: Part VI – Third party liabilities

D1A Section 143 – Users of motor vehicles to be insured or secured against third-party risks

This section makes it an offence for a person to **use, or to cause or permit any other person to use, a motor vehicle** (other than an invalid carriage) on a **road** unless there is in force, in relation to the use of the vehicle by that person or that other person (i.e. the person causing or permitting), as the case may be, such a policy of insurance or such a security in respect of third party risks as complies with the requirements of Part VI of the Act.

A person charged with committing this offence shall not, however, be convicted if they prove they were using the vehicle in the course of their employment, that the vehicle did not belong to them (and was not in their possession under a contract of hiring or of loan) and that they neither knew, nor had reason to believe, that there was no insurance or security in force in relation to the vehicle.

Using the vehicle in the course of their employment

Use

Use of a vehicle is deemed to have a wider meaning than simply driving. The test is one of control over the vehicle. A vehicle will be in use when being driven as the driver is the user, and may be in use even though it is parked, as it is in control of the person in possession of it (*Andrews v. Kershaw* (1951)). A vehicle in motion rolling down a hill with the engine switched off is being driven and in use (*Saycell v. Bond* (1948)). A passenger controlling the use of a vehicle but not driving it can be a user, whereas other passengers generally are not. In *Brown v. Roberts* (1965) it was held that a passenger opening a vehicle door and injuring a pedestrian on the pavement was not using the vehicle; for there to be use there had to be an element of controlling, managing or operating the vehicle. The passenger was negligent and also guilty of a criminal offence but it was not a RTA liability. The topic of use is further developed in considering s.145 of the Act.

Cause or permit to be used

This phrase extends the scope of the offence to the owner of an uninsured vehicle who permits any other person to use it. In *Monk (M) v. Warbey (W)* (1935), W lent his car to K who in turn lent it to M, who was involved in an accident whilst using it. Neither K nor M were insured and the injured party made his claim against W, who was held liable for the damages. The advent of the Motor Insurers' Bureau (MIB) in 1946 provided an alternative remedy to claimants in this situation (see later regarding the role of the MIB) but the right of action against the owner still remains. This was decided in *Norman v. Aziz* (2000).

Motor vehicle

Section 185 defines a motor vehicle as 'a mechanically propelled vehicle intended or adapted for use on roads'. There has been a deal of case law on what constitutes a motor vehicle for this purpose. In *McEachram v. Hurst* (1978), a moped being ridden by pedalling because the engine was not working and there was no petrol in the tank was held to be a mechanically propelled vehicle. Similarly, in *Newberry v. Simmonds* (1961) a car standing on a road without an engine did not cease to be a mechanically propelled vehicle simply because the engine had been removed. This type of issue is likely to be of most relevance in criminal actions, or establishing if an RTA liability exists under a motor policy, rather than in contractual disputes, although the definition of a 'motor car' assumes relevance in a contractual interpretation, discussed later.



Activity

Look up the RTA definition of a 'motor vehicle' and consider what other vehicles, apart from cars and GCVs, may or may not fall within this definition.

Road

A 'road', defined by s. 192 (1) of the Act as a '**highway or any other road to which the public has access and includes bridges over which a road passes**', is also of importance in establishing if a RTA liability exists. A great deal of case law exists on the subject, many turning on whether the public in general has a right of access to the land. The following have been held to be roads within the meaning of the Act: a lane on a housing estate, used by pedestrians as a short cut (*R v. Shaw* (1974)), footpaths and bridleways (*Suffolk CC v. Mason* (1979)) and a private approach road to a farm (*Harrison v. Hill* (1932)). This would not, however, be so where there are restrictions on public access such as a physical obstruction or a notice prohibiting access to members of the public at large. In *DPP v. Vivier* (1991) the payment of a fee to gain access to parking facilities was held not to create a special class of persons distinct from the general public.

In *Cutter v. Eagle Star* (1998), however, a private car park to which the public had access was held not to constitute a road as it was considered to be a destination. Following this decision the Act was changed in 2000 with the result that Section 143 now refers to 'Road or other public place'. The definition of 'Road' in s.192 remains unchanged. There is no definition of 'other public place' and there has been only limited case law to develop its definition in subsequent years. A car park on commercial premises intended for the use of customers was held to be a public place in *May v. DPP* (2005), whereas night-time use of a commercially owned one was not in *Bowman v. DPP* (2001).

D1B Section 144 – Exemptions from compulsory insurance

There is an exemption from compulsory insurance for a vehicle owner who has deposited and keeps deposited with the Supreme Court the amount of £500,000. This does not absolve the owner from legal liability for a greater sum (£500,000 is commonly exceeded for serious accidents and, as we have seen, damages can reach tens of £millions); it is merely a device whereby, for example, a company with a large number of vehicles (perhaps a large bus company) has the alternative of managing its own affairs and resources in making provision for meeting its third party liabilities in the same way all firms and individuals are free to choose whether to insure loss or damage to their own property, including vehicles. In practice, such a firm would need to operate a claims department in the same way an insurer would (or outsource that function) and would almost certainly effect some form of insurance for large losses. An individual or firm which avails itself of this exemption is required to make formal application in accordance with the **Motor Vehicles (Third Party Risk Deposit) Regulations 1992**.

This section of the Act also exempts certain vehicles from compulsory insurance, comprising broadly those owned by and being driven under the control of County Councils (but not Town Councils), police authorities, health authorities defined by relevant NHS Acts (e.g. NHS hospital ambulances) and those commandeered by the Army or Royal Air Force. It also exempts a vehicle when being driven to or from a place undertaken for salvage purposes in accordance with the **Merchant Shipping Act 1995**. These organisations have the capability of meeting third party liabilities by virtue of their ultimate government funding but many authorities, nevertheless, choose to effect insurance.

The exemption of Crown vehicles is dealt with by s.183.

D1C Section 145 – Requirements in respect of policies of insurance

This section states that a policy of insurance must be issued by an authorised insurer. You will recall from your study of IF1 that any company wishing to transact insurance must be authorised by the FSA and satisfy the conditions laid down in the **Financial Services and Markets Act 2000**, and that separate requirements apply to Lloyd's Underwriting Syndicates. In addition, motor insurers must be members of the Motor Insurers' Bureau (MIB). The operation of the MIB and its role in ensuring that innocent victims of road accidents are compensated is covered elsewhere in this study text.

If an insurer ceases to be a member of the MIB, it shall remain an authorised insurer for the purpose of current and future liabilities incurred under policies issued by the insurer before ceasing to be a member.

The policy must insure such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property **caused by, or arising out of, the use of** the vehicle on a road in Great Britain, and...

This emphasises that the policy needs to satisfy the requirements of s.143. The words 'caused by or arising out of the use of' have been construed to have a wider meaning than driving and control of a vehicle. In *Dunthorne v. Bentley* (1996), where a user of a vehicle which had run out of petrol caused an accident when crossing the road on foot, apparently to seek help to restart the car, the liability was held to be arising from the use of the vehicle.



Activity

Look up the facts of 'Dunthorne' in P05. Prior to this case, would you have considered the circumstances to be 'use of a vehicle'?

...must insure him or them in respect of any civil liability which may be incurred by him or them...in respect of the use of the vehicle and of any trailer, whether or not coupled, in the territory other than Great Britain and Gibraltar of each of the Member States of the Communities according to the state in whose territory the event giving rise to the liability occurred.

Certain other European nations subscribe to the EU directive

This requires the UK policy to provide the minimum cover required in each of the Member States of the European Union (i.e. those countries' equivalent cover to the UK's RTA) when a UK insured vehicle is being used in those states. It goes on to say that, in the event the cover provided by the RTA is greater than that required in the other State, the higher level of cover will apply. It should be noted that, in addition to other EU Member States, certain other European nations subscribe to the EU directive which is the foundation of this requirement and UK motor policies provide the minimum cover required in those States too, but the rule that the higher level of cover will apply does not apply to those other subscribing nations.

Note that the compulsory insurance requirement applies to *uncoupled* trailers whilst in EU Member States but not whilst they are in the UK. Whilst in the UK, trailers fall within the UK third party insurance requirements only when coupled to a motor vehicle.



Web resources

For full details of countries, visit Council of Bureaux website:
www.cobx.org/en/index-module-orki-page-view-id-118.html

...and in the case of a vehicle normally based in Great Britain must also insure him or them in respect of any liability which may be incurred by him or them under the provisions of this Part of this Act relating to payment for emergency treatment.

This makes it compulsory for a policy to cover emergency treatment fees (see s.158, covered later in this chapter).

Exclusions

Sub-section (4) of s.145 sets out the circumstances in which compulsory insurance is not required.

The policy shall not be required –

- (a) to cover liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment ... unless cover in respect of the liability referred to is in fact provided pursuant to a requirement of the Employers' Liability (Compulsory Insurance) Act 1969.

The 1988 RTA excluded the 'in the course of employment' risk as this was covered by the **Employers' Liability (Compulsory Insurance) Act 1969** but this was changed in 1992 to satisfy a requirement of the Third EU Motor Directive, whereby third party liability to passengers must be covered by the motor policy. This was achieved by the implementation of the **Motor Vehicles (Compulsory Insurance) Regulations 1992** and the **Employers' Liability (Compulsory Insurance) Exemption (Amendment) Regulations 1992** which came into force in 1994. The latter provides that the EL policy does not cover the motor risk arising from a vehicle on a road (i.e. the RTA liability).

The net effect of these changes is that liability for injury to passengers travelling in motor vehicles arising out of and in the course of employment falls under motor policies, where the liability is an RTA liability but would not do so where, for example, the use arose at a location other than a 'road' as described in the RTA Part VI, where the EL policy would apply.

- (b) to provide insurance of more than (£1,000,000) in respect of all such liabilities as may be incurred in respect of damage to property caused by, or arising out of, any one accident involving the vehicle, or

This enables insurers to limit liability to a maximum amount for third party property damage. The limit of £250,000 specified in the 1988 Act was increased to £1,000,000 in 2007, following implementation of the 5th EU Motor Directive. Note that whilst EU law specifies a minimum limit for death and bodily injury liability, the RTA requires that the policy must provide unlimited liability for those eventualities. Note that the limit is for any one accident and that it could, therefore, be paid a number of times in a single period of insurance.

The limit is for any one accident

- (c) to cover liability in respect of damage to the vehicle, or

The 'vehicle' is the insured vehicle. There will be situations where the driver is not the owner and the driver has a legal responsibility for damage to the vehicle, assumed by agreement, but this is not a compulsory insurance requirement.

- (d) to cover liability in respect of damage to goods carried for hire or reward in or on the vehicle or in or on any trailer (whether or not coupled) drawn by the vehicle, or
- (e) to cover any liability of a person in respect of damage to property in his custody or under his control, or

Similar considerations apply to goods in or on the insured vehicle or property in the driver's custody or control. Often the property will belong to the driver and it is expected that insurance for own property damage (including damage to vehicles) would be arranged under property and motor own damage policies.

- (f) to cover any contractual liability.

The RTA is only concerned with liability at law, primarily in tort and statutory liability. If an individual agrees to accept a wider liability by way of agreement it is not compulsorily insurable.

D1D Section 146 – Requirements in respect of securities

A further alternative to effecting a policy of insurance or making a deposit with the Supreme Court is to obtain a security. This is a form of guarantee of solvency issued by an insurer's fidelity department and takes the form of a guarantee that if the guaranteed persons fail to discharge the liability required to be insured by s.145 then the giver of the security must pay up to £25,000 for public service vehicles and up to £5,000 in any other case. The giver of the security must be an insurer or some other body of persons carrying on the business of giving such securities, which has deposited £15,000 with the Supreme Court. The deposit has been maintained at this level despite the higher level now required for deposits under s.144. There are believed to be very few securities in force; those that exist tend to be for public service vehicles and all are issued by authorised insurers.

D1E Section 147 – Issue and surrender of certificates of insurance (and of security)

- (1) A policy of insurance shall be of no effect for the purposes of this Part of this Act unless and until there is **delivered** by the insurer to the person by whom the policy is effected a certificate (in this Part of this Act referred to as a 'certificate of insurance') in the **prescribed form** and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed.
- (2) A security shall be of no effect for the purposes of this Part of this Act unless and until there is **delivered** by the person giving the security to the person to whom it is given a certificate (in this Part of this Act referred to as a 'certificate of security') in the prescribed form and containing such particulars of any conditions subject to which the security is issued and of any other matters as may be prescribed.
- (3) Different forms and different particulars may be prescribed for the purposes of sub-section (1) or (2) above in relation to different cases or circumstances.
- (4) Where a certificate has been delivered under this section and the policy or security to which it relates is cancelled by mutual consent or by virtue of any provision in the policy or security, the person to whom the certificate was delivered must, within seven days from the taking effect of the cancellation —
 - (a) surrender the certificate to the person by whom the policy was issued or the security was given, or
 - (b) if the certificate has been lost or destroyed, make a statutory declaration to that effect.

- (5) A person who fails to comply with sub-section (4) above is guilty of an offence.

Reference has been made previously to the need for third party insurance to be evidenced by a Certificate of Motor Insurance. This document must be produced to the police or vehicle taxation authorities, as necessary to provide *prima facie* evidence that insurance against third party liabilities is in force.

This section prescribes rules for the delivery and surrender of certificates. It provides that a policy shall be of no effect for the purpose of the RTA unless a certificate **in the prescribed form** has been **delivered** to the policyholder.

Prescribed form

It is important that the format of certificates is uniform to assist the authorities in inspecting them and establishing their validity. The rules are contained in the **Motor Vehicles (Third Party Risks) Regulations 1972** as amended, which is considered in more detail in chapter 4.

Delivery

In addition to physical transmission to the policyholder, delivery has been held to be effective if made to the policyholder's agent. The postal authorities are regarded as the agent of the receiver, so posting constitutes delivery for this purpose. An insurance broker or other insurance intermediary acting for the policyholder is also regarded as an agent for this purpose provided the broker/intermediary has the policyholder's express authority to accept the certificate on their behalf. This authority is often included in the Terms of Business Agreements between the parties. If such express authority does not exist then delivery is not effective. In *Starkey v. Hall* (1936), which involved a hire purchase company receiving and holding a certificate without express authority, the insurance was held not to be valid for RTA purposes.

This authority is often included in the Terms of Business Agreements

A very large proportion of policies are arranged by telephone and cover granted at the point of sale, sometimes with immediate effect. In the case of the latter, cover would need to commence before the certificate is physically despatched to the postal authorities. Whilst this would seem technically non-compliant with the Act, such practice has been endorsed by the authorities, it being the case that the record necessary to satisfy the requirements of the relevant regulations is created at the point cover is granted and the documentation carries the time, as well as date, of commencement of the insurance.

Surrender

If a policy is cancelled the certificate must be surrendered within seven days from the taking effect of cancellation and failure to do so by the policyholder constitutes an offence. If the certificate has been lost or destroyed, the policyholder is required to make a Statutory Declaration to that effect. This involves a legal process, whereby the person making the declaration does so before an appropriate authority (a Commissioner of Oaths, Notary Public or Solicitor), who completes and signs the form of declaration. It is not signed by the maker of the declaration. The importance of this document will become apparent when we address s.152 of the Act. The Statutory Declaration should not be confused with lost certificate declarations; the latter are documents required by some insurers to formalise the issue of duplicate documents or help substantiate the disposal of an insured vehicle when considering policy vehicle changes and do not satisfy the requirements of s.147.

**Activity**

There is a copy of a Statutory Declaration at appendix 2. Study how it is worded.

It is important to remember that these are statutory requirements and do not affect the contract between insurer and insured. The insurer's obligation to indemnify in contract would be unaffected by a failure to issue and deliver a certificate, notwithstanding it might technically be a ground for criminal prosecution for driving/using an uninsured vehicle. Similarly, the contractual cancellation of a policy is not dependant upon the surrender of the certificate, although some insurers make the *return* of the certificate a contractual requirement prior to allowing a refund of premium upon cancellation. As we shall see later the non-surrender of the certificate (or statutory declaration that it has been lost or destroyed) can, however, create a statutory liability for the insurer.

D1F Section 148 – Avoidance of certain exceptions to policies or securities

It is acceptable, and necessary, for general insurance policies (including motor policies) to contain limitations to their scope and conditions which require policyholders to undertake certain obligations or take precautions to help prevent or reduce a loss. Remember, however, that the fundamental object of compulsory insurance law is to help ensure innocent victims of motor accidents are compensated by ensuring that sufficient funds are available to meet their claims and this would be undermined if an insurer could simply repudiate liability on the ground of a breach of limitation or condition.

The RTA, therefore, provides that, whilst these limitations may operate for the purpose of the contract between the policyholder and insurer, they shall not affect the right of the innocent third party. This is achieved by the provisions of ss.148 and 151 and, as we shall see later, the existence of a fund of last resort, the Motor Insurers' Bureau (MIB).

Section 148 provides that certain conditions and restrictions shall be of no effect for the purposes of the insurer's RTA liability.

The prohibited conditions and restrictions in sub-sections 1 and 2 are:

- (a) the age or physical or mental condition of persons driving the vehicle;
- (b) the condition of the vehicle;
- (c) the number of persons that the vehicle carries;
- (d) the weight or physical characteristics of the goods that the vehicle carries;
- (e) the time at which or the areas within which the vehicle is used;
- (f) the horsepower or cylinder capacity or value of the vehicle;
- (g) the carrying on the vehicle of any particular apparatus; or
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the **Vehicles (Excise) Act 1971**.

Typical policy restrictions which would fall within this prohibition would be a requirement that the vehicle is kept in an efficient condition, the maximum weight of goods in transit or maximum engine capacity of motor cycles covered and the exclusion of drivers under 25 from an otherwise 'any driver' policy. Note, however, that a limitation to named drivers or 'policyholder only driving' is not prohibited under this section but is catered for under s.151, to which reference is made later.

Question 4

For the items (a) – (h) in section D1F, think of an example of situations where insurers may wish to refuse indemnity but be required to deal with third party claims as a result of s.148.



Sub-sections 3 and 4 provide that the obligation on the insurer to meet these liabilities does not preclude it from recovering its outlay from the person incurring the liability (i.e. the policyholder, driver or user of the vehicle).

Sub-section 5 states that any condition in a policy which would enable an insurer to deny liability based on some specified thing being done (or omitted to be done) after the happening of the event giving rise to a claim under the policy shall be of no effect. Examples would be the standard policy requirements to notify the insurer of the incident within a specified or reasonable period of time, to forward documents to the insurer in a prescribed manner or timeframe and not to admit liability.

As with sub-sections 3 and 4, sub-section 6 states that if an insurer has to meet a claim because of sub-section 5 it is not precluded from exercising a right of recovery against the person incurring the liability. This does not confer an automatic statutory right of recourse; it simply states that it is permissible for a policy to contain such a clause.

Sub-section 7 provides that a person issuing a policy of insurance under s.145 shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons. The background to this sub-section is found in *Williams v. Baltic Insurance Association* (1924), where the insurer's contention that the policyholder should not be able to claim by virtue of his having no insurable interest in a loss which fell on his sister (an additional driver who had incurred a third party liability) was not supported. The law on this point was codified by the enactment of the RTA 1930 and was examined again and ratified in *Tattersall v. Drysdale* (1935). Here, a car dealer's policy permitted driving of the insured vehicle by anybody acting on the insured's order or with their permission and the court held that the dealer's insurers should meet the claim. The effect of these decisions is to provide an indemnity for all classes of persons covered by the policy, although they may not be specified by name.

Activity

Refer to P05 for more information on insurable interest and the case of *Williams v. Baltic Insurance Association of London* (1924).



The prohibited restrictions in s.148 must not be shown on a Certificate of Motor Insurance, so the exclusion of drivers under a certain age (e.g. 25) cannot be shown, whereas a limitation to policyholder only (or named persons only) is permissible (see later).

The practical effect of s.148 is that an insurer must meet the third party liability, despite a breach of one or more of the prohibited restrictions or conditions precedent to liability, albeit there is a right of recovery against the policyholder, driver or user, as appropriate.

An insurer must meet the third party liability

D1G Section 149 – Avoidance of certain agreements as to liability towards passengers

This section prevents the driver/user of the vehicle from avoiding their liability for any passenger in the vehicle. Any agreement made with the passenger that the passenger will not sue the driver or will limit their claim to a certain amount would, therefore, be of no effect. An example would be disclaimer notices on dashboards. For the purposes of this section 'passenger' would extend to persons being carried in or upon a vehicle and persons entering or getting on to, or alighting from, the vehicle.

D1H Section 150 – Insurance or security in respect of private use of vehicle to cover use under car-sharing arrangements

This section of the RTA provides that where a vehicle is used for private purposes and people are contributing to the cost of a journey then such use will not be deemed use for hire or reward, business or commercial use of the vehicle provided that:

- (a) the vehicle is not adapted to carry more than eight passengers and is not a motor cycle,
- (b) the total fares paid for the journey do not exceed the amount of the running costs of the vehicle for the journey which for these purposes can include an appropriate amount for depreciation and general wear, and
- (c) the arrangements for the payment of fares by the passenger or passengers were made before the journey began.

The object of this section is to avoid placing an obstacle to private motorists and potential passengers from entering into car sharing arrangements, which are considered desirable in terms of reducing fuel consumption and pollution. The wording prevents hire car/taxi drivers from relying on the exemption as they are clearly in the business of accepting fares as part of a contract for hire and reward.

D1I Section 151 – Duty of insurers or persons giving security to satisfy judgment against persons insured or secured against third-party risks

Section 151 provides the means whereby the innocent victim of a vehicle user is able to enforce payment of compensation against the insurer if the court judgment is not satisfied. In effect it provides a direct right of action against the insurer when that stage is reached.

That right of action for the third party exists despite any contractual restrictions on the scope of the policy or post-loss breaches of condition specified in s.148 as described above. Section 151 goes further, however, in that the limitations prohibited by s.148 are effectively extended by sub-sections 2 and 3 to driving limitations by specified or named drivers; thus, a limitation to 'policyholder only driving', restriction to named persons or the exclusion of a named individual under an otherwise 'any driver' policy become of no effect for RTA purposes, as does any requirement that the insured person must hold a driving licence, but only when the 'unsatisfied judgment' stage is reached.

The fact that these prohibitions appear under this section, and not s.148, means they can be shown on Certificates of Insurance. These additional prohibitions were introduced by the 1988 RTA to satisfy the Second EU Motor Directive; that directive also sought to prohibit any restriction purporting to restrict the purpose for which a vehicle is used (e.g. limitation to social, domestic and pleasure use) but this was omitted from the 1988 Act and insurers consequently have no RTA liability in that regard. The EU requirement is, however, satisfied by the requirement of MIB Article 75 (see chapter 2, section A2).

A further effect of sub-section 2 is that prohibition of a driving limitation extends to stolen vehicles but the right to compensation does not apply to any person who, at the time of the use which gave rise to the liability, was allowing themselves to be carried in or on the vehicle and knew, or had reason to believe, that the vehicle had been stolen or unlawfully taken. This exclusion does not apply, however, if the person did not know, and had no reason to believe, that the vehicle had been stolen or unlawfully taken until after the commencement of their journey, and could not reasonably have been expected to have alighted from the vehicle. In this sub-section the reference to a person being carried in or upon a vehicle includes reference to a person entering or getting on to, or alighting from, the vehicle.

If the person did not know, and had no reason to believe

Think

Contrast the position re compensation under RTA of the following passengers when injured whilst riding in a stolen car:

1. An accomplice of the driver who assisted them to steal the car.
2. The driver's girl friend whom he has picked up from work.



Sub-section 5 states that, whilst the insurer may be entitled to avoid or cancel (or may have avoided or cancelled) the policy or security, it must meet the judgment. In effect, the insurer is prevented from relying upon avoidance or cancellation of the policy for the purpose of not meeting an RTA liability when the stage of unsatisfied judgment is reached.

Sub-section 6 permits an insurer to limit its total liability to £1 million for damage to property and deals with how this will work in practice where there are multiple claims for property damage arising from one incident.

Sub-sections 7 and 8 provide the right for the insurer to seek recovery of its RTA outlay (which it would not otherwise have incurred had it not been for the requirements of s.151) against any person who incurred the liability, in line with the right of recovery under s.148.

With effect from 2003, by virtue of by the **European Communities (Rights Against Insurers) Regulations 2002**, it is possible for the victim of an insured driver to bring an action direct against the driver's insurer without first having to obtain a judgment against the driver. This right is an alternative to the action against insurers to enforce judgment against the driver and for a visiting victim (i.e. from another EU state) might be a preferred option, but action under s.151 retains its importance to the claimant if there are advantages of suing in the UK; for example, in regard to damages or limitation periods.

D1J Section 152 – Exceptions to s.151

Section 152 contains certain exemptions to insurers' liability under s.151.

Sub-section 1a provides that:

no sum is payable by an insurer unless the claimant has given notice of the bringing of proceedings either before they commence or within seven days of their commencement. Under sub-section 1b the judgment does not have to be satisfied if there is an appeal pending

The claimant or their solicitor must give notice

The claimant or their solicitor must give notice of the bringing of the proceedings either before they commence or within seven days of the issue of the summons or writ. There has been some debate on what constitutes 'notice'. In *Harrington v. Link Motor Policies* (1989) a letter from solicitors to insurers threatening proceedings if liability was not admitted or the claim met was held not to be sufficient notice. In *Wake v. Page* (2000) insurers were held not liable where no letter had been sent to them even though they were aware of the proceedings against them from their policyholder.

Sub-section 1c exempts the insurer from liability if the policy had been cancelled before the event giving rise to the loss and:

before that event the certificate of insurance was surrendered to the insurer (or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed), or

after the event, but before the expiry of fourteen days from the taking effect of the cancellation, the certificate was surrendered to the insurer (or statutory declaration stating that the certificate had been lost or destroyed was made), or...

The importance of the surrender of the certificate is evident from this exemption. If it is not surrendered (or Statutory Declaration made – see section D1E above) the insurer's RTA liability continues, despite the cancellation, until the policy and certificate reach their natural expiry date.

either before or after the happening of that event, but within that period of fourteen days, the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate.

The only relief available to the insurer if the policyholder fails to surrender the certificate (or make the required Statutory Declaration) is to commence criminal proceedings for the policyholder's failure to comply with s.147, which requires the policyholder to surrender the certificate within seven days from the taking effect of the cancellation. This involves the commencement of criminal proceedings (i.e. the issue of a summons) in a court of summary jurisdiction (e.g. Magistrates' Court in England and Wales) within 14 days of the taking effect of the cancellation. Refer to appendix 3 for a specimen form of summons.

Sub-section 2 provides that:

no sum is payable by an insurer under section 151 if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration

- (a) that, apart from any provision contained in the policy or security, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact, or by a representation of fact which was false in some material particular, or
- (b) if he has avoided the policy or security on that ground, that he was entitled so to do apart from any provision contained in it.

These sub-sections enable the insurer to exempt itself from the RTA liability to meet unsatisfied judgments if the insurance is void or voidable on the ground of misrepresentation or non-disclosure (you will be familiar with the subject of void and voidable contracts from your study of study text P05). To do so, the insurer must obtain a court declaration of its entitlement to avoid on that ground and commence proceedings to obtain the declaration before or within three months of the start of the proceedings that gave rise to the judgment under s.151.

Sub-section 3 states that:

an insurer which has obtained such a declaration in 2 above is not entitled to the benefit of that section unless before, or within seven days after, the commencement of that action he has given notice of it to the claimant in those proceedings specifying the non-disclosure or false representation on which he proposes to rely.

Sub-section 4 states that:

a person to whom notice of such action is given is entitled, if he thinks fit, to be made a party to it.

If the declaration has not been obtained by the time the claimant's proceedings have been started the insurer must not only notify the policyholder but must give notice to the claimant either before or within seven days of the commencement of the declaration proceedings. This gives the claimant the opportunity to join the declaration proceedings and dispute the insurer's application should they see fit to do so.

As we shall see in chapter 2, the obtaining of such a declaration **after** an event giving rise to a RTA liability is of limited value, as the insurer retains a measure of responsibility under MIB Article 75. The cost of obtaining these can prove expensive, particularly where the application is disputed by one or more of the other parties. The advantages to the insurer of obtaining the declaration in this circumstance are discussed in chapter 2, section A2.

The insurer retains a measure of responsibility

These civil proceedings should not be confused with the need to commence criminal proceedings for failure to surrender a certificate, mentioned previously.

D1K Section 153 – Bankruptcy etc. of insured or secured persons not to affect claims by third parties

This section protects the position of an injured party, so that if the person whose liability is required to be covered by a policy becomes bankrupt (or, if a company, it goes into liquidation), that event shall not affect the liability required to be covered by a policy under s.145 and the third party will retain their rights under the RTA where a judgment has been given. Sub-section 3 provides that, notwithstanding the third party's rights under the RTA, the third party can exercise their rights under the **Third Parties (Rights against Insurers) Act 1930**, by which if the policyholder becomes bankrupt, or goes into liquidation, and has incurred a liability to a third party, the rights of the policyholder under the policy are transferred to the third party.

D1L Section 154 – Duty to give information as to insurance or security where claim made

This section states that a person against whom a claim is made for a compulsorily insurable liability must on demand by, or on behalf of, the person making the claim state whether or not they were insured (or had a security in force) or would have been insured had it not been avoided or cancelled and give such particulars of that policy or security as specified in any certificate of insurance.

If a certificate was not delivered then the registration mark or other identifying particulars of the vehicle, the number or other identifying particulars of the insurance policy issued in respect of the vehicle, the name of the insurer and the period of the insurance cover must be provided.

D1M Section 155 – Deposits

Section 155 states that if a deposit is made (as provided for by ss.44 and 146) it shall not be applied to any other liabilities until those required by the RTA have been satisfied.

D1N Section 156 – Power to require evidence of insurance or security on application for vehicle excise licence

Section 156 enables the authorities to require an applicant for a road fund licence to produce evidence that either (a) on the date when the licence comes into operation a policy of insurance (or security) will be in force in relation to the use of the vehicle by the applicant or by other persons with his permission, or (b) the vehicle is a vehicle to which s.143 of the Act does not apply when under the owner's control.

D1O Section 157 – Payment for hospital treatment of traffic casualties

This section deals with payment of hospital treatment of road traffic casualties.

Insurers are liable to pay for hospital payments *only* where payment is made in respect of death or bodily injury to a third party as required by the RTA. This liability attaches even where the third party payment is made without admission of liability; the payment of hospital fees would, therefore, attach even if the insurer's payment to the third party was subject to a reduction for contributory negligence or even made ex-gratia.

The liability is imposed directly on the insurer (or the owner if they have made a deposit required by s.144 or is the holder of a security) and is incurred only if the insurer knows that a hospital has given treatment and provided the insurer has made a payment to the injured person, with or without an admission of liability. It must be a payment 'made under or in consequence of a policy issued under section 145 of the Act', so a payment made by the motorist out of sympathy, with or without liability, would not tie the insurer to responsibility for payment of hospital treatment. This part of the Act has historically applied to a wider definition of 'Road' than other parts of the RTA, specifically 'a road or in a place to which the public have a right of access'. This is now more closely aligned with the rest of the RTA, following the change introduced by the 2000 Act (see section D1A above), although there remains a slight difference.

In 1997 it became government policy to allow NHS hospitals to recover the full cost of treatment from insurers of responsible drivers. The change was implemented by the **Road Traffic (NHS Charges) Act 1999**, whereby the recovery is effected by the Compensation Recovery Unit (CRU) of the **Department for Work and Pensions**. As a result this section now applies only to private hospitals

D1P Sections 158 and 159 – Payment for emergency treatment of traffic casualties

Section 158 applies to roadside treatment. The user of a motor vehicle involved in a road accident causing bodily injury (including fatal injury) to a person is required to make payment for treatment or examination (referred to as 'emergency treatment') by a legally qualified medical practitioner who has administered emergency treatment or examined the victim, where such action was immediately required. The fee is for each person examined or treated, plus a sum to cover mileage in excess of two miles.

If, as is often the case, the emergency treatment is first effected in hospital, the hospital will have the same rights to fees as would a doctor attending the scene. This applies to private hospitals as the Road Traffic (NHS Charges) Act 1999 removed NHS hospitals from the scope of s.158.

The fee has to be paid by the motorist involved in the accident or their insurer and the injured person can be the motorist themselves, a passenger or a third party outside the vehicle. The payment has to be made irrespective of liability on the part of the motorist but if another party was responsible the motorist has a right of recovery against them. In practice, insurers incurring this outlay make payment without affecting any 'no claim discount' to which the policyholder may be entitled.

Section 159 (Supplementary provisions as to payments for treatment) defines the bodies and authorities which may claim payment of emergency treatment or hospital treatment expenses.

D1Q Sections 160, 161 and 162

These sections of the Act provide definitions of a number of the terms used in Part VI and knowledge of these is not required for this part of the course.

D2 European Union (EU) Motor Directives

Previous mention has been made of the EU Motor Directives. The purpose of these has been to harmonise the laws of EU Member States to help achieve freedom of travel. To this end the Directives ensure that cover is set at an appropriate level and that procedures exist to facilitate claims made outside the home state.

There are five of these directives, the requirements of which have been incorporated into UK law and its supportive framework. The main features of each are summarised below.

D2A First Directive 1972 (implemented in the UK 1973)

Each Member State was required to ensure it had a compulsory insurance system in place providing for third party injury liability, including a Guarantee Fund and a bureau for handling claims outside its territory; the UK already had these in place. These requirements are reflected in s.145 of the RTA – see section D1C above.

Each state had to set its own limits on liability but, in addition, to provide the minimum compulsory cover required in each other Member State whilst vehicles normally based in the home state are in those other states. Insurance checks at frontiers between EU states were consequently abolished, although the practice of issuing International Motor Insurance Cards (Green Cards) continued for some years and remains necessary for travel within the 'Green Card' system outside Member States and those non-EU states which subscribe to the EU Directives.

D2B Second Directive 1984 (implemented 1988)

Third party property damage (TPPD) became compulsory, necessitating a change to UK law, which had hitherto only required cover for death or bodily injury to third parties. The RTA was duly amended to include a minimum £250,000 for TPPD, although most policies already included amounts in excess of that level, the exception being certain commercial policies and those limiting to RTA cover. Liability for death or bodily injury was already unlimited and, therefore, in excess of the limits required by EU law.

Each state was required to set up a Guarantee Fund for injury and property claims from visiting motorists. The UK already had the MIB in place.

In all Member States the compulsory insurance requirement was to apply irrespective of driving limitation, the driver's licence status and purpose for which the vehicle is used. The UK implemented these by changes to the RTA and MIB agreements – see section D1I.

D2C Third Directive 1990 (implemented 1992)

The minimum cover to be provided in other Member States was extended to the minimum cover required in that state or that provided in the home state, **whichever is the greater**.

The minimum motor cover was now to include legal liability for injury to passengers. This had been compulsory in the UK since 1972 but the new requirement for the risk to be insured under motor policies meant that for liability for injury to passengers arising out of their employment transferred from Employers' Liability to Motor Policies for incidents arising from the use of a vehicle on a road, as described by the RTA. See section D1C above.

D2D Fourth Directive 2000 (implemented 2002)

A requirement was introduced that all victims of road accidents should be able to identify the insurers of the responsible vehicle within two months of the incident, failing which the MIB would be obliged to take over the claim. This has been catered for in the UK by the Motor Insurance Database (MID), to which reference is made in section C of chapter 2.

Victims of accidents in states other than their home state were now to have a direct right of action against insurers if after three months from notification of a claim the insurer has not (a) made a reasoned offer of settlement if liability is admitted and damages have been fully quantified, or (b) provided a reasoned reply to the points made in the injured party's claim, if liability is denied or the claim for damages has not been fully quantified. The UK anticipated the requirements of the Fifth Directive by extending this right of action to victims resident in the UK, as well as those resident in other states. See section DII above.

D2E Fifth Directive 2005 (implemented 2007)

The minimum liability limits were increased. The UK limit for TPPD was duly increased from £250,000 to £1 million; the existing unlimited liability for death or bodily injury naturally sufficed for the increased EU limits.

Whereas Member States had previously been entitled to limit, or exclude, compensation for property damage caused by an unidentified vehicle in all cases, where the victim has sustained 'significant personal injury', he would now be able to claim for property damage sustained in the same incident.

The £300 excess applicable to property damage claims made against MIB was abolished.

Insurers in the home state are allowed to provide cover up to 30 days for vehicles imported from other states, facilitating the purchase by UK residents of vehicles from suppliers in other states for use in the UK.

*Provide cover
up to 30 days*

The direct right of action against insurers introduced by the Fourth Directive for visitors (see above) was extended to victims resident in the home state.

Motor insurance

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Section 143

- (1) Subject to the provisions of this Part of this Act –
 - (a) a person must not use a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act, and
 - (b) a person must not cause or permit any other person to use a motor vehicle on a road unless there is in force in relation to the use of the vehicle by that person such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act.
- (2) If a person acts in contravention of subsection (1) above he is guilty of an offence.
- (3) A person charged with using a motor vehicle in contravention of this section shall not be convicted if he proves –
 - (a) that the vehicle did not belong to him and was not in his possession under a contract of hiring or of loan,
 - (b) that he was using the vehicle in the course of his employment, and
 - (c) that he neither knew nor had reason to believe that there was not in force in relation to the vehicle such a policy of insurance or security as is mentioned in subsection (1) above.
- (4) This Part of this Act does not apply to invalid carriages.

Section 144

- (1) Section 143 of this Act does not apply to a vehicle owned by a person who has deposited and keeps deposited with the Accountant General of the Supreme Court the sum of [£500,000], at a time when the vehicle is being driven under the owner's control.

[(1A) The Secretary of State may by order made by statutory instrument substitute a greater sum for the sum for the time being specified in subsection (1) above.

(1B) -order shall be made under subsection (1A) above unless a draft of it has been laid before and approved by resolution of each House of Parliament.]

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(2) Section 143 does not apply –

(a) to a vehicle owned –

- (i) by the council of a county or county district in England and Wales, the Common Council of the City of London, the council of a London borough, the Inner London Education Authority, or a joint authority (other than a police authority) established by Part IV of the Local Government Act 1985,**
- (ii) by a regional, islands or district council in Scotland, or**
- (iii) by a joint board or committee in England or Wales, or joint committee in Scotland, which is so constituted as to include among its members representatives of any such council, at a time when the vehicle is being driven under the owner's control,**

(b) to a vehicle owned by a police authority or the Receiver for the Metropolitan Police district, at a time when it is being driven under the owner's control, or to a vehicle at a time when it is being driven for police purposes by or under the direction of a constable, or by a person employed by a police authority, or employed by the Receiver, or

(c) to a vehicle at a time when it is being driven on a journey to or from any place undertaken for salvage purposes pursuant to Part IX of the Merchant Shipping Act 1984,

(d) to the use of a vehicle for the purpose of its being provided in pursuance of a direction under section 166(2) (b) of the Army Act 1955 or under the corresponding provision of the Air Force Act 1955.

[(da) to a vehicle owned by a health service body, as defined in section 60(7) of the National Health Service and Community Care Act 1990, at a time when the vehicle is being driven under the owner's control,

(db) to an ambulance owned by a National Health Service trust established under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, at a time when a vehicle is being driven under the owner's control,]

(e) to a vehicle which is made available by the Secretary of State to any person, body or local authority in pursuance of section 23 or 26 of the National Health Service Act 1977 at a time when it is being used in accordance with the terms on which it is so made available,

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- (f) to a vehicle which is made available by the Secretary of State to any local authority, education authority or voluntary organisation in Scotland in pursuance of section 15 or 16 of the National Health Service (Scotland) Act 1978 at a time when it is being used in accordance with the terms on which it is so made available.

Section 145

- (1) In order to comply with the requirements of this Part of this Act, a policy of insurance must satisfy the following conditions.
- (2) The policy must be issued by an authorised insurer.
- (3) Subject to subsection (4) below, the policy –
 - (a) must insure such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road in Great Britain, and

[(aa) must, in the case of a vehicle normally based in the territory of another member State, insure him or them in respect of any civil liability which may be incurred by him or them as a result of an event related to the use of the vehicle in Great Britain if, –

 - (i) according to the law of that territory, he or they would be required to be insured in respect of a civil liability which would arise under that law as a result of that event if the place where the vehicle was used when the event occurred were in that territory, and
 - (ii) the cover required by that law would be higher than that required by paragraph (a) above, and]
 - (b) must [in the case of a vehicle normally based in Great Britain,] insure him or them in respect of any liability which may be incurred by him or them in respect of the use of the vehicle and of any trailer, whether or not coupled, in the territory other than Great Britain and Gibraltar of each of the member States of the Communities according to –

[(i) the law on compulsory insurance against civil liability in respect of the use of vehicles of the State in whose territory the event giving rise to the liability occurred; or

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(ii) if it would give higher cover, the law which would be applicable under this Part of this Act if the place where the vehicle was used when that event occurred were in Great Britain and]

- (c) must also insure him or them in respect of any liability which may be incurred by him or them under the provisions of this Part of this Act relating to payment for emergency treatment.

(4) The policy shall not, by virtue of subsection (3)(a) above, be required –

- (a) to cover liability in respect of the death, arising out of and in the course of his employment, of a person in the employment of a person insured by the policy or of bodily injury sustained by such a person arising out of and in the course of his employment, or
- (b) to provide insurance of more than £1,000,000 in respect of all such liabilities as may be incurred in respect of damage to property caused by, or arising out of, any one accident involving the vehicle, or
- (c) to cover liability in respect of damage to the vehicle, or
- (d) to cover liability in respect of damage to goods carried for hire or reward in or on the vehicle or in or on any trailer (whether or not coupled) drawn by the vehicle, or
- (e) to cover any liability of a person in respect of damage to property in his custody or under his control, or
- (f) to cover any contractual liability.

(4A) In the case of a person –

- (a) *carried in or upon a vehicle, or*
- (b) *entering or getting on to, or alighting from, a vehicle, the provisions of paragraph (a) of subsection (4) above do not apply unless cover in respect of the liability referred to in the paragraph is in fact provided pursuant to a requirement of the Employers' Liability (Compulsory Insurance) Act 1969.]*

(5) 'Authorised insurer' has the same meaning as in section 95.

(6) If any person or body of persons ceases to be a member of the Motor Insurers' Bureau, that person or body shall not by virtue of that cease to be treated as an authorised insurer for the purposes of this Part of this Act –

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- (a) in relation to any policy issued by the insurer before ceasing to be such a member, or
- (b) in relation to any obligation (whether arising before or after the insurer ceased to be such a member) which the insurer may be called upon to meet under or in consequence of any such policy or under section 157 of this Act by virtue of making a payment in pursuance of such an obligation.

Notes: Those parts shown in italics and in square brackets have been inserted by virtue of the Motor Vehicles (Compulsory Insurance) Regulations 1992. Those parts shown in italics only have been inserted by virtue of the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001/No.3649.

Section 146

- (1) In order to comply with the requirements of this Part of this Act, a security must satisfy the following conditions.
- (2) The security must be given either by an authorised insurer or by some body of persons which carries on in the United Kingdom the business of giving securities of a like kind and has deposited and keeps deposited with the Accountant General of the Supreme Court the sum of £15,000 in respect of that business.
- (3) Subject to subsection (4) below, the security must consist of an undertaking by the giver of the security to make good, subject to any conditions specified in it, any failure by the owner of the vehicle or such other persons or classes of persons as may be specified in the security duly to discharge any liability which may be incurred by him or them, being a liability required under section 145 of this Act to be covered by a policy of insurance.
- (4) In the case of liabilities arising out of the use of a motor vehicle on a road in Great Britain the amount secured need not exceed –
 - (a) in the case of an undertaking relating to the use of public service vehicles (within the meaning of the Public Passenger Vehicles Act 1981), £25,000,
 - (b) in any other case, £5,000.

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Section 147

- (1) A policy of insurance shall be of no effect for the purposes of this Part of this Act unless and until there is delivered by the insurer to the person by whom the policy is effected a certificate (in this Part of this Act referred to as a 'certificate of insurance') in the prescribed form and containing such particulars of any conditions subject to which the policy is issued and of any other matters as may be prescribed.
- (2) A security shall be of no effect for the purposes of this Part of this Act unless and until there is delivered by the person giving the security to the person to whom it is given a certificate (in this Part of this Act referred to as a 'certificate of security') in the prescribed form and containing such particulars of any conditions subject to which the security is issued and of any other matters as may be prescribed.
- (3) Different forms and different particulars may be prescribed for the purposes of subsection (1) or (2) above in relation to different cases or circumstances.
- (4) Where a certificate has been delivered under this section and the policy or security to which it relates is cancelled by mutual consent or by virtue of any provision in the policy or security, the person to whom the certificate was delivered must, within seven days from the taking effect of the cancellation –
 - (a) surrender the certificate to the person by whom the policy was issued or the security was given, or
 - (b) if the certificate has been lost or destroyed, make a statutory declaration to that effect.
- (5) A person who fails to comply with subsection (4) above is guilty of an offence.

Section 148

- (1) Where a certificate of insurance or certificate of security has been delivered under section 147 of this Act to the person by whom a policy has been effected or to whom a security has been given, so much of the policy or security as purports to restrict –
 - (a) the insurance of the persons insured by the policy, or
 - (b) the operation of the security,(as the case may be) by reference to any of the matters mentioned in subsection (2) below shall, as respects such liabilities as are required to be covered by a policy under section 145 of this Act, be of no effect.

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(2) Those matters are –

- (a) the age or physical or mental condition of persons driving the vehicle,**
- (b) the condition of the vehicle,**
- (c) the number of persons that the vehicle carries,**
- (d) the weight or physical characteristics of the goods that the vehicle carries,**
- (e) the time at which or the areas within which the vehicle is used,**
- (f) the horsepower or cylinder capacity or value of the vehicle,**
- (g) the carrying on the vehicle of any particular apparatus, or**
- (h) the carrying on the vehicle of any particular means of identification other than any means of identification required to be carried by or under the Vehicles (Excise) Act 1971.**

(3) Nothing in subsection (1) above requires an insurer or the giver of a security to pay any sum in respect of the liability of any person otherwise than in or towards the discharge of that liability.

(4) Any sum paid by an insurer or the giver of a security in or towards the discharge of any liability of any person which is covered by the policy or security by virtue only of subsection (1) above is recoverable by the insurer or giver of the security from that person.

(5) A condition in a policy or security issued or given for the purposes of this Part of this Act providing –

- (a) that no liability shall arise under the policy or security, or**
- (b) that any liability so arising shall cease,**

in the event of some specified thing being done or omitted to be done after the happening of the event giving rise to a claim under the policy or security, shall be of no effect in connection with such liabilities as are required to be covered by a policy under section 145 of this Act.

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- (6) Nothing in subsection (5) above shall be taken to render void any provision in a policy or security requiring the person insured or secured to pay to the insurer or the giver of the security any sums which the latter may have become liable to pay under the policy or security and which have been applied to the satisfaction of the claims of third parties.
- (7) Notwithstanding anything in any enactment, a person issuing a policy of insurance under section 145 of this Act shall be liable to indemnify the persons or classes of persons specified in the policy in respect of any liability which the policy purports to cover in the case of those persons or classes of persons.

Section 149

- (1) This section applies where a person uses a motor vehicle in circumstances such that under section 143 of this Act there is required to be in force in relation to his use of it such a policy of insurance or such a security in respect of third party risks as complies with the requirements of this Part of this Act.
- (2) If any other person is carried in or upon the vehicle while the user is so using it, any antecedent agreement or understanding between them (whether intended to be legally binding or not) shall be of no effect so far as it purports or might be held –
 - (a) to negative or restrict any such liability of the user in respect of persons carried in or upon the vehicle as is required by section 145 of this Act to be covered by a policy of insurance, or
 - (b) to impose any conditions with respect to the enforcement of any such liability of the user.
- (3) The fact that a person so carried has willingly accepted as his the risk of negligence on the part of the user shall not be treated as negating any such liability of the user.
- (4) For the purposes of this section –
 - (a) references to a person being carried in or upon a vehicle include references to a person entering or getting on to, or alighting from, the vehicle, and
 - (b) the reference to an antecedent agreement is to one made at any time before the liability arose.

Section 150

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(1) To the extent that a policy or security issued or given for the purposes of this Part of this Act –

- (a) restricts the insurance of the persons insured by the policy or the operation of the security (as the case may be) to use of the vehicle for specified purposes (for example, social, domestic and pleasure purposes) of a non-commercial character, or**
- (b) excludes from that insurance or the operation of the security (as the case may be) –**
 - (i) use of the vehicle for hire or reward, or**
 - (ii) business or commercial use of the vehicle, or**
 - (iii) use of the vehicle for specified purposes of a business or commercial character,**

then, for the purposes of that policy or security so far as it relates to such liabilities as are required to be covered by a policy under section 145 of this Act, the use of a vehicle on a journey in the course of which one or more passengers are carried at separate fares shall, if the conditions specified in subsection (2) below are satisfied, be treated as falling within that restriction or as not falling within that exclusion (as the case may be).

(2) The conditions referred to in subsection (1) above are

- (a) the vehicle is not adapted to carry more than eight passengers and is not a motor cycle,**
- (b) the fare or aggregate of the fares paid in respect of the journey does not exceed the amount of the running costs of the vehicle for the journey (which for the purposes of this paragraph shall be taken to include an appropriate amount in respect of depreciation and general wear), and**
- (c) the arrangements for the payment of fares by the passenger or passengers carried at separate fares were made before the journey began.**

(3) Subsections (1) and (2) above apply however the restrictions or exclusions described in subsection (1) are framed or worded.

(4) In subsections (1) and (2) above 'fare' and 'separate fares' have the same meaning as in section 1(4) of the Public Passenger Vehicles Act 1981.

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Section 151

- (1) This section applies where, after a certificate of insurance or certificate of security has been delivered under section 147 of this Act to the person by whom a policy has been effected or to whom a security has been given, a judgment to which this subsection applies is obtained.
- (2) Subsection (1) above applies to judgments relating to a liability with respect to any matter where liability with respect to that matter is required to be covered by a policy of insurance under section 145 of this Act and either –
 - (a) it is a liability covered by the terms of the policy or security to which the certificate relates, and the judgment is obtained against any person who is insured by the policy or whose liability is covered by the security, as the case may be, or
 - (b) it is a liability, other than an excluded liability, which would be so covered if the policy insured all persons or, as the case may be, the security covered the liability of all persons, and the judgment is obtained against any person other than one who is insured by the policy or, as the case may be, whose liability is covered by the security.
- (3) In deciding for the purposes of subsection (2) above whether a liability is or would be covered by the terms of a policy or security, so much of the policy or security as purports to restrict, as the case may be, the insurance of the persons insured by the policy or the operation of the security by reference to the holding by the driver of the vehicle of a licence authorising him to drive it shall be treated as of no effect.
- (4) In subsection (2)(b) above 'excluded liability' means a liability in respect of the death of, or bodily injury to, or damage to the property of any person who, at the time of the use which gave rise to the liability, was allowing himself to be carried in or upon the vehicle and knew or had reason to believe that the vehicle had been stolen or unlawfully taken, not being a person who –
 - (a) did not know and had no reason to believe that the vehicle had been stolen or unlawfully taken until after the commencement of his journey, and
 - (b) could not reasonably have been expected to have alighted from the vehicle.

In this subsection the reference to a person being carried in or upon a vehicle includes a reference to a person entering or getting on to, or alighting from, the vehicle.

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(5) Notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled, the policy or security, he must, subject to the provisions of this section, pay to the persons entitled to the benefit of the judgment –

- (a) as regards liability in respect of death or bodily injury, any sum payable under the judgment in respect of the liability, together with any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum,
- (b) as regards liability in respect of damage to property, any sum required to be paid under subsection (6) below, and
- (c) any amount payable in respect of costs.

(6) This subsection requires –

- (a) where the total of any amounts paid, payable or likely to be payable under the policy or security in respect of damage to property caused by, or arising out of, the accident in question does not exceed £250,000 (now £1,000,000), the payment of any sum payable under the judgment in respect of the liability, together with any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum,
- (b) where that total exceeds £250,000 (now £1,000,000), the payment of either –
 - (i) such proportion of any sum payable under the judgment in respect of the liability as £250,000 (now £1,000,000) bears to that total, together with the same proportion of any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on that sum, or
 - (ii) the difference between the total of any amounts already paid under the policy or security in respect of such damage and £250,000 (now £1,000,000), together with such proportion of any sum which, by virtue of any enactment relating to interest on judgments, is payable in respect of interest on any sum payable under the judgment in respect of the liability as the difference bears to that sum,

whichever is the less, unless not less than £250,000 (now £1,000,000) has already been paid under the policy or security in respect of such damage (in which case nothing is payable).

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- (7) Where an insurer becomes liable under this section to pay an amount in respect of a liability of a person who is insured by a policy or whose liability is covered by a security, he is entitled to recover from that person
 - (a) that amount, in a case where he became liable to pay it by virtue only of subsection (3) above, or
 - (b) in a case where that amount exceeds the amount for which he would, apart from the provisions of this section, be liable under the policy or security in respect of that liability, the excess.
- (8) Where an insurer becomes liable under this section to pay an amount in respect of a liability of a person who is not insured by a policy or whose liability is not covered by a security, he is entitled to recover the amount from that person or from any person who –
 - (a) is insured by the policy, or whose liability is covered by the security, by the terms of which the liability would be covered if the policy insured all persons or, as the case may be, the security covered the liability of all persons, and
 - (b) caused or permitted the use of the vehicle which gave rise to the liability.
- (9) In this section –
 - (a) 'insurer' includes a person giving a security,
 - (b) 'material' means of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions, and
 - (c) 'liability covered by the terms of the policy or security' means a liability which is covered by the policy or security or which would be so covered but for the fact that the insurer is entitled to avoid or cancel, or has avoided or cancelled, the policy or security.
- (10) In the application of this section to Scotland, the words 'by virtue of any enactment relating to interest on judgments' in subsections (5) and (6) (in each place where they appear) shall be omitted.

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Section 152

- (1) No sum is payable by an insurer under section 151 of this Act –
- (a) in respect of any judgment unless, before or within seven days after the commencement of the proceedings in which the judgment was given, the insurer had notice of the bringing of the proceedings, or
 - (b) in respect of any judgment so long as execution on the judgment is stayed pending an appeal, or
 - (c) in connection with any liability if, before the happening of the event which was the cause of the death or bodily injury or damage to property giving rise to the liability, the policy or security was cancelled by mutual consent or by virtue of any provisions contained in it, and also –
 - (i) before the happening of that event the certificate was surrendered to the insurer, or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or
 - (ii) after the happening of that event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy or security, the certificate was surrendered to the insurer, or the person to whom it was delivered made a statutory declaration stating that the certificate had been lost or destroyed, or
 - (iii) either before or after the happening of that event, but within that period of fourteen days, the insurer has commenced proceedings under this Act in respect of the failure to surrender the certificate.
- (2) Subject to subsection (3) below, no sum is payable by an insurer under section 151 of this Act if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration –
- (a) that, apart from any provision contained in the policy or security, he is entitled to avoid it on the ground that it was obtained –
 - (i) by the non-disclosure of a material fact, or
 - (ii) by a representation of fact which was false in some material particular,

or

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- (b) if he has avoided the policy or security on that ground, that he was entitled so to do apart from any provision contained in it.
- (3) An insurer who has obtained such a declaration as is mentioned in subsection (2) above in an action does not by reason of that become entitled to the benefit of that subsection as respects any judgment obtained in proceedings commenced before the commencement of that action unless before, or within seven days after, the commencement of that action he has given notice of it to the person who is the claimant (or in Scotland pursuer) in those proceedings specifying the non-disclosure or false representation on which he proposes to rely.
- (4) A person to whom notice of such an action is so given is entitled, if he thinks fit, to be made a party to it.

Section 153

- (1) Where, after a certificate of insurance or certificate of security has been delivered under section 147 of this Act to the person by whom a policy has been effected or to whom a security has been given, any of the events mentioned in subsection (2) below happens, the happening of the event shall, notwithstanding anything in the Third Parties (Rights Against Insurers) Act 1930, not affect any such liability of that person as is required to be covered by a policy of insurance under section 145 of this Act.
- (2) In the case of the person by whom the policy was effected or to whom the security was given, the events referred to in subsection (1) above are –
 - (a) that he becomes bankrupt or makes a composition or arrangement with his creditors or that his estate is sequestrated or he grants a trust deed for his creditors,
 - (b) that he dies and –
 - (i) his estate falls to be administered in accordance with an order under section 421 of the Insolvency Act 1986,
 - (ii) an award of sequestration of his estate is made, or
 - (iii) a judicial factor is appointed to administer his estate under section 11A of the Judicial Factors (Scotland) Act 1889,
 - (c) that if that person is a company –

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- (i) a winding-up order or an administration order is made with respect to the company,
 - (ii) a resolution for a voluntary winding-up is passed with respect to the company,
 - (iii) a receiver or manager of the company's business or undertaking is duly appointed, or
 - (iv) possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge.
- (3) Nothing in subsection (1) above affects any rights conferred by the Third Parties (Rights Against Insurers) Act 1930 on the person to whom the liability was incurred, being rights so conferred against the person by whom the policy was issued or the security was given.

Section 154

- (1) A person against whom a claim is made in respect of any such liability as is required to be covered by a policy of insurance under section 145 of this Act must, on demand, by or on behalf of the person making the claim –
- (a) state whether or not, in respect of that liability –
 - (i) he was insured by a policy having effect for the purposes of this Part of this Act or had in force a security having effect for those purposes, or
 - (ii) he would have been so insured or would have had in force such a security if the insurer, or as the case may be, the giver of the security had not avoided or cancelled the policy or security, and
 - (b) if he was or would have been so insured or had or would have had in force such a security –
 - (i) give such particulars with respect to that policy or security as were specified in any certificate of insurance or security delivered in respect of that policy or security, as the case may be, under section 147 of this Act, or

Appendix 1: Part VI of the Road Traffic Act 1988

- (ii) where no such certificate was delivered under that section, give the following particulars, that is to say, the registration mark or other identifying particulars of the vehicle concerned, the number or other identifying particulars of the insurance policy issued in respect of the vehicle, the name of the insurer and the period of the insurance cover.

- (2) If without reasonable excuse, a person fails to comply with the provisions of subsection (1) above, or wilfully makes a false statement in reply to any such demand as is referred to in that subsection, he is guilty of an offence.

Section 155

- (1) Where a person has deposited a sum with the Accountant General of the Supreme Court under section 144 or 146 of this Act, then so long as any liabilities incurred by him, being such liabilities as are required to be covered by a policy of insurance under section 145 of this Act, have not been discharged or otherwise provided for, no part of that sum shall be applicable in discharge of any other liabilities incurred by him.
- (2) Any regulations made, or having effect as if made, by the Secretary of State or the Board of Trade under section 20 of the Insurance Companies Act 1958 which apply to deposits made by insurers carrying on motor vehicle insurance business shall, with such necessary modifications and adaptations as, after consultation with the Lord Chancellor, may be prescribed, apply to deposits made with the Accountant General under section 144 or 146 of this Act.
- (3) Such provision as might be made by the Secretary of State or the Board of Trade under section 20 of the Insurance Companies Act 1958 with respect to deposits under that Act may, after consultation with the Lord Chancellor, be made by regulations with respect to deposits made with the Accountant General under section 144 or 146 of this Act.

Section 156

Provision may be made by regulations under section 37 of the Vehicles (Excise) Act 1971 for requiring a person applying for a licence under that Act in respect of a motor vehicle to produce such evidence as may be prescribed that either –

- (a) on the date when the licence comes into operation there will be in force the necessary policy of insurance or the necessary security in relation to the use of the vehicle by the applicant or by other persons on his order or with his permission, or
- (b) the vehicle is a vehicle to which section 143 of this Act does not apply at a time when it is being driven under the owner's control.

Appendix 1: Part VI of the Road Traffic Act 1988

Section 157

(1) Subject to subsection (2) below, where –

- (a) a payment, other than a payment under section 158 of this Act, is made (whether or not with an admission of liability) in respect of the death of, or bodily injury to, any person arising out of the use of a motor vehicle on a road or in a place to which the public have a right of access, and**
- (b) the payment is made –**
 - (i) by an authorised insurer, the payment being made under or in consequence of a policy issued under section 145 of this Act, or**
 - (ii) by the owner of a vehicle in relation to the use of which a security under this Part of this Act is in force, or**
 - (iii) by the owner of a vehicle who has made a deposit under this Part of this Act, and,**
- (c) the person who has so died or been bodily injured has to the knowledge of the insurer or owner, as the case may be, received treatment at a hospital, whether as an in-patient or as an out-patient, in respect of the injury so arising.**

The insurer or owner must pay the expenses reasonably incurred by the hospital in affording the treatment, after deducting from the expenses any moneys actually received in payment of a specific charge for the treatment, not being moneys received under any contributory scheme.

- (2) The amount to be paid shall not exceed [£2,949] for each person treated as an in-patient or [£295] for each person treated as an out-patient.**
- (3) For the purposes of this section 'expenses reasonably incurred' means –**
 - (a) in relation to a person who receives treatment at a hospital as an in-patient, an amount for each date he is maintained in the hospital representing the average daily cost, for each in-patient, of the maintenance of the hospital and the staff of the hospital and the maintenance and treatment of the in-patients in the hospital, and**
 - (b) in relation to a person who receives treatment at a hospital as an out-patient, reasonable expenses actually incurred.**

Appendix 1: Part VI of the Road Traffic Act 1988

Section 158

- (1) Subsection (2) below applies where –
- (a) medical or surgical treatment or examination is immediately required as a result of bodily injury (including fatal injury) to a person caused by, or arising out of, the use of a motor vehicle on a road, and
 - (b) the treatment or examination so required (in this Part of this Act referred to as 'emergency treatment') is effected by a legally qualified medical practitioner.
- (2) The person who was using the vehicle at the time of the event out of which the bodily injury arose must, on a claim being made in accordance with the provisions of section 159 of this Act, pay to the practitioner (or, where emergency treatment is effected by more than one practitioner, to the practitioner by whom it is first effected) –
- (a) a fee of [£21.30] in respect of each person in whose case the emergency treatment is effected by him, and
 - (b) a sum, in respect of any distance in excess of two miles which he must cover in order –
 - (i) to proceed from the place from which he is summoned to the place where the emergency treatment is carried out by him, and
 - (ii) to return to the first mentioned place, equal to [41 pence] for every complete mile and additional part of a mile of that distance.
- (3) Where emergency treatment is first effected in a hospital, the provisions of subsections (1) and (2) above with respect to payment of a fee shall, so far as applicable, but subject (as regards the recipient of a payment) to the provisions of section 159 of this Act, have effect with the substitution of references to the hospital for references to a legally qualified medical practitioner.
- (4) Liability incurred under this section by the person using a vehicle shall, where the event out of which it arose was caused by the wrongful act of another person, be treated for the purposes of any claim to recover damage by reason of that wrongful act as damage sustained by the person using the vehicle.

Appendix 2: Form of Statutory Declaration

Statutory Declarations Act 1835

STATUTORY DECLARATION

I (policyholder's name) of (address) in
the County of, (Occupation), DO SOLEMNLY AND
SINCERELY DECLARE that the certificate of insurance delivered to me by
(name of insurers) under s. 147 of the Road Traffic Act 1988, pursuant to Policy No.
..... in respect of (make) motor vehicle registration
number which policy has been cancelled) has been lost or destroyed.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by
virtue of the Statutory Declarations Act 1835.

DECLARED at in the County of this day of 20__ before me,

..... (name of Authorised Official)

A Commissioner for Oaths/ Notary Public/ Solicitor.

Appendix 3: Form of summons for failure to surrender certificate

In the City of (Place of insurer's address)

To (name of defendant) of (address)

Information has been laid this day by (name of insurer's solicitor)
(Solicitor) for and on behalf of (name of insurer) for that you on the
..... day of 20__ at (address of insurer) in the said City
being a person to whom a certificate of insurance had been delivered under s.147(1) of the
Road Traffic Act 1988, and the Policy in relation to such certificate having been cancelled on
and from the (effective date of cancellation) by virtue of a provision
therein, did unlawfully fail within seven days to surrender the certificate to the insurers, to
wit, the (name of insurers) or, if it had been lost or destroyed, to make a
Statutory Declaration to that effect. Contrary to s. 147 of the Road Traffic Act 1988.

You are therefore hereby summoned to appear before the Court of Summary Jurisdiction,
sitting at in the on the day
of at the hour of eleven in the forenoon to answer the said information.

Dated the day of 20__

Appendix 4: Declaration Proceedings (for a declaration for relief under s.152(2) (a) Road Traffic Act)

The Plaintiffs claim –

1. A declaration that they were entitled to avoid a policy of insurance, dated No (policy number) issued by them to the defendant, apart from any provision contained in the said policy on the ground that it was obtained by non-disclosure of a material fact or facts and/or representations of fact which were false in some material particular or particulars
2. Further or other relief.
3. Costs.

Note: The above would be accompanied by a 'Notice to third party', comprising a formal notification to a third party in an incident to which the policy relates, advising them of the insurer's intentions, details of the representations/ non-disclosures on which they are seeking to rely and the details of the hearing, including date.

Question answers

1. In normal cases, the 'clock does not start ticking' until the child reaches the age of majority, currently 18 and the limitation period is three years from then, i.e. to age 21.

Solicitors must keep a note of these dates otherwise they could be held liable if they permit a case to go beyond its limitation period and become 'statute barred'.

2. Road Traffic Act 1930.
3. Six.
4.
 - Exclusion of drivers under 25 or a drink/drive exclusion (a).
 - An accident where a bald tyre had been found to be the cause of a skid (b).
 - A car designed to seat five people is found to be carrying more (c).
 - A condition in a commercial vehicle policy excluding carriage of hazardous goods or machinery (d and g).
 - The policy may restrict the area in which a vehicle may be used, e.g. a taxi, a local authority vehicle or a goods-carrying vehicle where its radius of use is restricted. Also some policies involving automatic monitoring of drivers (Telematics) may exclude younger drivers operating at certain times (d and e).
 - The policy, e.g. (Motor Trade) may restrict driving by younger employees to vehicles under a certain engine size (f).
 - Where the vehicle is used for emergency work, road construction or haulage of hazardous goods there may be a requirement to display warning signs to alert the public (h).

Activity answers

1. Frequency:

50%.
36.92%.
2.71%.
2. Claim cost (use only whole numbers):

£416.
£2,112.
£1,461.

Self-test questions

1. Look at a selection of application forms for motor insurance and list the questions you think relate to:

- moral hazard; and
- physical hazard.

Where do you think motoring convictions fall?

2. How many examples can you think of where a driver may be negligent and cause an accident?

3. What examples can you think of where a 'victim' may be regarded as partly responsible for their own injuries in a motor accident?

4. What is the definition of 'motor car' according to RTA s.185?

5. What examples can you think of where a person may be using a vehicle but not driving it?

6. **Contrast the motor insurance requirements for an unattended, uncoupled trailer:**

- i) In a lay-by in Yorkshire.
- ii) In a lay-by in France.

7. **Contrast the difference in compulsory cover for a UK motorist when they are driving:**

- i) in France; and
- ii) in Switzerland.

You will find the answers at the back of the book

2: Uninsured driving and measures to combat it

Chapter section	Syllabus learning outcomes
A Motor Insurers' Bureau	1.2.4
B Insurance related offences	1.2.4, 1.2.6
C Combating uninsured driving	1.2.4
D Motor Insurance Database	1.2.4
E How insurance provides incentives to minimise risk	1.2.2

Learning objectives

After studying this chapter, you should be able to:

- ☐ describe the role and functions of the Motor Insurers' Bureau;
- ☐ describe the incidence and consequences of uninsured driving and the measures taken to combat this;
- ☐ outline ways in which risk can be minimised through the nature of insurance which is available.

A Motor Insurers' Bureau

In chapter 1 we examined how legislation has been designed to try to ensure innocent victims of road accidents will receive compensation if a judgment is obtained but is unsatisfied. As the RTA framework was developed, however, it became apparent that potential remained for cases to slip through the net; for example, an insurer could quite legitimately escape liability by avoiding a policy on grounds of non-disclosure or misrepresentation and seek an appropriate court declaration, thereby absolving itself of its RTA liability and leaving the claimant with an action against a potentially impecunious defendant. Alternatively, the defendant might simply be uninsured, due to the policy having been cancelled prior to the incident or the motorist having never taken out insurance at all.

The gap was closed in 1946

The gap was closed in 1946 by the establishment of the Motor Insurers' Bureau (MIB), which administers a central fund to benefit victims of motor accidents caused by uninsured or untraced drivers and, as already noted, all motor insurers must belong to it. It is funded by a levy on the MIB members, calculated broadly in line with their respective gross premium income, although the calculation is weighted to reflect each insurer's share of the RTA risk, as far as it is possible to do so. As the levy is drawn from insurers, it follows that the insuring motorists ultimately bear the cost of uninsured liabilities through their premiums.

A1 MIB Agreements with HM Government

If there is no valid insurance, the innocent victim's claim will be considered by the MIB under one of two agreements; these are formal agreements between the MIB and HM Government.

A1A The Uninsured Drivers' Agreement

This applies if the driver is identified and is found to be uninsured, either due to a policy not being effective for RTA purposes or there being no policy in force at all. It applies to property damage (up to the RTA limit of £1m) and unlimited damages for death or bodily injury.

It does not apply to:

- Subrogated claims; for example, an insurer which has indemnified a policyholder for their own damage repairs cannot obtain recovery of its outlay from MIB or an Article 75 insurer (see below), whereas it would be able to do so against another insurer in a conventional 'insured' scenario.
- Claims for vehicle damage where the claimant's vehicle is itself uninsured for third party risks.
- Claims from injured passengers if they were aware that the vehicle they were travelling in was stolen or being driven uninsured and the claim is against the driver of the vehicle in which they were travelling.
- The first £300 of property damage claims arising from incidents prior to a Supplementary Agreement made in 2008 implementing the 5th EU Motor Directive. This 'excess' does not apply to incidents happening after the date of the Supplementary Agreement.

The MIB has a right of recovery of its outlay against the uninsured driver, in the same way insurers have a right of recovery for their RTA liabilities incurred against the driver and/or the policyholder. Strictly, MIB only has a liability under the Agreement if the claimant has obtained judgment which has been outstanding for seven days but, in practice, MIB will usually seek a negotiated settlement with the claimant to avoid costs. To enable recovery to be effected, it will seek the uninsured motorist's agreement to MIB dealing with the claim and to reimburse MIB. If this proves impossible then the claimant would be asked to assign their right of recovery against the at-fault motorist to MIB.

A1B The Untraced Drivers' Agreement

This provides compensation to victims where the driver or vehicle cannot be identified but there is substantial proof that the accident arose from the use of a motor vehicle on a 'road', as described by the RTA Part VI. The MIB is only liable where, on the balance of probabilities, the untraced motorist would have been liable. The MIB has a duty to investigate the claim and make a decision on the evidence. In this regard it is said to have a quasi-judicial function and the process is inquisitorial rather than adversarial.

Prior to 2003, claims were limited to death or bodily injury – property claims were excluded. Since 2003, property damage claims have been included, subject to the vehicle being identified and subject to the RTA £250,000 (now £1m) limit and a £300 excess. Accidents must be reported to the police within strict time limits (five days for property damage and 14 days for injury); this helps prevent spurious claims for damage not caused by a responsible third party. Time limits for bringing actions are in line with those prescribed by the Limitation Acts (see chapter 1, section A8). Subrogated claims are excluded.

The MIB's liability under both agreements applies only to RTA liabilities so it would not, for example, be called upon to meet a claim arising from an incident which did not happen on a 'road', or did not arise from the use of a 'motor vehicle'.

The operation of the agreements in the context of claims handling is explained in chapter 6.

A2 The Domestic Regulations (Article 75)

Included in MIB's rules is an agreement between it and its members, known as the Domestic Regulations. These appear in article number 75 of MIB's Memorandum and Articles of Association, and the liability insurers incur under it is, consequently, referred to as an 'Article 75' liability. The agreement has the effect of requiring insurers to meet certain liabilities which arise from the use of a vehicle where there is evidence of insurance being provided by the insurer in the broadest sense, whilst outside their strict contractual or RTA liabilities.

An example is the situation mentioned above, where an insurer has successfully obtained a declaration of its right to avoid under the RTA s.152. The insurer has no contractual liability as the policy is void, nor does it have an RTA liability as it has obtained the declaration, but it nevertheless remains liable under Article 75 in a situation where the declaration was obtained after the accident in question (see item (i) below).

The vehicle in question is uninsured for RTA purposes and remains so for the purpose of Article 75. The insurer's liability is limited to the constraints of the Uninsured Drivers Agreement and the attendant limitations on insurer's liability (e.g. subrogated claims are excluded), but the claim is met by the insurer without recourse to the MIB's central fund. Put another way, the insurer is required by the Articles to handle and pay the particular uninsured case on behalf of MIB. Consequently, it is reflected in the insurer's results in the same way as a claim under a valid policy or a claim settled as RTA insurer.

The objectives of Article 75 are:

- to assist the victims of motor accidents;
- to further the interests of policyholders with a view to reducing the cost of premiums; and
- to fulfil these objectives in an efficient, economical and expeditious manner, having regard to the interests of members as a whole.

Article 75 is applied and interpreted in a pragmatic, rather than a strictly legal manner with a view to furthering these objectives. In the event of dispute between MIB and a member, it is interpreted impartially by a Technical Committee comprising MIB members, although there is a facility for cases to go to arbitration as a mechanism for appeal against the decisions of the Technical Committee.

The broad scope of Article 75 is summarised below by way of paraphrased extracts from the Agreement.



Activity

Visit the MIB website www.mib.org.uk and copy the Domestic Regulations (Article 75) from the MIB Memorandum and Articles. You will also find the text of the Uninsured Drivers, Untraced Drivers and Supplementary Agreements on the website.

The Article 75 Insurer is an insurer who at the time of the accident giving rise to the liability was providing **any insurance** in respect of the vehicle (other than by reason of a driving other vehicle clause)...from which the liability arose.

... 'insurance' shall mean the issue of any document or promise by or on behalf of a Member, whether legally or otherwise, purporting to effect cover against Road Traffic Act Liability, whether or not a certificate of insurance has been prepared, issued or delivered (and notwithstanding that the certificate of insurance, if any, may be void or voidable) and includes the issue of a security under the Road Traffic Act 1988 or any subsequent statute or equivalent legislation in the Relevant Territories or a relevant foreign country. Where, after 1 January 2002, a record is held on the MID, the existence of such a record covering the date of an accident shall, unless there is documentary evidence to the contrary, be sufficient to establish the existence of 'insurance' for the purpose of this Article;

Note that the insurer can be on risk as an Article 75 insurer even if an RTA certificate of insurance has not been issued. Furthermore, a record on the Motor Insurance Database that the vehicle is insured by a particular insurer is treated as *prima facie* proof for the purposes of Article 75. Article 75 liability attaches only for specifically insured vehicles; it does not apply to vehicles purported to be covered by a 'driving other vehicles' section of a policy.

The agreement states that the insurer is the Article 75 insurer notwithstanding that:

- (i) the insurance has been obtained by fraud, misrepresentation, non-disclosure of material facts, or mistake;

This obligation dovetails with the RTA exemptions explained in chapter 1, sections D1I and D1J. Mention was made earlier of the limited advantages to an insurer of obtaining a court declaration of its entitlement to avoid and thereby absolve itself of RTA liability. Here we see that such action merely converts the RTA liability to Article 75 liability and the option of avoiding and obtaining a supporting court declaration is, therefore, rarely exercised. It is likely to be utilised where liability for an incident involves more than one vehicle and there are two or more insurers involved because, if there is a meaningful degree of liability on another party who is properly insured or whose insurers have a RTA liability, then the Article 75 insurer can escape liability completely. This is known as the joint tortfeasor rule (i.e. there is more than one defendant). The other main advantage is that the Article 75 insurer has no liability for subrogated claims.

- (ii) the cover has been back dated; or...

Obligation (ii) effectively places the insurer on risk as Article 75 insurer, if a member of staff (or intermediary acting for the insurer) backdates cover. This means the insurer incurs liability for an incident which actually precedes the commencement of RTA liability.

- (iii) the use of the vehicle is other than that permitted under the policy.

Item (iii) provides for the scenario described in chapter 1, section D1J, whereby the Article 75 insurer meets the 'RTA' liability averted by virtue of the purpose of use falling outside the policy scope.

And only ceases to be the Article 75 Insurer:

- (i) if a renewal notice is issued, incorporating a temporary cover note extending cover, conditionally or otherwise, beyond the date of expiry of the policy, as of the expiry date of that extension of cover;
- (ii) from the expiry date specified in the policy if, by provision in the policy or by notice in writing by either party to the policy, the policy is not intended to be renewed;

Item (i) provides that the Article 75 liability ceases upon expiry of the temporary covering note incorporated in the insurer's renewal notice, where such a covering note is included. Item (ii) means that the Article 75 liability will cease upon the natural expiry of the policy if the policy makes provision for it, or there is written notice by the insurer or the policyholder of the intention not to renew.

- (iii) from the expiry date of a short period insurance (being any insurance proposed for a term of less than twelve months, where there is no intention on the part of the Member to renew, nor any renewal documents issued), save where a new insurance for the same vehicle and policyholder begins within a period of fifteen days of the expiry date;

Item (iii) covers the situations where cover is by agreement between the parties issued for a period of less than twelve months. It is not uncommon for a series of short period covers to be issued for the same risk in quick succession and this clause creates liability during the gap between cover if it resumes within the 15 day period.

- (iv) when the insurance has been cancelled and the certificate of insurance has been recovered before the date on which the Road Traffic Act Liability was incurred, by specific request of the insured, or strictly in accordance with the power of cancellation contained in the Member's contract for the risk, notwithstanding that such contract may not have been issued (provided that where an intermediary cancels the policy and the certificate of insurance has been recovered by the intermediary, either as agent for the Member or under the terms of any separate agreement between the intermediary and the insured, cancellation of the policy must be exercised strictly in accordance with the Member's standard form of contract for the risk and there must be clear evidence that the intermediary is empowered to do so by the policy wording);

The insurer is not relieved of MIB liability under Article 75 unless upon cancellation the certificate of insurance is *recovered*. This actually goes beyond the RTA liability, whereby the insurer's liability ceases if, upon cancellation, the certificate is *surrendered* (or a Statutory Declaration of loss has been made in lieu of its surrender) or the insurer commences criminal proceedings in respect of the failure to surrender in a timely fashion. It does, however, facilitate the situation where the policy provides for an intermediary to cancel the policy on behalf of the insurer and the intermediary recovers the certificate either as agent for the insurer or under the terms of an agreement between the intermediary and the policyholder.

- (v) when, before the date on which the Road Traffic Act Liability was incurred, the Member has obtained a declaration from a court of competent jurisdiction that the insurance is void or unenforceable;

This item offers exemption from Article 75 liability where a court declaration that a policy is void is obtained *before* the date of accident. It, therefore, differs from the declaration of the right to avoid under the RTA (see chapter 1, section D1J), which is retroactive, and it does not limit avoidance to the grounds of misrepresentation or non-disclosure.

- (vi) when the insurance has ceased to operate by reason of a transfer of interest in the vehicle involved in the accident, which the insurance purports to cover, and which transfer is proved by evidence;

This clause reflects the established legal view that the motor policyholder's insurable interest in the specifically insured vehicle ceases upon sale or disposal of it and, in cases where the policy provides no other benefits, the policy itself comes to an end.

Note the requirement to provide evidence of the transfer of interest. The importance of this is reflected in the practice of some insurers to sometimes seek details of the purchaser of a vehicle before agreeing to delete a vehicle from cover when substituting to another, in cases where the certificate of insurance has not been recovered.

- (vii) when the theft of the certificate of insurance was reported to the police (provided that the report was made within 30 days of the date of discovery of the theft); or
- (viii) if the certificate of insurance has been forged by someone other than the Member or an intermediary acting on behalf of the Member or an officer, employee or agent of the Member or of an intermediary acting on behalf of the Member.

Item (vii) exempts the insurer if certificates are stolen, provided a timely report is made to the police. This enables the police to be on the alert when inspecting suspect documents and is a useful aid to their investigations where a vehicle is thought to be uninsured. Item (viii) provides relief if the certificate is forged – a fairly common occurrence, even before the advent of home laser printers and scanners.

This enables the police to be on alert

In all cases where a Member contends that it is not the Article 75 Insurer, for whatever reason, the burden of proof, on the balance of probabilities, rests with the Member.

Article 75 thereby provides a further layer of responsibility beyond the strict RTA liability, whereby the liability is met by the insurer as opposed to the MIB central fund. In summary an insurer's liability can arise thus:

- Contractual insurer under a valid policy.
- RTA insurer under an invalid policy but in circumstances where the insurer retains a RTA liability.
- MIB Article 75 insurer, whereby the insurer incurs a MIB liability, in line with the Uninsured Drivers Agreement.

If the liability is not met by an insurer under any of the above it falls to be dealt with by the MIB central fund.

Contractual insurer	RTA insurer	MIB Uninsured Drivers' Agreement (Article 75 insurer)	MIB Central Fund
The policy is valid and the policyholder/driver is entitled to an indemnity for the RTA liability.	The policy is inoperative by, for example, a breach of policy condition and the policyholder/driver is not entitled to an indemnity. The insurer is obliged to meet any unsatisfied judgment with a right of recovery against the policyholder/driver.	The policy is inoperative and the insurer has no RTA liability by virtue of its having terminated cover or avoided the policy, in accordance with RTA requirements but, nevertheless, remains liable as 'Article 75 insurer'.	There is no Article 75 insurer. The Central Fund meets the uninsured liability under the Uninsured Drivers Agreement.



Question 1

There are two agreements between the MIB and the Government in respect of innocent victims' claims where there is no valid insurance on which to claim. What are these?

A2A The impact of Article 75 on the insurer

It is clear that the requirements of Article 75 impose quite onerous obligations on insurers and it undoubtedly acts as a great incentive to employ 'good housekeeping' to ensure as far as possible that they do not incur direct liability.

Among the incentives to insurers evident from the requirements above are:

- prudent risk selection and validation (obligation i);
- close agency control and cover note auditing (obligation ii and exemption iv);
- strict controls and procedures for notifying termination of cover and retrieval of certificates of insurance, thereby helping curtail unintentional uninsured driving (exemptions iv and v); and
- notifying stolen certificates (exemption vii).

The process whereby an insurer determines its liability as RTA insurer, Article 75 insurer or whether MIB will meet the liability under the Uninsured Drivers Agreement can be complex. This is examined in more detail in chapter 6.

Question 2

Think of an example for each of the following situations:

1. Where an insurer will deal with a claim as:
 - a) RTA Insurer.
 - b) Article 75 Insurer.
2. Where MIB will become involved:
 - a) Under the Uninsured Drivers' Agreement.
 - b) Under the Untraced Drivers' Agreement.

N.B. In each case, assume the accident has happened 'on a road'.



B Insurance-related offences

Most insurance-related prosecutions of motorists fall under one or both of two headings:

- 'Using, or permitting the use of, an uninsured motor vehicle' (s.143 of the RTA).
- 'Making a false statement or withholding material information' (s.174 of the RTA).

B1 Uninsured driving

The offences under s.143 and the subtleties of the definitions of road and use have already been covered in chapter 1, section D.

Activity

Access DVLA website (see earlier) and identify the conviction codes and Penalty Points for Insurance Offences.

What are the codes for driving without insurance and causing or permitting driving without insurance?

Hint. Look at leaflet INS57P.



Prosecution can arise if there is no policy in force at all (i.e. a policy has not been issued or has been issued but has expired or the offence pre-dated commencement) or if the policy is inoperative because of breach of limitation, exclusion or condition.

Examples of inoperative motor policies are:

- **Duration:** If the applicable period of the policy does not cover the time and date of the usage of the vehicle.
- **Vehicle:** If the vehicle in use is not the vehicle covered by the policy or any driving other vehicles extension.
- **Use:** If the use is outside the scope of the policy.

*The insurance is
inoperative*

- **Driving limitation:** If the driver is not permitted to drive by virtue of a named driver, insured only driving, excluded driver limitation. Note that driving limitation by age category, whilst relevant for contractual purposes, is not applicable for the purposes of the RTA. Thus, an exclusion of drivers under 21, 25 etc. would not seem to be capable of supporting a prosecution for uninsured driving.
- **Driving licence:** If a driver does not hold a driving licence and has never held one the insurance is inoperative; this would also apply to a driver who has been disqualified from driving. Note that policies stipulate that cover will operate provided the driver holds a licence (or has held but is not disqualified from holding or obtaining one). This provides for the situation where someone is entitled to hold a licence but has failed to renew it due to an oversight.

A provisional licence is 'a licence to drive the vehicle'. In *Rendlesham v. Dunne (1964)*, D, a provisional licence holder who was driving unaccompanied and without L-plates was deemed to be covered by the policy, which stipulated that it applied 'provided the person holds a licence to drive' the vehicle. It made no reference to its not applying if the driver was in breach of licence conditions. Had it done so, it would appear the decision might have been different but this point does not appear to have been tested at law.

B2 False declaration – RTA Part VII s.174(5)

This section of the RTA provides that a person who makes a false statement or withholds any material information for the purpose of obtaining the issue of a certificate of insurance is guilty of an offence. Material information is defined in s.151 as 'of such a nature as to influence the judgment of a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what conditions'.

This offence would not normally support a prosecution for using, or permitting the use of, a motor vehicle, without insurance; this is because a void or voidable policy would, nevertheless, have been valid for RTA purposes at the time the offence was allegedly committed, the right to avoid necessarily always being discovered after the alleged offence. In *Adams v. Dunne (1978)* it was decided that the insured could not be convicted of driving without insurance pending a decision on avoidance by the insurer.

B3 Forgery of documents etc. – RTA Part VII s.173(1)

The offence specified in s.173(1) deserves special mention. This makes it an offence for any person, with intent to deceive:

- (a) to forge, alter or use a document;
- (b) to allow a document to be used by any other person; and
- (c) to make or possess a document closely resembling a document so as to be calculated to deceive.

For this purpose 'document' includes a certificate of insurance.

B4 Issue of false documents (falsification of documents) – RTA Part VII s.175

This section makes it an offence to issue a certificate of insurance (or certificate of security) which to the issuer's knowledge is false in a material particular. In *Ocean Accident and Guarantee Corporation v. Cole* (1932) it was held on appeal that no offence had been committed where an incorrect commencement date had innocently been inserted, thereby backdating cover. The appeal succeeded because the error was not deliberate and was, therefore, not 'false to its knowledge'.

C Combating uninsured driving

We have seen that legislation has endeavoured to ensure funds exist to compensate the innocent victims of road accidents and that the cost of uninsured liabilities ultimately fall upon the insured motorist, whose premiums cover not only their own risk to third parties but an element of which contribute to the MIB central fund. MIB's levy on its members was in the order of £377 million in 2008.

C1 Greenaway Report

The Greenaway Report on Uninsured Driving in the UK (2004) was commissioned by HM Government in response to the rising incidence of uninsured driving and growing public concern about the problem. The report identified two forms of failure to insure:

- **Accidental uninsured driving:** i.e. drivers misunderstanding the nature of cover they require for the type of driving they do (i.e. purpose of use) and duration of policies. Although accidental, such uninsured use is a criminal offence and should be minimised by simplification, where practicable.
- **Intentional uninsured driving:** i.e. intentional non-purchase of insurance against third party liability by those who feel they can save what they would otherwise have spent on insurance and go undetected in the process. This would include those people likely to offend in other areas, including those who drive without a valid driving licence, without road tax or making use of vehicles to engage in other (non-motor related) criminal activity.

C2 Greenaway's Recommendations

Intentional uninsured driving was the main focus of the report, whose recommendations included:

- Empower the police to seize and, in appropriate cases, destroy vehicles being driven uninsured.
- Link the DVLA's Vehicle Register with the MID, allowing the police to identify which vehicles on the road are uninsured.
- Allow fixed penalties for those who ignore reminders that their insurance has expired.
- Concerted action by insurers to continue to improve the MID.
- Introduce simpler and clearer notification procedures so that no one is in any doubt when their insurance expires.
- Automatic reminders to be sent to those motorists who forget to insure on time.

C3 Key developments

Key developments to date include:

- The introduction of the **Serious and Organised Crime and Police Act 2005 (SOCA)**, which has enabled the police to seize uninsured vehicles and destroy them if there is continued non-compliance with the insurance requirement.
- The police have been provided with enhanced access to the MID and data processed from it for use within their automatic number plate recognition (ANPR) cameras.
- The **Road Safety Act 2006** (scheduled for implementation in 2011) will introduce a new offence of being the keeper of an uninsured vehicle, with fixed penalties for non-compliance, together with seizure and destruction for continued non-compliance.
- The Motor Insurers' Information Centre (MIIC) regulates updating of the MID by insurers and, where applicable, vehicle keepers (in the case of some fleet and motor trade insured vehicles with appropriate insurer approval). Measures have been taken to establish and attain targets to ensure that the MID is kept as up to date as possible, thereby supporting the efforts of the enforcement authorities in detecting and prosecuting uninsured driving.
- Motor insurers have developed voluntary model policy and certificate wordings to exclude cover in those situations where valid private motor and motor trade policies had hitherto been used by a minority to secure the release of impounded uninsured vehicles, thereby circumventing the SOCA seizure powers.
- Motor insurers have reviewed processes for inviting renewal of policies and dealing with late payment and renewal instructions. This is covered in more detail in chapter 4.

The seizure powers introduced by the SOCA have resulted in the police impounding in excess of 500 uninsured vehicles each day. Comparisons of the respective data held on the DVLA and MID show a fall in the percentage of uninsured vehicles from 6.3% in 2005 to around 4.0% by the end of 2009. It is envisaged that the implementation of the offence of keeping an uninsured vehicle, effectively introducing 'enforcement from the record', will provide a further significant boost to the initiative to curtail uninsured driving.

Insurers have had a very substantial role in supporting the Greenaway initiatives, both individually and through the ABI and MIB. In addition to its fundamental task of handling the claims of innocent victims of uninsured drivers, MIB has a strategic objective of reducing the level and impact of uninsured motoring and has played a leading part in supporting the authorities through the administration of the MID.

Insurers have also sought to explore ways of trying to reduce the incidence of unintentional uninsured driving. In its response to Greenaway on behalf of the industry, the ABI identified the need to ensure that customers understand, and are able to comply with, the insurance obligation, and for the insurance industry to seek to minimise the risk of accidental uninsurance.

The object of insurance is, of course, to provide the protection customers require, and we shall see in chapter 3 how this is achieved for both RTA liabilities and other liabilities and contingencies.

Provide the protection its customers require

D Motor Insurance Database

D1 Motor Insurers' Information Centre (MIIC)

The Motor Insurers' Information Centre (MIIC), a subsidiary of MIB, was established to operate the Motor Insurance Database (MID) on behalf of the industry. The MID is set up for two main purposes:

1. To help reduce the incidence of uninsured driving by providing a means by which the police can readily establish if a vehicle is insured.
2. To provide the mechanism by which the UK complies with the 4th EU Motor Insurance Directive, which requires that insurance details of all vehicles in Member States can be easily accessed from a national information centre by claimants.

D2 Information to be held

The information required by the Directive to be held on the database includes:

- the registration numbers of all motor vehicles normally based in the UK;
- the numbers of the insurance policies relating to those vehicles and, where the period of validity of any policy has expired, the date of termination of the insurance cover;
- the name and address of the insurer;
- the name and address of the insurer's claims representative in the state of residence of the injured party;
- the name and address of the owner or usual driver or the registered keeper of the vehicle. This is provided if the injured party has a legitimate interest in obtaining this information.

In addition to insurance policy details, the database also holds details for those vehicles which are exempt from insurance requirements, with details of the organisations responsible for compensating third parties.

Details of privately insured vehicles are submitted by insurers. Motor traders and fleet policyholders can have responsibility to populate the MID themselves but in many cases insurers undertake this responsibility on behalf of their customers.

D3 Effectiveness of MID

The effectiveness of the database is naturally dependent upon its being kept up to date and 'fit for purpose'. To this end, insurers and others responsible for submitting data are required to adhere to strict 'time to supply' targets agreed by MIB with the Department for Transport, whilst recognising that processes and current technology do not enable 'real time' updates. The time to supply targets are:

- MID 1 (motor vehicles and policies relating to vehicles insured on an individual basis) to be supplied within seven days of any relevant change (this would include commencement and expiry of cover, consequent upon incepting, amending, renewing and cancelling cover).
- MID 2 (policies not referred to in MID 1, in particular fleet and/or motor trade) within 14 days of any relevant change.
- MID 2 (vehicles not referred to in MID 1) within 21 days.

The reference above to 'vehicles' reflects the fact that there is a distinction between policy updates and vehicle updates and that the policyholder has a legal obligation to notify their insurer, or the MIIC, of them, demonstrated by the 21 day target for fleet and motor trade under MID 2.

Adherence to these targets by insurers is enforced

Adherence to these targets by insurers is enforced by data quality self-regulation defined in Article 76 of the MIB Memorandum and Articles of Association, which provides consequences for non-compliance.

In view of the potential for delay in updating the MID, the police require a means of validating whether a vehicle which does not appear on it, but which the driver claims is, in fact, insured, has valid insurance. This is achieved in 'real time' circumstances by reference to a MIIC helpline which carries out the necessary enquiries of the alleged insurer and enables the police to make an informed decision on whether to seize the vehicle. In excess of 33% of calls to the helpline result in confirmation of no insurance being in force.

Apart from the police, the main users of the MID are insurers, solicitors and the DVLA, which links its vehicle excise payment system (EVL) to the MID to enable many registered vehicle keepers to renew their vehicle road tax remotely, by telephone or internet.



Web resources

For more information on the MID refer to the MIIC website www.mib.org.uk.



Question 3

Why was the Motor Insurance Database set up?

E How insurance provides incentives to minimise risk

Primary responsibility for minimising motor risk rests with the user of the vehicle whilst the State enforces good practice through legislation, backed by penalties for breaches of the criminal law.

Compulsory third party insurance is the means by which the Government seeks to ensure that motorists are in a position to compensate innocent victims of their negligent use of their vehicles and it is the role of the insurer to provide insurance to meet the motorists' needs. It might be supposed that the insurer's responsibility stops there and they have no interest in controlling risk. This, however, overlooks that insurers are the custodians of the policyholders' funds and that they have an overriding responsibility to use those funds for the customers' benefit, whether in settlement of valid claims or reducing risk and thereby minimising premiums. Furthermore, if due to escalating claims outlay the cost of insurance rises to the point that it begins to become unaffordable, the market for the product would begin to diminish and insurers' income would fall, with the attendant difficulties from the effects of uninsured driving.

Insurers, therefore, have a fundamental interest in reducing risk and the industry invests considerable funds and effort to this end.

E1 Cost and availability of insurance

One of the greatest incentives to the motorist to minimise risk is the cost and availability of insurance. As we shall see when we examine underwriting of risk, those drivers with very poor records will attract severe premium loadings and restricted cover, usually limited to third party or even the minimum RTA cover. Premium levels and insurers' acceptance limits also act as a deterrent to very high risks; these constraints would, for example, preclude most young and inexperienced drivers from driving very high performance vehicles.

E2 Incentives

Aside from the incentive of being able to obtain cover, the motorist is encouraged by other financial incentives such as excesses and no claim discounts (NCD); these are covered later in the course.

E3 Risk prevention

Examples of risk prevention include premium reductions for security measures, including garaging, immobilisers, alarms and tracker devices, some of which are mandatory for certain high risk vehicles. Businesses are also encouraged to invest in risk management programmes, including driver training, the benefits of which are reflected in motor fleet rating.

E4 Industry research programmes and initiatives

The industry through its trade body, the ABI, undertakes research and works closely with HM Government in both seeking improved driving standards and providing statistical support for government evaluation. Recent ABI research includes papers on young and inexperienced drivers, the experience from foreign based commercial vehicles used in the UK and the availability of insurance for older drivers.

The industry, through the ABI and other trade associations, also invests in consumer education and awareness of insurance requirements and how insurance can be obtained.

Activity

Refer to the ABI website www.abi.org.uk and look up the insurance advice for business guide published in 2008 under publications/information zone.



The Motor Insurance Repair Research Centre (MIRRC) is funded by the insurance market and its remit includes research to control the quality and cost of motor vehicle repair and evaluation of security devices. Its output includes repair data, including recommended times and working practice, to help minimise repair costs and training engineers and repairers. It also evaluates newly released vehicles to help insurers' underwriting and pricing of the new models.

Insurers consistently support road and transport safety organisations through sponsorship, such as 'BRAKE' and the Parliamentary Advisory Council for Transport Safety (PACTS), either directly or through the ABI. Insurers were also instrumental in developing with the Government, and supporting, the 'Pass Plus' scheme, by which a number of insurers allow premium discounts to those newly qualified drivers who voluntarily submit to additional driving tuition upon passing the standard driving test.

Question answers

1. The Uninsured Drivers Agreement and the Untraced Drivers Agreement.
2.
 1. Where an insurer will deal with a claim as:
 - a) RTA Insurer – examples:
 - Where the policy is cancelled but the certificate has not been returned.
 - Where the driver is not a named driver.
 - Where the driver is not a licensed driver.
 - b) Article 75 Insurer – examples:
 - Where the insurers have obtained a declaration under s.152, e.g. on grounds of non-disclosure.
 - Where the use of the vehicle is not covered by the policy.
 2. Where MIB will become involved:
 - a) Under the Uninsured Drivers Agreement
 - Where there is no insurance on the vehicle whatsoever.
 - Where the driver's insurance has lapsed and they have not arranged cover elsewhere.
 - b) Under the Untraced Drivers Agreement
 - Where the car is stolen and the thief 'disappears' after the accident.
 - A hit and run accident.
3. To meet the 4th EU Motor Insurance Directive requirement for easy access to the insurance details of all vehicles from a national information centre; and to help reduce uninsured driving by giving the police a means of checking if a vehicle is insured or not.

Self-test questions

1. **In what type of accidents do you think that 'meaningful degree' or 'Joint tortfeasor' situations might make it advantageous for an insurer to revert to Article 75 status?**

2. **What recommendations were made in the Greenaway Report on Uninsured Driving in the UK?**

3. **For what main purposes was the Motor Insurance Database set up?**

You will find the answers at the back of the book

3: Motor policies – the scope of cover

Chapter section	Syllabus learning outcomes
A Cover	2.1.1, 2.1.2
B Motor car	2.1.1 – 2.1.7
C Motor cycle	2.2.1
D Commercial vehicles	2.2.2, 2.2.4, 2.2.5, 2.2.6
E Goods-carrying vehicles	2.2.2
F Special types	2.2.5
G Agricultural and forestry vehicles	2.2.6
H Passenger-carrying vehicles	2.2.3, 2.2.4
I Contingent liability and occasional business use	2.1.1, 2.1.2
J Motor trade	2.2.7
K Breakdown insurance and legal expenses	2.1.8, 2.1.9

Learning objectives

After studying this chapter, you should be able to:

- ☐ outline the motor car policy and its structure, including territorial limits and use outside the UK;
- ☐ explain the cover provided for third party liabilities (including emergency treatment fees), loss of or damage to the insured vehicle, personal accident and other benefits;
- ☐ describe the policy conditions, limitations and exclusions and the operation of the right of recovery clause;
- ☐ differentiate between the cover provided by the motor car policy and those issued for motor cycles, commercial vehicles and other motor risks, including motor trade;
- ☐ outline the cover provided for motor legal expenses and breakdown insurance.

A Cover

In chapter 1 we explored the various types of risk that arise from the ownership and use of motor vehicles, and in this chapter we shall examine how insurance provides cover for risk and satisfies legislation.

As we have seen, compulsory third party motor insurance as required by the RTA is provided by authorised insurers who must comply with legislation and regulations for the satisfaction of third party claims and the issue of documentation. Those same insurers are also the main providers of insurance for non-RTA third party motor liabilities and vehicle 'own damage' and theft, although some cover is provided outside the conventional motor market. It is interesting to note that, whilst RTA cover is included within third party policies, approximately 85% of insured motor car owners select comprehensive or third party fire and theft cover.

A1 Contractual relationship and insurable interest

Like other forms of insurance, motor policies are contracts between policyholder and insurer, the fundamental principles of which you will be familiar with from your study of P05. At this stage you should remind yourself of those principles which govern the formation of insurance contracts and consider how they apply in the context of the motor policy.

A1A Utmost good faith

The principle of utmost good faith and the implications of misrepresentation and non-disclosure are relevant to motor contracts, like other classes, but have the added nuance that breach of this fundamental duty can not only undermine the contract but constitute an offence under the RTA. The consequences of breach and practical implications arising from it are examined in later chapters.

A1B Insurable interest

You will recall insurable interest is one of the essential elements necessary to create a valid insurance contract; for motor insurance it arises from:

- i) the policyholder's financial interest in the insured vehicle (in the case of policies which cover the risk of damage or loss of it) and consequential loss arising from such damage – for example, loss of use of the insured vehicle, for which a replacement vehicle might be required.
- ii) the potential liability in law arising from use of a vehicle which, if uninsured, would reduce the insured's wealth or assets if they were required to pay damages to claimant(s).

The standard comprehensive motor policy covers most types of damage to the vehicle, together with third party liability. It is essentially a contract of indemnity and the attendant principles of subrogation and contribution apply. An exception is the personal accident section of a comprehensive policy which provides fixed capital benefits for death or loss of limbs (and sometimes weekly benefits), irrespective of liability, and that section is, therefore, not subject to subrogation or contribution.

*Contracts
between
policyholder
and insurer*

A2 The policy cover

The motor policy must satisfy the following:

- **The needs of the customer.** This will vary, depending upon the customer profile. Some policies provide a very wide range of benefits (e.g. supply of replacement cars whilst the insured vehicle is undergoing repair, overnight accommodation if a car is undriveable through accident and unlimited foreign use) whilst others provide more modest benefits, limiting cover to accidental damage and/or fire and theft. All will usually provide some form of third party cover.
- **RTA liabilities.** All motor policies, other than those which cover solely 'off road' use or laid up cover, must provide the minimum cover to comply with Part VI of the RTA. The policyholder will normally have the wider protection provided by third party only cover, unless restricted to 'RTA only' for underwriting reasons.
- **The rules of fairness.** The policy must satisfy the rules of fairness established by various legislation, including the **Unfair Terms In Consumer Contracts Regulations 1999**, enforced by the FSA through regulation and, in the context of dispute resolution, the Financial Ombudsman Service (FOS).

The FSA does not require insurers to provide totally customised products and does not seek to inhibit the development of generic material but Treating Customers Fairly (TCF) does mean that insurers must consider their target market when developing products.

- **It must be clearly defined.** Having established the type of cover to be provided the insurer must ensure that the appropriate limitations and exclusions are in place so that the contract provides only the scope of cover intended and which is commensurate with the premium charged.
- **Reinsurance.** All insurers arrange reinsurance to protect their capital and stabilise their results from year to year – a regulatory requirement enforced by the FSA/HM Treasury – and the scope of the policy must dovetail with the insurer's reinsurance arrangements, with policy wordings reflected in reinsurance treaty wordings, as appropriate. Reinsurance is covered in detail in chapter 5.

Reinforce

Refer to IF1 for a reminder of the FSA TCF principles in relation to the development of products.



A3 Policy wordings

There are currently in the region of 65 insurers actively underwriting motor insurance in the UK, most of which offer variations in the scope and wordings of their policies when compared to each other. Whilst there is no universal wording in use throughout the market, upon comparing them you will notice a certain similarity in structure and content; this is something inherited from an era when accident insurance was predominantly subject to standard 'tariff' wordings. Furthermore, unlike most other forms of insurance, motor policies reflect the statutory requirements of the RTA and other related legislation and there is, therefore, no scope to deviate from the minimum requirement in the third party section of the policy.

A4 Types of cover

A4A RTA or 'Act only'

A policy which limits cover to RTA only provides the minimum cover required by law, namely:

- Unlimited indemnity for legal liability to third parties for death or bodily injury, together with damage to third party property up to a maximum of £1m, arising from the use of a vehicle in a road as defined, in the UK and other countries as required by the EU Motor Directives. Refer to chapter 1, section D1C.
- Payments for emergency treatment and hospital treatment fees, as required by the RTA.

The policy also covers legal costs incurred in defending an action for damages, including claimant's costs awarded against the driver/user.

Liability arising from terrorism is a standard exclusion

Few motorists would be content to accept a policy providing RTA only cover as there is no protection for liability arising from non-road use and it is not offered to the customer as a voluntary option. It is used for those cases where the insurer is unwilling to issue wider cover because of an unsatisfactory driving history or where the particular liability is otherwise considered uninsurable. For example, liability arising from terrorism is a standard exclusion other than to the extent that liability cover must be provided to satisfy the requirements of the RTA.

A4B Third party only

The third party only policy provides the RTA cover described above and, in addition:

- liability arising from accidents on private property, as well as 'roads' as described in the RTA Part VI; this is unlimited in amount for death or bodily injury, and whilst limited for liability for third party property damage, the amounts are usually much higher than the £1m limit required by the RTA. As we shall see later, a typical limit for private cars is £20m, whilst limits for commercial vehicles can vary considerably and are often significantly lower than £20m.
- Indemnity for the liability of passengers in the vehicle arising from their negligence is usually covered. For example, the opening of a passenger door injuring a pedestrian or cyclist.
- Indemnity to the policyholder's employer or business partner arising from their vicarious liability whilst the vehicle is being used for business purposes covered by the policy, is usually covered under non-commercial policies.
- Indemnity to the legal personal representatives of the person indemnified by the policy in the event of that person's death.
- In addition to the legal costs described above for RTA cover, the third party policy includes payment of legal fees incurred **with its consent** for representation at a coroner's inquest or fatal accident enquiry, or for the defence of proceedings in a court of summary jurisdiction (e.g. in England and Wales, a magistrates' court) and fees to defend proceedings for manslaughter or reckless or dangerous driving, in respect of an accident covered by the policy.
- Most private car policies (and some motor cycle policies) provide third party only cover whilst the policyholder in person is driving certain vehicles other than the specifically insured vehicle. This 'driving other vehicles' part of the third party section (often referred to as 'driving other cars' or simply DOC under motor car policies) is explained in detail later.

**Activity**

Look at the third party sections of a selection of policies and identify the wordings which provide the above covers.

A4C Third party, fire and theft

This policy provides the third party only cover described above, together with cover for the risks of fire (including explosion and lightning) and theft (or attempted theft). Cover for accessories against these perils varies between private car and other types of policy.

A4D Comprehensive

In addition to the third party fire and theft cover described above this policy provides a range of additional benefits, the most important of which is accidental damage to the specifically insured vehicle, irrespective of liability; these are explained in detail later. It is important to note that the term 'comprehensive' means 'including many things' or 'something which is of wide scope'; it does not mean that the policy covers every conceivable risk. The term 'fully comprehensive', favoured by some marketing organisations, can be misleading and is not used in formal insurance documentation.

B Motor car

In the following section we will examine a typical motor car policy wording, exploring its scope and limitations (commercial and motor cycle will be covered later). As this is based on just one of many, however, it will vary from those in use across the market. You should, therefore, obtain copies of at least two specimen wordings if you can for comparison, preferably those you come across in your work. Discuss any differences with your experienced colleagues in the motor department to ensure you understand any significant differences and the reasons why they exist.

The motor car policy is sometimes referred to as a 'private car' policy or even simply a 'motor' policy. The general form of the policy is used for motor cars used for both private and business purposes (except those used for hire, for which commercial policy forms are used) and other light commercial vehicles (e.g. car-derived vans and twin cab pick-ups) used for non-business purposes, although some insurers permit business use for these under this policy.

Policies issued to companies and other non-individuals are adapted so that personal benefits (e.g. personal accident and 'driving other cars') are excluded or restricted to named individuals. Policies issued for driving tuition are also adapted appropriately.

To save costs, the main policy wording that is usually issued with all policies, irrespective of cover, features the comprehensive wording. For non-comprehensive covers, the wording is adapted by reference to applicable sections, identified in the schedule (see below) issued for the individual policy.

The main wording for motor car policies is often in the form of an A5 or A4 booklet or system-generated A4 pages customised to the individual risk.

Like other property and liability policies, motor policies feature the following key elements:

- recital clause;
- operative clauses, each with its own exclusions and conditions;
- general exclusions, applying to the whole policy;
- conditions applying to the whole policy.

In addition, there is usually the following:

- The schedule. This document personalises the policy booklet with the policyholder's details, those of the specifically insured vehicle, the applicable cover and excesses and any 'endorsements' applicable to the policy (see below). A new schedule is issued for mid-term policy changes and often at renewal.
- The certificate of motor insurance. Apart from serving the purpose of providing evidence of RTA insurance to comply with legislation, some of the detail on the certificate unique to the individual policy is incorporated in the policy limitations and exclusions, including the registration number of the insured vehicle and the permitted drivers and use.
- The Statement of Facts (also referred to as a Confirmation of Policy Details) or proposal form, showing the information provided by the proposer/policyholder, on which the assessment of the risk is based. The policyholder is requested to contact the insurer immediately if anything is incorrect, otherwise cover could be invalid.

Endorsements are wordings which vary the main policy wording and apply if the schedule states that they are operative. An example would be the exclusion of drivers under 25, the applicability of which to an 'any authorised driver' policy would be activated by the schedule. Some insurers print the most commonly used endorsement wordings at the back of the policy booklet, whilst others print the applicable wordings on the schedule itself.

Note that the term 'endorsement' is also used to describe mid-term changes to policies – this is covered in chapter 4.

Try to ensure that you obtain specimens of all these documents in addition to the main policy wording.

B1 Recital clause (or preamble)

This is an introduction explaining the nature of the contract and typically including reference to:

- The fact that it is a contract between the policyholder and insurer, that no other party has any rights they can enforce under the contract, and that the **Contracts (Rights of Third Parties) Act 1999** shall not apply (except as set out in the RTA).

The Contracts (Rights of Third Parties) Act, which would otherwise give rights to a third party to the contract (e.g. a permitted additional driver), enables the insurer to seek exemption from the Act and most insurers avail themselves of this option. Some insurers feature this in general exceptions to the policy (see later), rather than in the recital clause.

Reinforce

Refer to P05 for a more detailed explanation of the Contracts (Rights of Third Parties) Act 1999 and who can claim on an insurance policy.



- The policyholder's agreement to pay the premium.
- The insurer's agreement to provide cover as defined in the schedule for accident, injury, loss or damage happening within the territorial limits during the period of insurance stated in the schedule.
- The law applicable to the contract.

Under European law, the parties are free to agree which law will apply to the contract and the policy will typically stipulate that the law of England (or England and Wales) will apply unless the parties agree otherwise. Some policies substitute the policyholder's country of residence within the British Isles as an alternative to England (or England and Wales). The object is to ensure that any contractual disputes are subject to the jurisdiction of the courts of the countries in the UK, Channel Isles or the Isle of Man, which share a similar framework and operation to each other. Note, this applies to *contractual* matters – if an accident occurs in, for example, France, then any third party liability or compensation issues would normally be subject to French law.

B2 Definitions

It is common practice to define certain words which appear repeatedly throughout the policy wording or have particular significance. Examples include 'You' (the policyholder), 'Your car' (the insured vehicle identified in the current schedule or by its registration in the current certificate of insurance), and 'We' (the insurer). These are often highlighted in bold type or italicised throughout the wording to remind the reader that the word has a defined meaning.

Activity

Examine the wordings at your disposal and see how they deal with the above issues.

Do they all contain a definitions section and, if so, how do they treat defined words when they appear in the text of the policy?

**B3 Operative clauses**

These clauses set out what is and is not covered under each section of the policy. They may state the duration of the policy and the territorial limits to which the whole policy applies, although this information is sometimes combined with the recital clause.

These clauses set out what is and is not covered

The latter will typically be the United Kingdom of Great Britain and Northern Ireland, the Channel Isles and the Isle of Man (the British Isles) and, sometimes, the Republic of Ireland. Some policies extend the full policy cover to the countries for which the EU Motor Directives require the appropriate minimum cover to apply. Most policies, however, limit any 'driving other cars' cover to the British Isles.

B4 Third Party section

Part 1 – Liability to Third Parties

What is insured

- 1) We will insure you for all amounts (subject to the limits set out below) you legally have to pay for causing the death of, or injury to, any person or damage to their property as a result of an accident caused by you using or driving your car.
(This includes towing a trailer, caravan or broken-down motor car. This towing must be allowed by law and the vehicle being towed must be properly attached to your car.)

Indemnity is provided for the insured's legal liability (i.e. their liability in tort or statute) for death or bodily injury to third parties and is unlimited in amount.

Policies typically limit liability for third party property damage to £20m for motor car policies but some provide for a specified additional sum for costs, as in this example. You will recall the legal minimum required by the RTA is £1m. See item 15 which applies the limit for property liability.

Policies differ in the way they refer to trailers but all motor car policies permit the towing of a trailer or disabled vehicle. This wording clarifies that an attached trailer is deemed to form part of the towing vehicle for the purpose of third party liability by the use of the words in brackets.

- 2) We will provide the same insurance to the following people:
 - a) Anyone you allow to drive your car if they are permitted to do so by your **certificate of motor insurance**.

This extends indemnity to additional drivers, driving the vehicle with the policyholder's permission, if permitted by the certificate of insurance. This is conditional on the driver being someone who holds a licence to drive the vehicle, or has held such a licence and has not been disqualified from holding or obtaining one. The latter phrase covers the situation where someone is entitled to hold a licence but has overlooked renewing it.

Many policies limit driving to the policyholder or to named persons, and those policies which permit 'any driver' often exclude drivers under a certain age (e.g. 21, 25 or 30); the truly 'any driver' car policy is now fairly rare.

- b) The employer of the person using any vehicle for which cover is provided by this section while the vehicle is being used for business purposes permitted by your **certificate of motor insurance except that we shall not be liable where the vehicle belongs to, or is hired by, such employer**.

This provides indemnity for the vicarious liability of the employer, as discussed previously. Note that this is subject to the policy permitting business use of that employer.

- c) Anyone you allow to use (but not drive) your car for social, domestic and pleasure purposes.

This provides indemnity to a person using (but not driving) (see chapter 1, section D1A) but limits indemnity to use for social domestic and pleasure purposes. Some policies state that the indemnity to the person using (but not driving) is dependent upon the policyholder requesting it but this would not override the insurer's liability to satisfy judgments arising from this RTA liability.

- d) Anyone travelling in or getting into or out of your car.

This extends indemnity to passengers for their liability to third parties (see chapter 1, section D1A). The indemnity for passengers referred to in (d), however, is not, of course, an RTA liability.

- 3) If your **certificate of motor insurance** allows it we will also insure you, for your liability to others, while you are driving a **motor car** you do not own and which you have not hired under a hire-purchase or leasing agreement.

- a) You must have the owner's permission.

This 'driving other cars' (DOC) cover provides valuable protection to the policyholder. It does, for example, cover those unplanned and emergency situations when they find themselves needing to drive a car belonging to someone else, whose own policy does not permit driving by them, a common situation now that most policies limit driving to the policyholder or named persons. Additionally, and importantly, it is the only means by which the policyholder can be certain that they have the required third party protection because, even in those situations where it is believed the owner's policy permits them to drive, there is always the risk that the owner's policy is inoperative or defective– something which is beyond their control.

**Unplanned
and emergency
situations**

The definition of 'motor car' for the purpose of this extension will be deemed to follow the RTA definition, unless the policy includes a definition to the contrary. This was decided in *Laurence v. Davis (1972)*, where a van (which is not defined by the RTA) was deemed to be a 'motor car'.

Activity

Refer to s.185 of the RTA and note the respective definitions of motor car, motor cycle, invalid carriage, heavy motor car, light locomotive and heavy locomotive.



- b) We will not insure you if you no longer have Your Car or if it has been previously damaged and it would cost more than its value to repair.

This excludes cover if the insured car has been disposed of or has been damaged beyond economical repair. This is because the insurer is providing the DOC cover in the belief that it will, in normal circumstances, only be used sparingly (i.e. when the specifically insured vehicle is not available). If the policyholder no longer has the specifically insured car it is likely that the DOC cover would be used extensively.

This exclusion came into being following the decision in *Dodson v. Dodson* (2001), which held that, contrary to the previously established position (i.e. that the policy came to an end upon disposal (or total loss) of the specifically insured vehicle – *Tattersall v. Drysdale* (1935) – this would not apply for the purpose of the operation of the DOC extension, unless the policy specifically said so.



Reinforce

Look up *Castellain v. Preston* (1883) in P05 to see how insurable interest is necessary for a policy to operate.

- c) We will not insure loss or damage to the vehicle you are driving.

This clarifies that DOC is provided under the third party section of the policy and there is, therefore, no cover for loss of or damage to the vehicle in use. This is always the case, irrespective of whether the policy itself is comprehensive or third party.

**DOC is
sometimes
extended**

Note – whilst DOC is widely available, it is usually not applicable to policyholders under age 25 and is withheld (or adapted) for policyholders employed in the motor trade or hire car business. Policies sometimes exclude vehicles owned by the policyholder's employer. Some insurers only provide the benefit for comprehensive policyholders, in the certainty that they are obtaining the benefit of a comprehensive premium for a third party risk, which itself might feature a vehicle of greater risk than the insured car. DOC is sometimes extended to the driving of other motor cycles, as well as motor cars although this practice, once common, is now very rare.

DOC is usually limited to travel within the UK, the Channel Isles and the Isle of Man; i.e. it would not apply whilst the policyholder is in the other EU states or other foreign countries permitted by the policy.

- 4) If anyone covered by this insurance dies, we will deal with any claims which are covered by this policy made against that person's estate.

The policy provides indemnity to the legal personal representatives of anyone entitled to indemnity under this section, in the event of that person dying after the liability is incurred. This is necessary because the liabilities of a deceased person pass to their estate by virtue of the **Law Reform (Miscellaneous Provisions) Act 1934**.

- 5) As long as the claim is insured by this policy, we will, with our prior agreement, pay for a solicitor or barrister to represent anyone insured under this policy at a coroner's inquest or fatal accident inquiry or defend anyone insured under this policy in a court.

This cover for legal fees does not extend to payment of fines or penalties by the motorist, which would be contrary to public policy. Note, it is usually subject to the insurer's prior agreement and only applies where the action results from an accident which is the subject of indemnity under the policy. This can assist the insured's (and the insurer's) position if there is a defence to the charge and in serious cases will, in any event, bring out evidence which could be helpful in defending a third party claim. The insurer has the option of declining to meet the costs if it is considered there is no merit in defending the action.

Some policies specify that fees will be met for defending charges of manslaughter or causing death by dangerous or careless driving and that fees for defending other offences will be restricted to actions brought in courts of summary jurisdiction (e.g. magistrates' courts in England and Wales).

Question 1

List the four main sections of a motor policy.



- 6) If there is an accident insured by this policy, we will pay for emergency medical treatment that must be provided under the Road Traffic Acts. This will not reduce your No Claim Discount.

This reflects the requirement of the RTA, explained in chapter 1, section D1O.

What is not insured

- 7) Liability for death of, or injury caused to, any employee of the person insured which arises out of and in the course of such employment except where such liability is required to be covered by the Road Traffic Acts.

This exclusion reflects the position explained in chapter 1, section D1C, whereby the motor policy will meet the liability to passengers arising from their employment if it is a RTA liability. If it is not (e.g. an accident occurring other than on a 'road'), the Employers' Liability policy would meet the liability.

- 8) Anyone who fails to comply with any of the terms and conditions of this policy which apply to him.

This imposes an obligation on the policyholder and any other person or body entitled to indemnity to be subject to and comply with the terms of the policy. It usually appears as a policy condition as others can be entitled to indemnity or benefit under other sections of the policy, but is sometimes also shown as a requirement under the third party section by way of exclusion, as in this example.

An obligation on the policyholder

- 9) Anyone who has other insurance covering the same liability.

There will be situations where two or more policies cover the same liability. For example, an insured additional driver under the policy will sometimes also have third party protection under the DOC part of their own motor policy. Where this is so the exclusion would apply but it is very likely that the other driver's policy will have a similar exclusion, with the result that both policies would be inoperative because of the existence of the other. Where this mutual exclusivity exists it is established law that each policy will meet 50% of the liability (*Gale v. Motor Union* (1928)).

Dual Indemnity Undertaking

There is a market recommendation (the Dual Indemnity Undertaking) which provides that, where dual insurance applies in these circumstances, the insurer of the vehicle will normally meet the third party liability without seeking contribution from the DOC insurer, and that the no claim discount of the latter will consequently be unaffected.

**Activity**

Refer to P05 for the facts in *Gale v. Motor Union* (and accompanying reference to *Loyst v. General Accident*) and note the reasoning which resulted in the 50% contribution rule.

- 10) Liability for loss of or damage to property which belongs to, or is in the charge of, any person who is claiming cover for liability under this section.

This exclusion is common to most liability policies but is particularly relevant to motor as there is a strong possibility that not only the policyholder, but additional drivers, could damage property in their control. The nature of the indemnity (the driver/user's legal liability) would preclude a claim against themselves, e.g. for damage by themselves to their own property, which should be insured in its own right.

- 11) Loss or damage to any car you drive or any trailer, caravan or vehicle you tow.

This makes it clear the indemnity does not apply to damage to the vehicle in use (or any trailer attached to it), following the principle in 10 above.

- 12) Liability for loss or damage caused in a place where aircraft land, park or move, including the associated service roads, refuelling areas, and ground equipment parking areas, except where such liability is required to be covered by the Road Traffic Act.

The 'airside' use of motor vehicles presents a substantial risk which is excluded from most conventional policies and the subject of special arrangements. It is excluded from the motor third party liability except to the extent required by the RTA. The definition of 'road' is important here, as the area 'airside' is usually restricted to exclude vehicle access by members of the public and would not, therefore, be expected to fall within the RTA Part VI description of a 'road'.

**Think**

What examples can you think of where a private car may find itself 'airside'?

- 13) Liability for pollution or contamination unless it is caused by a sudden and identifiable event which is accidental and unexpected.

The intention of this exclusion is to limit liability to, for example, spillages arising from an accident which are immediately identified. Liability for gradual pollution and contamination is difficult to qualify and evaluate and is considered generally unsuitable for liability insurance. This risk, which is greater for large commercial vehicles (e.g. tankers), is considered in more detail in chapter 5.

- 14) Liability caused by acts of terrorism as defined in the Terrorism Act 2000 except as is necessary to meet the requirements of the Road Traffic Act.

The policy excludes this liability for an act of terrorism, which is unsuitable for insurance. It would in any event be outside the scope of the policy by virtue of the purpose of use of the vehicle (for terrorism) not being a permitted use or its constituting a criminal act, for which it would be against public policy to indemnify. It is, therefore, perhaps difficult to conceive how an RTA liability could arise, albeit it is possible an explosion could, for example, arise during the course of a theft which might be deemed within the scope of the RTA s.151 (2). This is unexplored ground in law and policies contain the proviso that an RTA liability would be met, should it arise.

- 15) Liability for more than £20,000,000 for damage to property and £5,000,000 for legal expenses and costs.

See Note 1 above under 'What is insured.'

Activity

Look at the wordings at your disposal and compare how they treat the above exclusions.



B5 Own damage and theft section

Part 2 – Loss of or Damage to Your Car

What is insured

- 1) Your car if it is damaged, or if it is stolen or taken without your permission.

This part of the comprehensive policy provides for 'loss of or damage to' the specifically insured vehicle. This is sufficiently wide to include accidental damage, fire (including explosion and lightning) and theft (or attempted theft) and, unlike some other types of property insurance, does not specify the insured perils, except where fire and theft are specified under third party fire and theft policies.

The risks of storm, flood, malicious damage and vandalism, misfuelling and other 'accidental' perils are, consequently, covered, unless specifically excluded within the list of exclusions to this section or the general exceptions to the policy.

- 2) Accessories and spare parts fitted to your car or in your private garage if they are damaged, or if they are stolen or taken without your permission.

Accessories are those parts forming part of the vehicle, or would be sold with the vehicle, such as the spare wheel and jack, permanently fitted radio or other permanently fitted audio and electronic equipment. Note the limits for certain accessories in the exclusions (see items 18, 19 and 20 under exclusions below). Note also that the cover extends to accessories which are stolen or damaged whilst in the policyholder's private garage but only if they are specific to the insured vehicle. The cover would not apply to other unattached accessories.

The cover would not apply to other unattached accessories

- 3) We will at our option:
 - pay for the damage to be repaired; or
 - repair or replace what is stolen or damaged; or
 - pay the amount of the loss or damage.

We will not pay more than the market value of your car at the time the loss or damage happened. We will not pay any costs which increase the market value of your car. Where we have agreed to pay the market value of your car and payment is made to you the car will become our property.

If your car is subject to a hire-purchase or leasing agreement, we will make any payment for the total loss of your car to the hire-purchase or leasing company.

The aim of indemnity is to place the policyholder in the same position that existed immediately prior to the loss and the insurer may select any of these options to achieve this. Note that the insurer's liability is limited to the market value of the vehicle immediately preceding the loss. If the cost of repairs exceeds the market value less the value of the salvage, the vehicle is regarded as beyond economical repair and the insurer will agree an amount with the policyholder in settlement on the understanding the insurer retains the salvage (known as a 'total loss' settlement).

An alternative is to make a reduced payment, allowing the policyholder to retain the salvage and arrange repairs under their own direction, perhaps using second-hand parts. These 'cash in lieu of repair' settlements are appropriate where the car is clearly repairable (even though repair using new parts and normal labour costs might be uneconomical) and the policyholder has an attachment to the vehicle through a lengthy period of ownership or other sentimental affinity. Care is required when providing future cover in these cases; this is considered in chapter 5.

- 4) We will also pay the reasonable cost of taking your car to the nearest repairer and returning it to your address after the repairs have been carried out.

This provides for the cost of removal to the nearest repairers after an accident and returning it to the insured's address after repair. The reasonable cost of removal would include towing and storage if the vehicle is undriveable. Some policies stipulate the delivery address as the insured's address in the UK or Great Britain, Northern Ireland, the Channel Isles or the Isle of Man (and sometimes the Republic of Ireland) to avoid the remote prospect of being asked to deliver it to an address outside these territories.

- 5) We will also temporarily insure any motor car supplied to you under our recommended repairer network whilst your car is being repaired as a direct result of damage covered by this policy. The cover for a car supplied under this paragraph will be comprehensive, even if the policy cover is third party, fire and theft.

This 'courtesy car' facility is quite common

Some insurers provide the policyholder with a temporary vehicle whilst their own car is undergoing repair in connection with a claim under the policy. In this example, the insurer provides cover for the temporary replacement under the policy, although this is not universal market practice. This 'courtesy car' facility is quite common but the benefits and types of vehicle provided vary and you should carefully examine the specimens you have obtained to acquire a fuller understanding of the typical scope of this benefit.

- 6) If, within one year of registration as new in your name, your car is stolen and not recovered or is damaged and the cost involved in the repair will exceed 60% of the manufacturer's list price (including car tax and value added tax) at the time of loss or damage, we will replace your car with a new car of the same make and model provided that one is available. The replacement of Your Car can only take place with your consent and that of any other known interested parties. The car being replaced will become our property. If a replacement car of the same make and model is not available we will pay the market value of Your Car and its fitted accessories and spare parts at the time of the loss or damage.

The replacement of new/nearly new vehicles which are stolen or substantially damaged with a replacement new vehicle is a fairly standard feature for comprehensive car policies and the wording is self-explanatory. Note that the agreement of any interested hire purchase, or finance, company is required; this is to ensure the insurer will not incur any cost from the transaction, whereby the finance company agrees to transfer any outstanding balance due under the hire purchase agreement, or other loan, to the replacement vehicle. Furthermore, there is provision for the insurer to settle the claim on a conventional market value basis by paying the market value, in the event an exact replacement is not available.

- 7) When carrying out repairs, our approved repairers will be entitled to fit parts made by other manufacturers they recommend for which they or the manufacturers offer a warranty. If we cannot get a replacement part or accessory, we will pay the manufacturer's last list price.

This wording provides the insurer with the flexibility of utilising other than the manufacturer's replacement parts. Where parts have become obsolete and cannot be obtained a degree of pragmatism is called for and the fall-back position of paying the value of the part, not exceeding the manufacturer's last list price, protects the insurer in those rare cases where agreement cannot be reached.

A degree of pragmatism is called for

- 8) If you have comprehensive cover and you claim only for broken glass in your car windscreen or windows or scratched bodywork caused by the broken glass, this will not reduce your no claim discount.

Historically, claims for damage to windscreens and windows, which are commonplace and usually beyond the driver's control, have been met without affecting any applicable no claim discount.

With a view to containing costs and preventing fraudulent claims (at one time it was not unknown for unscrupulous claimants to arrange for servicing bills to be presented under fabricated invoices, purporting to be for windscreen replacement) insurers require claimants to use the facilities of recommended glass replacement companies and, where practicable, encourage repair rather than replacement of the glass. The latter is encouraged by the insurer waiving the excess applicable to claims for replacement (typically an excess of £60).

Some insurers exclude damage to sunroofs and/or glass roof panels (panoramic roofs) from this section.

What is not insured

- 9) Loss of use, loss of market value for any reason, deterioration or wear and tear.

This exclusion seeks to make it clear that, whilst the insurer undertakes to make good loss of or damage to the vehicle, the indemnity does not extend to any resultant loss of its use; i.e. the policy does not cover consequential loss (unless specifically stated otherwise). The indemnity would not, for example, automatically extend to covering the cost of using alternative means of transport or paying for overnight accommodation, whilst the insured vehicle is out of use undergoing repair.

Loss of market value can arise, even though the repair is undertaken to the highest standard and this is consequently excluded, along with deterioration or wear and tear as these are inevitable and, therefore, uninsurable under an accident policy. Like the other 'uninsured' losses mentioned above, loss of value could constitute part of a claim against a responsible third party. This is covered in more detail below under uninsured loss recovery and legal expenses insurance.

- 10) Mechanical, electrical, electronic or computer faults, failures, malfunctions or breakdowns.

The policy does not cover mechanical or electrical, electronic or computer breakdowns and failures but any resultant damage to the vehicle from the failure is covered, provided reasonable steps have been taken to maintain the vehicle. If, for example, an electrical wiring fault causes a fire in the engine, the resultant fire damage would be covered but not the cost of replacing the defective part, if it can be isolated.

Damage to the engine caused by misfuelling would be covered (unless misfuelling were a specifically excluded peril under the policy) as the proximate cause of the damage would be the misfuelling, not the mechanical damage to the engine.

- 11) Damage to tyres from braking or by road punctures, cuts or bursts.

Damage to tyres by these causes is commonplace and regarded as wear and tear; it is, therefore, unsuitable for accidental damage insurance. Malicious damage to tyres by third parties would, however, be covered as would hitting debris, a protruding manhole cover or other 'foreign' object in the road.

- 12) Loss of, or damage to, your car as a result of it being stolen or taken without your permission at any time if:

- an ignition key or any similar device is left in or on the car; and/or,
- all doors, roofs, windows and all other openings including convertible roofs have not been closed and locked; and/or
- any security or tracking device, which you have told us is fitted to your car, has not been set or is not in working order and/or the annual network subscription for the maintenance contract of any tracking device has not been renewed.

As we shall see later, a policy condition requires the insured to take reasonable precautions to protect the vehicle from loss or damage and the precaution of locking the car would normally be expected in a number of situations, particularly where there is a high risk of its being stolen. Conversely, there have been cases where temporary inadvertence has been deemed not to constitute breach of that condition. This exclusion seeks to reinforce the specific need to make the unattended vehicle secure. The subject is examined in more detail in chapter 6.

- 13) The cost of replacing car locks or reprogramming or replacing any car theft device as a result of the loss of the car keys.

Policies generally do not cover replacement of locks resulting from the loss of keys. Some insurers do, however, make provision for replacement (sometimes available as an additional optional benefit) where the key or lock transmitter has been lost or stolen and they are satisfied that the identity or garaging address of the insured vehicle is known to any person who might have possession of the keys or transmitter, with consequent increased risk of theft of the vehicle. Practice varies, however, and some insurers provide the benefit only where the key or transmitter has been stolen, not lost (i.e. misplaced).

- 14) Loss of Your Car by deception by someone who claims to be a buyer or a buying or selling agent.

- 15) Loss of your car resulting from it being repossessed and returned to its rightful owner.

Exclusions 14 and 15 reflect the scenario outlined in chapter 1, section A12. It is not the intention to cover the loss of the proceeds of the sale of a vehicle which proves defective due to deception.

Note this particular wording refers specifically to the fraudster pretending to be a buyer. The exclusion would not, therefore, extend to deception by an impostor representing themselves as a bona fide car park attendant or hotel employee for the purpose of parking it but with the intention of stealing it. In these circumstances the theft would be covered, provided the policy contained the waiver to any driving limitation, referred to in section B14 below.

***The fraudster
pretending to
be a buyer***

- 16) Confiscation or destruction of your car by, or under the order of, any government or public or local authority.

This eventuality would normally be a matter for resolution between the owner and the relevant authority. Some insurers do, however, specify that the exclusion will only apply if the loss arises from the vehicle being impounded as result of a road traffic or vehicle licensing offence; consequently, if a vehicle is confiscated in error the policy would provide indemnity, leaving the insurer to exercise its subrogation rights against the authority responsible for the incorrect confiscation.

- 17) Loss of, or damage to, your car as a result of it being stolen or taken without your permission unless you make a report to the police and get a crime reference number.

The stolen vehicle is used for an illegal purpose

It is to be expected that a vehicle owner/user would automatically report the theft of a vehicle to the police. This would not only improve the prospects of recovering it, but protect the owner's position in the event the stolen vehicle is used for an illegal purpose, should there otherwise be a suspicion they might be a party to it.

Problems can arise, however, where the vehicle is taken without the policyholder's consent by a person known to them (sometimes a member of the insured's own household) and damaged whilst in their control. In such cases there can sometimes be doubt as to whether the taking was truly unauthorised or the driver really had the policyholder's permission to use the vehicle.

In the case of the latter there would, of course, be no cover if the driver were not an authorised driver under the policy. The requirement to notify the police provides the safeguard that any person alleging unauthorised taking by someone known to them would expose that person to prosecution and, thereby, provides a deterrent to the employment of such a ruse.

- 18) More than £500 for permanently-fitted electronic equipment (including audio/visual equipment, computer games consoles, telecommunication and navigational equipment) unless it is standard equipment for your car when built and your policy cover is comprehensive.

This exclusion sets a financial limit on 'after market' in-car entertainment, telephone and navigational equipment permanently fitted to the vehicle. Equipment not permanently fitted would in any event be excluded, other than to the extent covered by the personal belongings section of the policy (see later). The scope and limits of this cover vary between insurers and you should compare this wording with other specimens.

What is meant by permanently fitted requires explanation. The intention is to cover those accessories forming part of the vehicle and would, for example, normally extend to items removable for security purposes (such as audio front panels) even whilst removed; for example, if lost in a shopping centre where the vehicle is parked.

Exclusion 19 features a variation for third party fire and theft policies.

- 19) More than £250 for permanently-fitted electronic equipment (including audio/visual equipment, computer games consoles, telecommunication and navigational equipment) unless it is standard equipment for your car when built, if the policy cover is third party fire and theft.

- 20) More than £500 for accessories and spare parts in your private garage.

- 21) Loss of, or damage to, any trailer or caravan, whether attached to or detached from your vehicle.

Whilst this is a standard exclusion, insurers are often willing to provide accidental damage, fire and theft cover for specified trailers subject to additional premium. Caravans are more appropriately insured under caravan policies issued by the non-motor department.

- 22) Loss or damage as a result of a deliberate act by the insured person.

This exclusion emphasises the common law principle that no person shall benefit under a policy of insurance from their deliberate act. A person acting 'in the agony of the moment' through being placed in a position of being forced to take evasive action would not be considered to be undertaking a 'deliberate act' for this purpose. This topic is covered in more detail in chapter 6.

'in the agony of the moment'

- 23) Loss or damage directly caused by pressure waves caused by aircraft or other flying devices travelling at, or above, the speed of sound.

This 'sonic bangs' exclusion would typically apply to claims for windscreen and windows shattered by aircraft breaking the sound barrier – a responsibility of the aircraft operator but not necessarily an easy claim to pursue successfully. Some insurers consider this an unnecessary exclusion and it does not appear in all policies.

- 24) The first amount you must pay shown under endorsements added to the schedule.

Some insurers show some standard 'policy' excesses within the body of the policy wording; this exclusion refers the reader to the schedule for details of the policy excesses applicable to the policy. In both cases the insurer will rely on the schedule, or endorsements, to show voluntary and other compulsory excesses.

Standard 'policy' excesses include those for:

- a) **Young drivers:** These might typically be accidental damage excesses of £350 for ages 17–20 and £250 for ages 21–24.
- b) **Inexperienced drivers aged 25 and over:** Accidental damage excess of £150.
(‘Inexperienced’ would include a person over 25 who is a provisional licence holder or someone who has held a full licence issued in Great Britain, Northern Ireland, the Isle of Man or the Channel Islands for less than one year or, for licences issued outside these territories, for less than two years.)
- c) **Theft/unauthorised taking (or attempt thereat):** Excess £250.
- d) **Windscreen/glass damage:** Excess £60. Waived for windscreen repair (see note 8 above).

Apart from standard 'policy' excesses, other excesses include:

- e) **Voluntary excesses.** These are optional and provide a mechanism for the policyholder to obtain a premium discount in exchange for bearing the first part of a loss. These normally apply to accidental damage (excluding fire and theft) claims.
- f) **Compulsory, or underwriting imposed, excesses.** These are applied because of adverse claims experience or due to the type of vehicle on risk. In the case of the former they may be applied to specified drivers only. These can apply to accidental damage, fire/theft or malicious damage, as appropriate.

Where applicable, the excesses are applied cumulatively. For example, a voluntary excess of £100 (applicable to the entire policy) would apply in addition to a young driver excess of £350, making a total £450 excess.

The excess applies whilst the car is being driven by or **in the charge of** the driver and would, therefore, apply to damage sustained whilst the vehicle is parked unattended as well as when being driven. This can present problems where there is dispute as to when 'charge' passed between individuals. The practicalities of this scenario are discussed in chapter 6. The application of excesses as an underwriting measure is discussed further in chapter 5.

B5A Notes

- **Third party fire and theft cover.** In this example, the complete section would apply only to comprehensive policies. For third party fire and theft policies, the policy would specify that 'only that part of this section relating to loss or damage resulting from fire or theft of your car' applies. Some insurers structure their policies differently, with a separate section featuring accidental damage from the one featuring fire and theft.
- **Other exceptions.** Note that, in addition to these exclusions, there are general exceptions to the policy (which we shall come to later) which apply to the whole policy.
- **Terrorism.** Some insurers exclude loss or damage caused by an act of terrorism, as defined, but this is not universal and most policies cover this risk. All policies, however, exclude terrorism under the third party section, other than to the extent it is required by the RTA (see section B4 above). Where the accidental damage risk by terrorism is excluded, it would normally appear as a general exception.

B6 Personal accident cover

Part 3 – Personal accident benefits

- 1) If you or your spouse/civil partner are accidentally injured while travelling in or getting into or out of any motor car and this injury alone results within three calendar months in death, permanent loss of sight in one or both eyes; or loss of one or more limbs We will pay the injured person(s) or their legal representative £2,500.

The benefit is not restricted to vehicles insured by the policy; it applies to accidents in any motor car and applies to the policyholder and their spouse-civil partner irrespective of whether they are a driver or passenger in the vehicle. The RTA definition of 'motor car' assumes relevance here, as it does with the driving other cars cover (see section B4 above).

For some policies loss of a limb means its physical severance, rather than loss of use of the limb through its being rendered useless by, for example, a spinal injury sustained in the accident. Practice varies in this regard.

The capital sum varies between policies and some insurers provide the option of increasing the benefit upon payment of additional premium.

- 2) The most we will pay in any period of insurance is £5,000.

It is usual for the maximum payment in any one period of insurance to be capped, usually either at the sum payable for a single claim or twice that amount, as shown here.

What is not insured

- 3) Any person over 79 years of age or under 18 at the time of their injury.

Practice varies. Some insurers have no upper or lower age limit, whilst others have an upper limit as low as 65.

- 4) Any injury or death resulting from suicide or attempted suicide.

This is a standard exclusion under personal accident policies.

- 5) If you or your spouse/civil partner have insurance under more than one motor policy with us for the same accident, we will pay under one policy only.

It is possible that the policyholder and the spouse/civil partner could both have policies with the same insurer and that more than one of those policies would apply to the loss. This exclusion provides that the insurer will pay only once for the same loss. This exclusion would not, however, prevent recovery under other applicable personal accident or life policies – see notes below regarding capital benefits and indemnity.

- 6) If as a result of the accident the injured person is convicted of any drink related or drug-related offence.

This exclusion is dependent upon the injured party being convicted of the relevant offences as a result of the accident.

- 7) If at the time of an accident, the injured person was driving under the influence of alcohol and drugs or any other substance and this is an offence under the driving laws of the country in which the accident happened.

Unlike 6 above, this exclusion is not dependent upon conviction. If, therefore, the driver died as a result of the accident and was consequently not convicted, proof of their having driven in breach of the relevant laws would negate cover.

This exclusion is not dependent upon conviction

Exclusions 6 and 7 are not featured in all policies.

Notes on the personal accident benefits section:

- Note that some policies limit this benefit to accidents occurring within the territorial limits (i.e. commonly Great Britain, Northern Ireland, the Channel Isles and the Isle of Man, and sometimes the Republic of Ireland).
- Unlike the other parts of the policy, this cover is not one of indemnity, but a capital benefit, and the insurer, therefore, has no right of subrogation. The rule of contribution similarly does not apply, except as specified in the circumstance of 5 above.

The benefit is deleted for policies issued other than to individuals; i.e. policies issued in joint names and to firms.

B7 Personal effects cover

Part 4 – Personal belongings

- 1) We will pay up to £100 for personal belongings in your car if they are lost or damaged by an accident, fire, theft or attempted theft.

The amount of cover is traditionally low, typically £100 or £150 and is intended to cover items typically found in a vehicle, for example, coats, spectacles, CDs etc. The cover is sometimes conditional upon its accompanying a claim under the main 'loss of or damage to the insured vehicle' section of the policy. If requested by the policyholder the indemnity is provided to other persons if the property belongs to them.

- 2) If you have a child seat fitted in your car and your car is involved in an accident or damaged following fire or theft we will contribute up to £100 per child seat towards the cost of a replacement even if there is no apparent damage, subject to you making a claim under Part 2 of your policy for such damage.

This is a recently introduced benefit, inspired by the legislation implemented in 2006, requiring the compulsory fitting of child seats for children aged 3–11 and under 1.35 metres in height.

We will not cover loss of or damage to:

- 3) money, stamps, tickets, documents, cheques or share or bond certificates;

The exclusion of these items is a standard one under this section. The risk of loss or damage to these is high and in the case of cash the loss could be difficult to prove.

- 4) or goods, samples or equipment you or anyone insured by this policy carry in connection with any trade or business.

This cover is unsuitable for business tools, goods and samples, cover for which should be arranged under an appropriate goods in transit or commercial all risks policy.

Notes on the personal effects section:

- Items permanently fitted to the vehicle, e.g. car radios, are regarded as accessories, not personal effects. Removable items, such as mobile telephones and satellite navigation systems which can operate independently of the vehicle are classed as personal effects. As with the personal accident cover, this benefit is deleted for policies issued other than to individuals. It is also usually excluded if the insured vehicle is a motor caravan.

B8 Medical expenses cover

Part 5 – Medical expenses

We will pay up to £200 in medical expenses for each person being carried in your car if they are injured in an accident involving your car.

This is a policy (first party) benefit and is not to be confused with any claim a passenger may have against the driver for compensation. These benefits are payable irrespective of who is at fault for the accident and the driver themselves is entitled to claim. Typical claims would include: prescription charges, physiotherapy, specialist consultant's charges, dental fees.

Claims under this section are rare as medical treatment is usually provided by NHS hospitals, who effect recovery by the means described in chapter 1.

Question 2

List the options insurers have when dealing with a damage claim.



B9 Foreign use cover

Part 6 – Foreign use

1) This policy provides the compulsory cover you need by law to use Your car in:

- Any country which is a member of the European Union.
- Any country which the Commission of the European Community approves as meeting the requirements of Article 7 (2) of the European Community Directive on Insurance of Civil Liabilities arising from the use of motor vehicles (no. 72/166/EEC) as amended.

This is the minimum cover required by the EU directives and specified in the RTA. It is the minimum required in the EU state in which the vehicle is being used or the minimum required in Great Britain, whichever is higher. For non-EU states complying with the directives, the level of cover is the minimum required in that state. The cover applies only to the specifically insured vehicle, not to any vehicle covered under a DOC extension.

*Minimum cover
required by the
EU directives*

2) Subject to our consent and the payment of an appropriate premium we will provide the same level of cover as you have in the territorial limits for the period agreed in the countries specified in the confirmatory endorsement issued.

This enables the policyholder, upon payment of an additional premium, to extend the full policy cover for the specifically insured vehicle, applicable in the territorial limits (Great Britain, Northern Ireland, the Channel Isles and Isle of Man, and sometimes the Republic of Ireland), to other countries in the 'Green Card' system, comprising other EU states and other states complying with the EU directives, namely Andorra, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Republic of Ireland, Romania, Slovak Republic, Slovenia, Spain and Sweden, Croatia, Iceland, Norway and Switzerland. As a group, these countries are currently referred to as 'Section III Countries'.

Upon request, cover may also be provided for use in certain other countries, which are not members of the EU (and the others who adhere to the directives), but are members of the Green Card system. These comprise Albania, Belarus, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia (FYROM), Iran, Israel, Moldova, Montenegro, Morocco, Russia, Serbia, Tunisia, Turkey and Ukraine. Not all insurers readily provide cover in these countries, as there can be issues around availability of repair facilities and legal requirements, particularly during periods of political and social unrest in certain territories.

The policy will be extended accordingly for the agreed period and an appropriate document (or endorsement) issued to confirm the extension and applicable countries, together with, if appropriate, an International Motor Insurance Certificate (Green Card). This internationally recognised document is not strictly necessary for Section III countries, but is required for the other countries in the Green Card system.

Note that the policy exclusions apply to the foreign use extension. For example, the exclusion of riot cover outside Great Britain.

Typical Territorial Limits to which the whole policy applies
The United Kingdom (England, Wales, Scotland (including Scottish islands) and Northern Ireland) Crown Dependencies (Jersey, Guernsey, Alderney, Sark and the Isle of Man); these are not members of the EU.
Note: Some insurers include the Republic of Ireland in their territorial limits.
European Community (EC) States other than the UK to which the minimum cover in those states, or the UK minimum applies (whichever is the higher)
Andorra, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Republic of Ireland, Romania, Slovak Republic, Slovenia, Spain and Sweden.
Non-EU States subscribing to the EU Motor Directives, to which the minimum cover in those states applies
Croatia, Iceland, Norway, Liechtenstein and Switzerland.
Others Countries in Green Card system
Albania, Belarus, Bosnia & Herzegovina, Former Yugoslav Republic of Macedonia (FYROM), Iran, Israel, Moldova, Montenegro, Morocco, Russia, Serbia, Tunisia, Turkey and Ukraine.

A map showing these areas of operation is at appendix 1 to this chapter.

- 3) Cover in these countries is conditional upon your main permanent residence being in, and your car being normally kept in, the United Kingdom, Northern Ireland, the Channel Isles or the Isle of Man.

Whilst the minimum EU cover is provided without restriction in terms of duration within the policy period, most insurers limit the extension of the full policy cover to a maximum of 90 days per trip or 90 days in total in any one period of insurance and some stipulate, as in this example, that the cover is dependent upon the policyholder's main residence remaining in (and the insured vehicle normally being kept in) the British Isles. This is to avoid the situation where the policyholder and their car spend the majority of the year in a foreign country. Some insurers do, however, provide the full policy cover in EU countries (and those subscribing to the EU directives) without limit and in that situation there is no need to arrange foreign use extensions unless the policyholder is travelling to other countries in the Green Card system.

- 4) We will provide cover for Your car while it is in and being transported between any countries to which the insurance applies, provided the transit is by recognised sea route, air or rail, the duration of which does not exceed 65 hours.

This confirms the existence of cover during transit by sea, air or rail (including the Channel Tunnel) up to the duration specified. Not all policies automatically include transit by air, for which extra premium may be charged.

- 5) If you cannot drive your car because of loss or damage covered by this policy, we will also pay the reasonable cost of delivering it to your address in the United Kingdom.

This follows the cover for delivery to the insured's address in the UK, in line with that for accidents within the territorial limits.

- 6) We will also pay the amount of customs duty you have to pay as a result of the loss or damage to your car preventing its return to the United Kingdom.

Foreign customs duty would apply where a driver arrives in a country with a car and departs without it, it being assumed the car has been disposed of and, therefore, qualifying for payment of the duty. The policy will meet the cost of that duty if the car is not repatriated due to loss or damage sustained in an accident within the scope of the cover.

- 7) We will cover for your liability to pay General Average contributions, Salvage charges and Sue and Labour charges incurred whilst your car is being transported by sea between any countries to which the policy applies provided your car is covered for loss or damage by this policy at that time.

General average refers to the amount payable, by every interest in a ship which has safely reached harbour, to the owners of cargo that might have been thrown overboard in a storm to lighten the ship. The levy will pay the owners of their cargo for their sacrificial loss because without it the ship might never have arrived safely. Similarly, if the ship has to be rescued the fees payable to the salvage company are apportioned amongst the owners of the ship and cargo.

Question 3

What is the usual upper age limit for personal accident cover under a comprehensive private motor car policy?



B10 Car sharing section

Part 7 – Car sharing

The receipt of contributions in respect of the carriage of passengers for social or similar purposes as part of a car sharing arrangement will not be regarded as the carriage of passengers for hire or reward or the use of a car for hiring provided that:

- The car is not constructed or adapted to carry more than eight passengers (excluding the driver);
- The passengers are not being carried in the course of a business of carrying passengers;
- The total contributions received for the journey do not involve an element of profit.

Note: If you are in doubt whether or not a car sharing arrangement is covered by this policy, please contact us immediately.

This section reflects s.150 of the RTA (see chapter 1, section D1H).

B11 Car laid up section

Part 8 – Suspension of cover

If you give notice to us that your car is to be laid up and out of use we will at your request suspend all cover provided by the policy from the date of our receipt of the current certificate of motor insurance, except that if Part 2 of this policy is operative it shall remain operative during the period of suspension for loss or damage caused solely by fire or theft (or attempt thereof). Provided the period of suspension is for a continuous period of 28 days or more, and your car is not out of use due to damage for which a claim has been made under this policy, we will refund to you an amount equal to 75% of the premium applicable to the period of suspension. The exceptions to Part 2 of this policy shall continue during the period of suspension.

UK weather conditions were particularly severe

This benefit, introduced during an era when UK weather conditions were particularly severe during the winter months and vehicles less resilient to cold conditions than they are now, is nowadays rarely invoked except in situations where a car might, for example, be undergoing repair or restoration by the insured. Some policies stipulate that the vehicle must be kept in a locked garaged whilst laid up.

Note that the credit is calculated at 75% of the pro-rata premium; some insurers allow 100% credit if the policy cover is third party only and they consider there is consequently no, or very little, exposed risk. Historically the credit was allowed as a reduction from the following renewal premium but it is now practice to allow a refund at the date cover is reinstated or when the policy expires. Practice varies and some insurers do not allow the benefit for motor caravans and mobile homes.

B12 No claim discount

Part 9 – No claim discount

If a claim(s) has not been made under your policy for an incident(s) occurring during the period of insurance we will allow a no claim discount against the premium when you renew the policy, in line with the scale we apply at that time. This discount is not applicable to policies issued for less than 12 months duration. If we agree to transfer the policy to another person any no claim discount accruing to you will not transfer to that other person.

The concept of the no claims discount (NCD) is straightforward but there are a number of variations in scales and how they accrue over time, and reduce following claims. Their operation is examined in chapter 5.

B13 Other benefits

The above are the benefits which feature in typical comprehensive motor car policies. There is a trend towards including wider benefits, sometimes as optional extras within the policy or as stand-alone add-ons. These are always subject to financial and, where applicable, duration limits.

Examples include the following but these will not be examined in any detail. Apart from an awareness of their existence, the detail will not feature in examinations for this course, except where covered in the main text:

- Increased limits for personal accident, personal belongings and medical expenses.
- Physiotherapy treatment for the policyholder following injury in an insured accident, combined with driving instruction by a professional instructor to regain confidence. This would be covered under the medical expenses section of the policy but some insurers provide additional cover under a specific heading with a higher level of benefit than the medical expenses section.
- Overnight accommodation following disablement of the insured vehicle through an accident which is the subject of a claim under the policy.

Uninsured loss recovery/legal expenses insurance and breakdown assistance are discussed later.

B14 General exceptions

General exceptions apply to the whole policy and are, therefore, additional to the exceptions applicable to individual sections.

- 1) This policy does not provide insurance when any car covered is:
 - a) with your permission being driven by, or is in the charge of, anyone not permitted to drive by your certificate of motor insurance or schedule;
 - b) being used for purposes that are not permitted by your certificate of motor insurance;
 - c) being driven by you unless you hold a licence to drive the vehicle or have held a licence and are not disqualified from holding or obtaining such a licence;

- d) being driven by anyone else with your general consent who, to your knowledge, does not have a licence to drive your car, has never held one or is disqualified from holding or obtaining such a licence.

Any cover you have for loss of, or damage to, your car continues whilst the car is being repaired or serviced by a member of the motor trade or being parked by an employee of a hotel, restaurant, or car parking service.

- 1 Parts a) and b) of this exception effectively implement the driving limitation selected by the policyholder (or imposed by the insurer) and purpose of use but note that it is waived for the purpose of the indemnity provided to the policyholder for any applicable own damage or theft cover whilst the car is in the custody of the motor trade for repair or servicing or in the custody of an employee of a car parking service.

**Some insurers
waive the
limitation**

Whilst some insurers waive the limitation for thefts and unauthorised taking, this practice is not universal and some others exclude these risks if the car is not in the charge (or custody or control) of a permitted driver at the time it is stolen.

- 1a) This example is a case in point – note the use of the words ‘in the charge of’ in 1a) above. The driving limitation would similarly apply to other non-driving incidents (e.g. if the car is damaged whilst parked unattended by a non-permitted driver, the exception would apply and there would be no cover). As with excesses (see section B5 above) problems can arise where custody and control passes between permitted and non-permitted drivers. The practical implications for claims handling are discussed in chapter 6.
- 1b) The main ‘purpose of use’ variations which feature in motor car policies are examined in section B16. Issues sometimes arise where a journey is being undertaken for a dual purpose and one of them is an excluded purpose. There have been several test cases over the years, decided on their individual facts. In *Seddon v. Binions* (1978), which involved the use of a car for the dual purposes of the driver travelling home for lunch (social, domestic and pleasure) and conveying an employee of his son for the purposes of his son’s business (which was not covered), it was held that the latter was the primary purpose and the policy would not apply.
- 1c) The exclusion invalidates cover if the policyholder does not hold a licence in the circumstances described and applies equally to other persons requesting indemnity (i.e. additional drivers seeking third party indemnity), who are subject to the policy conditions.
- 1d) This exclusion leaves the policy in force for the purpose of providing an indemnity to the policyholder (e.g. repair of damage to their insured vehicle) if an authorised additional driver is not the holder of a driving licence and the policyholder was unaware of that fact, e.g. it provides for the situation where the policyholder may be lied to by a driver who states that they have a licence when in fact they do not hold one.

Some policies exclude cover if a vehicle is being driven by, or in the charge of, anyone who does not keep to the conditions of their driving licence but this practice is not universal. Such an exclusion would have the effect of invalidating cover if, for example, a learner driver was driving unaccompanied in breach of their provisional licence conditions. It would, however, similarly apply to an inadvertent technical breach such as a failure to display L-plates, where the L-plate had become detached unbeknown to the driver.

Note that the certificate of insurance is incorporated in the policy for the purpose of invoking the driving and use limitations. This is normal practice but, as discussed in chapter 1, certain driving limitations (e.g. limitation by age) cannot be shown on certificates and are featured in the policy schedule or endorsements to the policy.

- 2) This policy does not insure liability which anyone covered by this policy has as a result of an agreement or contract unless they would have had that liability if the agreement or contract did not exist.

The policy is intended to apply to the driver's liability at law, in tort or statute, and would not apply to an undertaking to accept a liability under contract. For example, a policyholder might seek to assure a passenger that they would be compensated for injury, however caused, while travelling in their car, whereas the policy does of course only meet the claim for injury to the passenger if the insured is legally liable for it. The policy, therefore, excludes contractual liability **unless the liability would have arisen at law in any event**. You will recall from chapter 1 that contractual liability is not required to be insured against under the RTA.

- 3) This policy does not insure any loss or damage caused by war, revolution or any similar event.

Some wordings are more specific than this, referring to 'any consequence of war, invasion, act of foreign enemy, hostilities (whether or not war is declared), civil war, rebellion, revolution, insurrection or military or usurped power except so far as is necessary to meet the requirements of the Road Traffic Acts. War is a catastrophic risk considered uninsurable for accident policies and this is the standard war exclusion clause.

*Some wordings
are more
specific*

- 4) This policy does not provide insurance except under Part 1 (Liability to Others) for any accident, injury, loss or damage caused by:
 - a) an earthquake (note that not all motor policies exclude damage caused by earthquake); or
 - b) riot or civil commotion if it happens outside Great Britain, the Isle of Man or the Channel Islands.

Refer to chapter 1, section A16 for the background to the limit of this cover to the British Isles, excluding Northern Ireland, and the application of the **Riot (Damages) Act 1886**.

- 5) This policy does not cover
- a) any loss or destruction of, or damage to, any property or any associated loss or expense or any other loss; or
 - b) any legal liability that is directly or indirectly caused by, contributed to by or arising from
 - ionising radiation or contamination by radioactivity from any irradiated nuclear fuel or from any nuclear waste from the combustion of nuclear fuel
 - the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof.

The background to the exclusions in 4 and 5 above is covered in chapter 1, section A1, where we discussed fundamental risks.

- 6) We will not cover securing the release of a motor car, other than Your Car, which has been seized by, or on behalf of, any government or public authority.

This exclusion was introduced to exclude cover in those situations where valid policies had hitherto been used by a minority of motorists to secure the release of impounded uninsured vehicles, thereby circumventing the SOCA (see chapter 2, section B1B). Some insurers cater for this exclusion by amending the DOC clause.

- 7) We will not pay the claim and all cover under the Policy is forfeited if You or anyone acting for You makes a claim under the Policy knowing the claim to be false or fraudulently inflated in any respect or if any loss or damage or injury is caused by your wilful act or with your connivance.

This exclusion renders cover inoperative if a fraudulent claim is submitted and effectively restates the common law position which applies where there is a breach of good faith. It consequently does not appear in all policies. It is not retrospective in effect and would not ordinarily invalidate previous valid claims under the policy.

B15 Conditions

You will be aware of the distinction between conditions and warranties from your study of P05, which should be revisited in conjunction with your study of this section. Warranties rarely appear in private motor policies but are sometimes used in certain commercial policies.

The following conditions are those commonly found in motor car policies.

B15A Duties of the insured

- 1) The insurance described in this policy will apply only if you and any person claiming to be covered by this policy have kept to all the conditions and endorsements.

This requires all persons seeking indemnity to observe the terms and be subject to the conditions of the policy. See note 9 under part 1, which imposes the requirement for those seeking indemnity for third party liability. Its inclusion as a condition enables it to apply to those who might be entitled to indemnity under other parts of the policy, such as the personal belongings section.

- 2) You must immediately send us a completed report form or report fully to us, quoting your policy number, if there is an event which could lead to a claim being made against you or by you under this policy. You must do this even if you do not plan to claim personally under this policy or if damage to your own car is not covered by this policy. You must also send us any letter, notice, claim form, court proceedings, summons, writ or communication connected with any claim arising out of any event. We will contact the people who wrote to you.

If you know about any possible future prosecution, inquest or fatal accident enquiry, you must write and tell us immediately.

Reference to 'You' will include others seeking indemnity. It would, for example, apply to the legal personal representatives. Whilst 'immediate' notification is required, the insurer will take into consideration mitigating factors in the event of breach, such as the insured's possible incapacity and would in any event normally seek to rely on any breach in this regard only to the extent it had prejudiced its position. Some policies use alternative terminology, such as 'as soon as reasonably possible after discovery/ after you become aware'.

Some policies use alternative terminology

- 3) You must not pay or agree to settle any claim without our written permission.

This condition exists to deter the insured from making an admission of liability or offer to the third party, which could prejudice the insurer's negotiating position. Again any breach would normally only be invoked if the admission had prejudiced the insurer's position.

- 4) You and any other person who is covered by this policy must do everything possible to keep your car in an efficient, safe and roadworthy condition; and protect it and its contents from loss or damage.

If the vehicle is unroadworthy or inefficient (e.g. locks are inoperative) the insurer has a contractual right to repudiate the insured's claim in its entirety. You will recall from study of P05, however, that for retail customers FSA ICOBS rules preclude the insurer from relying upon a breach of policy condition unless the circumstances of the claim are connected with the breach. If, for example, an accident occurs due to the insured car colliding with another vehicle due to its having defective tyres or brakes (and the deficiency can be reasonably shown to be known by the insured) the insurer could rely upon the breach of condition to repudiate the claim in total or in part, as appropriate. If, however, a comprehensively insured car is damaged whilst parked, the same breach of conditions could not be relied upon in the case of a retail customer contract as the breach would be unconnected to the loss.

- 5) You must allow us to examine your car at any reasonable time.

This enables the insurer to inspect the vehicle for any purpose, but the right would rarely be exercised other than following an accident, when there is a need to not only assess damage for repair (if covered under the policy) but to establish roadworthiness prior to the accident. An inspection might, for example, reveal defective brakes or tyres which would constitute a breach of policy conditions and possibly affect the policyholder's right to indemnity.

B15B Subrogation

- 6) We are entitled to:

- take over and carry out the defence or settlement of any claim in your name, or in the name of any other person insured by this policy;
- take proceedings in your name, or in the name of any other person insured by this policy, to get back any money we have paid under this policy; and
- any information and help we need from you or any other person insured by this policy.

This condition modifies the common law position

You will be familiar with the principles of subrogation from your study of P05. This condition modifies the common law position, whereby the insurer's right to subrogation does not exist until the indemnity has been provided; e.g. the accidental damage claim has been paid. This condition gives the insurer the authority to exercise its right from the outset of the claim, thereby enabling contact and negotiation with third parties and/or their insurers. The insured is required to provide all assistance the insurers require in negotiating the claim and effecting recovery, where that right exists.

B15C Contribution

- 7a) If a claim is made under this policy and there is another policy that covers the claim, we will pay only our share of the claim. This condition does not apply to Part 3 (Personal Accident) of this policy.

This contribution condition (or rateable proportion clause) restates the common law position that, where more than one policy is in force the liability of the insurer is limited to their proportion of the loss. It would, for example, apply if a loss is covered under both a household policy and the personal belongings section of a comprehensive motor policy, but special rules apply in that circumstance by virtue of the market Personal Effects Contribution Agreement, examined in chapter 6.

Like subrogation, contribution is a corollary of indemnity and consequently, neither applies to the benefits under the personal accident section of the policy. This means that the injured person can claim in full under all similar policies and can also claim compensation against the responsible third party for injuries as well.

- 7b) This provision shall not place us under any obligation to accept liability under Part 1 of this policy which we would otherwise be able to exclude under the exceptions to Part 1.

The wording makes it clear that this clause does not detract from the exclusion under the third party section which excludes all liability under that section if other insurance is in force (see note 10 under Part 1 in section B4 above). You will recall the latter invariably features in all policies, resulting in mutual exclusivity and the liability being shared by both insurers. If that exclusion were deemed to be waived by the contribution condition it would leave the insurer facing the whole of the liability under the third party section.

Reinforce

Refer to P05 for a further examination of the operation of contribution conditions.



B15D Cancellation

- 8a) You may cancel this policy within 14 days of the date you receive it. If you do this you must return the certificate of motor insurance to us. If you choose to do this you are entitled to a refund of the premium you have paid for this insurance less a pro rata charge for the number of days for which cover has been given. The full premium is due if a claim has been made which entails settlement on the basis of a total loss of Your car.

This 'cooling off' period is applicable to all general insurance contracts issued to consumers and was introduced to comply with FSA rules established following the **Consumer Protection (Distance Selling) Regulations 2000**.

- 8b) We may cancel this policy by sending you seven days notice in writing (by recorded delivery) to your last known address. You must then send us the certificate of motor insurance. When this is received we will refund the unused part of your premium to you.

This enables the insurer to invoke cancellation during the term of the policy. It is customary to give seven days notice of cancellation but this can be varied. Some policies stipulate that the notification will be sent by recorded delivery or registered post but this is not universal, nor is it mandatory.

The notice brings the contract to an end for all purposes but you will recall that termination of the insurer's RTA liability is dependent upon the surrender of the certificate of insurance (or statutory declaration that it has been lost or destroyed). Contractual cancellation is not otherwise dependent upon the surrender of the certificate but, as in the example here, insurers often make it a requirement that any refund of premium will be dependent upon their receipt of the certificate and return premium calculated from the date of receipt.

As the cancellation is at the instigation of the insurer a pro-rata refund is allowed, irrespective of whether there has been a claim during the period of insurance.

Some policies provide that cancellation may be invoked on its behalf by its authorised agent and that receipt of the surrendered certificate by the agent will constitute receipt by the insurer. The latter is done to satisfy the requirement of the MIB Article 75 – see chapter 2, section A2.

- 8c) If you wish to cancel your policy outside the statutory cooling off period in 8a above you can write to us and return your certificate of motor insurance. If you or others have not made a claim in the current insurance year, we will refund any premium paid less a charge for the period for which cover has been given calculated in accordance with our published short period scale. If a claim has been reported in the current insurance year no refund will be given.

This provides the policyholder with the option of cancelling for any reason and is complementary to the insurer's right to do so. It is, however, usual for the insurer to apply 'short period' rates (i.e. greater than pro-rata) or a fixed cancellation fee for first year cancellations to cover the expense of issuing the policy. Some insurers, nevertheless, allow pro-rata refunds for cancellations in second and subsequent years; in both these instances the refund is dependent upon there being no claim under the policy during the current period but practice varies in this regard. If, following a claim, a full recovery of its outlay was made the insurer would normally disregard it for this purpose and some insurers similarly disregard windscreen claims, though this is not universal.

B15E Avoidance of certain terms and right of recovery

- 9) If under the laws of any country where this policy applies, we have to make a payment which we would not otherwise have paid under this policy, we reserve the right to recover the amount paid from you or from the person who incurred the liability.

This gives the insurer the right to recover from the policyholder (or the person who incurred the liability) any outlay it has to make under the RTA (or equivalent law of the country in which the accident occurred), which it would not have paid had it been able to rely on a policy breach. Examples are those given in chapter 1 when considering the insurer's RTA liability under ss.148 and 151 – see chapter 1, sections D1F and D1I. If, for example, a vehicle is being driven by a driver under age 25 and the policy excludes such drivers the insurer is entitled to decline indemnity under the policy. The declinature will be effective for non-RTA liabilities (e.g. an own damage claim would not be met) but the insurer would be obliged to meet a third party property or personal injury claim as required by the RTA. This condition, if invoked, would enable the insurer to seek recovery of its RTA outlay from the relevant party. The inclusion of this condition in the policy is permitted by the RTA ss.148 and 151.

B15F Arbitration

- 10) Where we have accepted a claim but you and we disagree over the amount to be paid, the dispute must be referred to an arbitrator who we and you will agree on. When this happens, the arbitrator must make a decision before you can take any legal action against us.

This arbitration condition, which is common to most property policies, provides for disputes on the amount to be paid (quantum) to be referred to an independent arbitrator before legal action can be taken against the insurer. It does not apply to disputes on liability. In practice, most motor disputes on quantum relate to total loss settlements and the private customer ultimately has recourse to the Financial Ombudsman Service in that eventuality. The arbitration clause is consequently rarely used. This subject is covered in greater detail in chapter 7.

B15G Change in risk condition

You will recall from your study of IF1 and P05 that the duty of disclosure ends when the contract is formed and there is no common law duty to disclose new material facts that occur during the currency of the policy except that, if there is a change to the contract, the duty of disclosure is reopened insofar as material changes which relate to the change are concerned. For example, a policyholder would be obliged to disclose new information such as accidents, losses or convictions when changing cover from third party to comprehensive or adding drivers.

The duty of disclosure is reopened

This follows the principle that the insurer accepts the risk for its duration, for better or for worse. If the risk improves by virtue of the insured's, or the car's, advancing age or a conviction becomes 'spent' the reduction in risk will not be reflected in the premium until renewal is reached. Conversely, if the risk worsens by virtue of a loss occurring or the insured sustaining a conviction, any variation to the premium and terms would normally be made at renewal.

There are exceptions to this. The insurer will sometimes become aware of a serious deterioration in the risk, without disclosure by the insured, and in that situation has the option of invoking the cancellation clause. Some insurers go further, however, and include a 'change in risk' condition (or alteration clause) which obliges the insured to make notification of changes in material facts mid-term. This practice is not universal for motor policies and has been questioned in its relevance to certain changes.

Changes to the contract (as distinct from changes of material facts), such as changes to cover, vehicle, driving limitation and use must, for example, be notified (and cover amended), **before** cover is required because the new risk simply is not covered by the contract. Some of these require the issue of a revised certificate of insurance – this is covered in chapter 4.

If the insured vehicle is modified, however, it could be argued that the subject matter of the contract may have substantially changed and that any contractual requirement to make such a change notifiable prior to its being made would be supportable, in the same way that property policies normally require changes to the buildings to be notified as a contractual condition.

Some policies do not feature alteration conditions but instead include guidance to the policyholder regarding the need to notify the different types of changes, at the relevant stages during the period of insurance.

B16 Description of purpose of use

Some typical 'purpose of use' wordings for motor car policies are:

Social, Domestic and Pleasure ('SDP')

Use for social domestic and pleasure purposes EXCLUDING use for competitions, rallies or trials, hiring racing or for any business purpose.

Some policies add the words 'which includes travel between home and place of work' after the words 'social, domestic and pleasure' to clarify their meaning. Alternatively, it might be made clear by alternative wording that such usage excludes travel between home and work. This use would be appropriate where all drivers are fully retired or full-time students. In some cases 'commuting' can be limited to the policyholder only or named persons, although this is rare.

In this example, where the words 'social, domestic and pleasure' receive no further definition, it may be assumed that travel between home and place of work is permitted, but this could turn on the use requirement established at the proposal stage, when the policyholder's requirements were established.



Activity

Obtain examples of certificates from your motor department or friends who hold motor policies and compare the various use wordings. Check with your friends that they have the usage they require and whether they are clear about the limitations and how they affect them.

Class 1/Class A

Use for social domestic and pleasure purposes and **use by the policyholder in person in connection with the policyholder's business** EXCLUDING use for competitions, rallies, trials, performance test, race or trial of speed, and use for hiring, racing commercial travelling or for any purpose in connection with the motor trade

This is the most commonly used private car wording

This is the most commonly used private car wording, often known as Class 1 or Class A business use. The emboldened phrase is often extended to permit personal business use by the policyholder's spouse or domestic partner. It is important to note the difference between 'driving' and 'use' in the context of Class 1 use. The spouse need not be a driver on the policy to 'use' the car.

For example, imagine that the spouse is a mobile hairdresser, but cannot drive. Provided the car is driven by a named driver, the cover permits her to be driven to her clients. 'In person' is generally considered to mean that the person using the car is present in the car.

Class 2/Class B1

Use for social domestic and pleasure purposes and for the business of the policyholder and the policyholder's employer or business partner EXCLUDING use for competitions rallies or trials and use for hiring racing **commercial travelling** or for any purpose in connection with the motor trade.

This wording is commonly used for policies issued to individuals where businesses use is not limited to one person. Note the exclusion of use for commercial travelling, which would exclude use in a sales capacity, such as travelling to the premises of potential customers. This is often known as Class 2 or Class B1 business use.

Where the policy is issued in the name of a firm the permitted use would be **use for social domestic and pleasure purposes and use for the policyholder's business**. This wording is normally used for firms or for business cars which are at the disposal of several members of staff. Provided a permitted driver is driving, any member of staff may 'use' the car on the firm's business.

Note that there is no mention of 'spouse' or 'in person', as featured in Class 1; this wording would therefore be inappropriate for the example of the mobile hairdresser given above.

Note the exclusion of use in connection with the motor trade under Class 1 and 2. Special policies are issued for motor trade risks and these are discussed later. In those cases where limited use in connection with the motor trade is permitted under a car policy (e.g. use to carry spare parts between supplier and repairer) the exclusion would, instead of excluding use in connection with the motor trade, specifically exclude use for experiments, tests, tuition, demonstration or breakdown purposes in connection with the policyholder's business.

Class 3/Class B2

Use for social domestic and pleasure purposes and the business of the policyholder and the policyholder's employer or business partner EXCLUDING use for competitions rallies or trials and use for racing or the carriage of passengers for hire or reward.

This Class 3 (or Class B2) form of business use is the same as Class 2/B1 but does not exclude commercial travelling and, in some cases, may not exclude use in connection with the motor trade.

'Commercial travelling' is becoming an outdated term used to distinguish use in a travelling sales capacity, where the extent of use justified a higher rate than non-sales related activity. It does, however, have no recognised definition and is, therefore, nowadays a questionable exclusion. Where there is any doubt, it is important that the insurer is fully informed of the use of the vehicle and their interpretation agrees with the policy eventually issued.

'Commercial travelling' is becoming an outdated term

The term 'hiring' used in all the above wordings includes not only hiring out but carriage for reward (of goods or passengers). A specially adapted wording is used for professional driving instruction, the underwriting of which is covered in chapter 5.

Competitions, rallies, trials, tests and racing

It will be noted that all wordings exclude these activities, which are considered to be high risks and require individual underwriting at case level. Insurers distinguish between car rally driving and caravan 'rallies' and 'treasure hunts' when evaluating individual cases.

Many policies also specifically exclude off-road events, whether between motor vehicles or otherwise and irrespective of whether the event takes place on a circuit or track (formed or otherwise) and regardless of any statutory authorisation of the event. Others specifically mention the Nurburgring, lest it might be disputed that it falls within the exclusion of racing etc.

Activity

Google Nurburgring.de and see what is on offer to motorists who wish to have a taste of high speed driving. Can you understand why insurers are reluctant to provide cover for events such as these?



This is a small sample of the many purpose of use wordings used by insurers and you should be aware that there is a wide range of variations in the market, both in the basic wordings and their adaptation for individual risks.

B17 Note on variation in policy wordings

As indicated previously, these policy wordings are not universal and you should compare the equivalents in the specimens you have obtained to gain a wider understanding of the scope of cover and exclusions.

C Motor cycle

C1 Policy structure

The structure of the motor cycle policy follows that of the motor car policy but usually features fewer benefits and our examination of the policy wording will be limited to the main differences between the two. You should obtain copies of at least two specimen motor cycle policies to aid study of this section.

The standard policy follows the motor car wording with the exception as listed below.

C1A Third party liability

Some policies do not provide indemnity to employers.

As with 'driving other cars' under motor car, any 'driving other motor cycles' (DOMC) cover is limited to third party only cover for the policyholder in person and is withheld or limited for certain occupations and ages. It is usually granted only where the specifically insured motorcycle has an engine cc above a certain level (for example, 100cc or greater). This ensures that the insurer receives a reasonable rate for the DOMC cover, for it might otherwise be providing cover for a very large machine at the rate for a substantially smaller one. Like the motor car equivalent, DOMC does not apply outside the home territorial limits (i.e. it is excluded for EU and other 'green card' countries).

C1B Accidental damage, fire and theft

1. Loss of or damage to accessories and spare parts applies only if they are on the vehicle and, in the case of theft, if they are stolen with the vehicle itself, whereas the motor car policy covers accessories while in the insured's private garage.
2. Policies usually specifically exclude loss of or damage to helmets and protective clothing although cover is often available for an additional premium where the equipment is damaged at the same time as the vehicle or whilst being stored in locked panniers.

C1C Other benefits

The standard motor cycle policy has historically not included the personal accident, personal belongings and medical expenses sections usually found under comprehensive motor car policies as these risks are far greater for motorcyclists than motor car users. Some enhanced policies featuring these benefits have, however, been introduced recently.

C1D General exceptions

Driving is limited to the policyholder only or to named persons. 'Any driver' is not available, except sometimes for mopeds or other small machines. As with motor car, the driving and use limitations are linked to those shown in the accompanying certificate of insurance.

The cover provided in respect of the insured's vehicle whilst in the hands of the motor trade for overhaul, upkeep or repair or whilst in the custody of a car parking service, notwithstanding driving limitation or use restriction, is not usually provided for motor cycle. Similarly any waiving of those limitations for thefts (not a universal practice in any event) does not apply for motor cycle.

Notes

If a sidecar is attached it is deemed to be part of the motor cycle and cover applies to it as well as the specified machine, provided the sidecar has been declared and cover requested.

Unlike motor car, foreign use extensions for motor cycle do not always cover customs and excise duties and there is normally no suspension facility provided for laid up motor cycles.

Some special endorsements are unique to motor cycle policies. These will be discussed when we consider underwriting in chapter 5.

C1E Purpose of use

A typical wording for purpose of use might be **use for social domestic and pleasure purposes and use for the policyholder's business EXCLUDING hiring, racing, pacemaking, speed testing or use for hire or reward.**

A variation to the wording would be made if courier services were to be covered in that the exclusion of hire or reward would be varied to exclude the carriage of passengers for hire or reward. An exclusion would be shown here if cover were restricted to use with a side car attached.

Other possible variations are where use is limited to social domestic and pleasure (excluding business) or where business use is restricted to the policyholder or specified persons.

D Commercial vehicles

Commercial motor policies provide cover in the same way as for motor car; namely Road Traffic Act only, third party only, third party fire and theft and comprehensive but commercial vehicles differ from motor cars in their use and most present a wider exposure in terms of claims frequency and size of claim. The cover provided by the commercial vehicle policy consequently varies from the motor car policy in several areas and there are further variations for the different types of commercial risks. These are traditionally classified for underwriting purposes under the following headings and policy wordings differ for each:

Commercial vehicles differ from motor cars in their use

- **Goods-carrying vehicles**, which may be used for carriage of the insured's own goods (e.g. plumbers and shop keepers) or the goods of others (the haulage risk). Haulage risks are categorised as local/medium distance haulage and long-distance haulage (including international haulage), with rating assessed according to mileage radius covered from the vehicle's normal base.
- **Agricultural and forestry vehicles**, including those used for farming or maintenance of sports grounds and large private estates.
- **Passenger-carrying vehicles**, used for hire or reward, including public and private hire cars, multi-seater vehicles and coaches.
- **Vehicles of special construction**, (special types) used typically for local authority activities or for site work, e.g. mechanical plant, mobile shops/libraries and ice cream vans.

**Separate forms
are used for
motor trade
risks**

Some insurers adapt a standard commercial vehicle wording by endorsement to satisfy the particular requirements of agricultural and special types risks, whilst others issue a customised policy form for them. Separate forms are used for motor trade risks and some insurers issue a 'Fleet' policy for those risks featuring large numbers of vehicles that are 'fleet' rated. These will be examined later.

The nature of these risks and how they are underwritten, together with the various classifications of permitted use will be examined in chapter 5. Here we shall explore the main differences between the motor car policy and these commercial classifications, to demonstrate the scope of cover provided and how it satisfies the needs of this customer segment. A detailed examination of the full wordings is beyond the scope of this course.

Motor cars used for business purposes (other than those used for hire or reward and motor trade purposes) are usually insured under the motor car policy examined in section B above. Small commercial vehicles (e.g. car-derived vans and pick-ups, not used for hire or reward), are also sometimes insured under that type of policy. Most commercial vehicles are, however, issued under one of a number of 'commercial vehicle' policy forms.

E Goods-carrying vehicles

The format of the commercial vehicle policy used for goods-carrying vehicles follows that of the motor car policy with the following main differences. As with motor car, wordings differ between insurers and you should gather a selection of policy wordings, schedules and certificates for use with this course.

E1 Definitions

Where they appear, the definitions would, in addition to those featured in motor car, include 'trailer' and 'semi-trailer' (described as a trailer so constructed that when attached to its tractor unit (tug) it is partially superimposed on it, i.e. the trailer part of an articulated vehicle).

E2 Third party liability limits

The liability to third parties for death or bodily injury is unlimited in line with motor car to satisfy the requirements of the RTA but the third party property damage limit (typically £20m for motor car) is substantially lower. This is because large commercial vehicles are capable of inflicting considerable damage on impact with buildings and other structures and could carry explosive, toxic or other dangerous substances capable of causing extensive damage or loss.

The policy will therefore start by imposing a limit of, say, £5m, £2m or even as low as the RTA minimum (£1m) and increasing this upon request, for additional premium, thereby enabling the insurer to assess and limit its liability for the individual risk. The limit is for one event or occurrence and the insurer could, therefore, be required to meet several claims up to the limit during one period of insurance. The limit is not applied to the cumulative losses in one period.

Some insurers adhere to a low limit for vehicles carrying 'hazardous goods', defined as those prescribed in the **Dangerous Substances (Conveyance by Road in Road Tankers and Tank Containers) Regulations 1992, Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2007** and other legislation.

Activity

Using specimen policies you may have, examine how each insurer refers to dangerous substances and which ones restrict the TPPD limit.

Access www.hazchem.freeuk.com to see details of legislation and regulations relating to carriage of dangerous goods by road.

**E3 Legal fees**

Commercial motor policies issued to firms typically provide cover for legal fees and for defending proceedings (but not fines), not only relating to incidents likely to give rise to a claim under the policy but also arising from any health and safety inquiry or criminal proceedings for any breach of the Health and Safety at Work etc. Act 1974 or the Corporate Manslaughter and Corporate Homicide Act 2007, which risks were described in chapter 1 A6A.

Like the equivalent, more limited cover provided under the motor car policy, this only extends to fees and expenses incurred with the insurer's prior agreement.

E4 Loading and unloading

Use of the vehicle includes loading and unloading. This presents a potential difficulty as a line has to be drawn between when the loading and unloading of the vehicle ends, for the purpose of deciding if the risk should be covered by the insured's motor policy or any applicable public liability policies.

This presents a potential difficulty

The commercial motor policy includes the loading and unloading risk but limits it to the bringing of a load to a vehicle for loading or the taking of a load from a vehicle after unloading, by the driver or attendant. Loading and unloading by anyone else, for example, a customer's employee, is only covered if it happens 'within the limits of any carriageway or thoroughfare'; i.e. it is only covered if the accident happens on the road or on the pavement.

By way of example, if the driver or attendant causes third party injury or damage by dropping an unloaded object beyond the confines of the road or pavement the motor policy would apply, but if the act were committed by someone else (e.g. an employee of the customer assisting with the unloading) it would not be covered if it happened beyond those confines and the risk would fall to be dealt with under the public liability policy of the negligent person or their employer.

A typical policy exclusion wording might be:

We shall not be liable for damage, death or injury caused or arising beyond the limits of any carriageway or thoroughfare in connection with

- a) the bringing of the load to the insured vehicle for loading thereon
- b) the taking away of the load from the insured vehicle after loading therefrom

by any person other than the driver or attendant of such vehicle.

E5 Indemnity to others

Unlike the motor car policy, not all policies extend to persons **using** (but not driving) the vehicle and those that provide the cover do so while the vehicle is being used for social, domestic and pleasure purposes (provided such use is permitted by the policy); this proviso is important, as some commercial policies do not permit use for other than business purposes.

There is no indemnity to employer but the policy indemnifies any principal, director or employees of the policyholder.

Unlike the motor car policy, not all insurers provide indemnity to passengers for their liability to others. Those that do so may feature an exclusion whereby the indemnity shall not apply if to the knowledge of the passenger the driver does not hold a licence or has held and is not disqualified from holding one.

There is no 'driving other vehicles' cover. The demand for such cover is lower in terms of exposure to risk to the policyholder, as other commercial vehicles are likely to be insured and feature open driving, whereas private cars are typically limited to insured only or named persons. The insurer too would be exposed to a risk far greater than that posed by a car or motor cycle.

Like motor car, the third party indemnity does **not** extend to cover loss or damage to property:

- being carried in or on the vehicle (e.g. tools); or
- belonging to (or in the custody or control) of any person claiming indemnity under the policy;
- the insured vehicle.

Goods being carried by the vehicle should be covered by goods in transit policy.

Like the motor car policy, the commercial policy excludes indemnity if the person seeking it is entitled to indemnity under another policy – the scenario described in section B4 above – but the prospect of this arising is diminished by the fact that the driving other vehicles facility does not feature under most commercial policies. The exclusion of liability for accidents of employment (other than as required by the RTA) follows that featured in the motor car policy.

A typical purpose of use wording for a goods-carrying vehicle policy (own goods) might be **use for the policyholder's business and for social domestic and social domestic and pleasure purposes EXCLUDING use for hire or reward and use whilst drawing a greater number of trailers in all than is permitted by law**. But note that some policies exclude trailer cover, making it necessary for application to be made on an individual risk basis.

For a policy permitting the use for the carriage of the goods of others (the haulage risk) the corresponding wording might be **use for the policyholder's business and for social domestic and pleasure purposes EXCLUDING use for the conveyance of passengers for hire or reward and use whilst drawing a greater number of trailers in all than is permitted by law**.

E6 Indemnity to hirers

Indemnity to hirers can be provided in one of two ways:

1. If the vehicle is hired out with the owner's driver it will usually be insured by the owner (as policyholder) but a liability rests on the hirer, for which the hirer's third party liability may be insured under the owner's policy.
2. If hired out without driver and used solely by the hirer for their business, for which the hirer requires to be indemnified for their negligence or that of their employees, the policyholder does not have control in the way they would with their own driver and an additional premium would be required.

E7 Indemnity to principal

Where an insured is using his vehicle in connection with a contract with someone else (the principal), a condition of the contract may require the insured to indemnify the principal against any liability they (the principal) incur arising from work involving the performance of the contract.

A typical example might be where the insured's driver is delivering goods to a customer of the principal and, during the delivery the driver damages a valuable ornament in the customer's home. As the customer associates the goods with the principal, there is every likelihood that they will make their claim against the principal. In these circumstances the principal would expect the driver's insurers to deal with the claim on their behalf.

In some cases, the indemnity goes further and covers liability where the principal was at fault. In the above example, if the damage had been caused by the goods falling out of their packaging and causing the damage to the ornament and it was found that the principal had packaged the goods carelessly, it would be the principal who was negligent. In these situations the extended indemnity to principal would operate and the driver's policy would protect the principal.

In some cases, the indemnity goes further

Usually it is a condition of this cover that the driver's insurers have full control over the handling of any claims.

E8 Cross liabilities

It is established law that a legal person (firm or individual) cannot sue itself. However where the policyholder is a group of companies, each with its own separate identity there could be situations where a member of one company in the group injures or damages an employee or property belonging to another member of the group.

This extension permits each party in this case to be regarded as separate for the purposes of litigation.

E9 Skip hire risks

Once detached from the insured skip carrier, the skip is no longer covered under the motor policy. Skips left on the roadside require separate public liability (PL) cover. Proof of valid PL cover will be required by the local authority before the skip can be left on the roadside.

E10 Trailers

Under a motor car policy, third party cover is provided for trailers whilst being towed by the insured vehicle but the number, type and value of trailers towed by commercial vehicles vary considerably and it is usual practice to exclude the towing of trailers under the standard policy, adding the trailer cover as required. Some policies issued for small commercial vans do, however, include third party cover for attached trailers as standard.

The insured may specify the trailers they wish to insure

The insured may specify the trailers they wish to insure or may request cover for unspecified trailers. In the case of the latter the insured will be required to specify which vehicles will be used to tow trailers and the towing units will be specified accordingly in the policy; cover for these would only apply whilst attached to the specified towing vehicles – there would be no cover whilst detached. Where the trailers are specified, however, it is not relevant which vehicle tows it and cover can operate whilst the trailer is detached, as well as when towed.

You will recall from chapter 1, section D1C that cover for legal liability arising from the trailer whilst detached cover is mandatory for UK vehicles whilst in EU countries, other than the UK. Within the UK, however, there is currently no compulsory insurance requirement. As a consequence some detached trailers are insured under general liability (non-motor) policies (which can cover the third party risk) as well as under motor policies.

E11 Unauthorised movement

It may sometimes become necessary for drivers of commercial vehicles to move other parked and unattended vehicles which are blocking their way, in the normal course of their work. Cover is, therefore, usually available, on request, for the insured's liability to third parties (including damage to the moved vehicle) arising from their driver's unauthorised movement of the vehicle.

E12 Unlicensed drivers

Movement of vehicles on site or within other 'off road' places by unlicensed drivers can occur and cover for this risk can be provided.

E13 Own damage

Accessories and spare parts are covered whilst they are on the vehicle but, unlike motor car, are not covered whilst in the insured's private garage, or elsewhere.

Replacement windscreens for large vehicles, such as coaches, can be very expensive and some policies impose a financial limit for claims for solely glass damage, where this does not form part of repairs for wider damage to the vehicle.

Sheets and ropes are often carried by lorries

Sheets and ropes are often carried by lorries in order to help secure a load or protect it against damage by the elements, and these are often stored on the vehicle when not in use. These could be covered as accessories and where appropriate cover might be conditional to security precautions and additional premium.

The policy excesses applicable to young and inexperienced drivers is sometimes higher than under motor car policies.

E14 Other benefits

The personal belongings, medical expenses and personal accident benefits which typically feature in motor car policies do not appear in the standard commercial policy, with the exception of those policies designed for the self-employed and small businesses, which are limited to small vans.

There is usually no 'vehicle laid up' concession under commercial policies, as featured in motor car.

E15 Exceptions

The exclusions of pollution and the airside risk, featured under motor car above, are common to commercial policies and of particular relevance in view of the potentially greater exposure to these excluded risks.

Death, bodily injury or illness of any person caused by food poisoning, anything harmful contained in any goods supplied, or any harmful or incorrect treatment given at or from the vehicle is sometimes excluded. These are risks which should be covered by the insured arranging products liability or other appropriate non-motor liability policies and would include, for example, vans carrying fresh fish and meat, mobile shops and surgeries.

E16 Conditions

A condition uniquely applicable to commercial policies is the one which states that if the total amount of claims exceeds the limit of indemnity the insurer may pay the indemnity stated in the policy plus costs incurred up to that point and leave the insured to meet the claim.

This is due to the existence of the third party property damage limit which has traditionally applied to commercial policies. Historically this did not apply to car and motor cycle because, unlike commercial, those policies had no TPPD limit. You will recall, however, that TPPD limits have been introduced for car and motor cycle in recent years, but an equivalent condition has not been applied to them. The probability of the limit being exceeded for car and motor cycle is relatively low, given that it is typically £20m. By contrast the commercial limits are lower and the likelihood of the limit being breached is that much greater.

Some policies include an additional condition which stipulates that in the event the TPPD limit is reached the policyholder's claims will be met first and those of other parties entitled to indemnity (e.g. the driver or employer) would be subordinate.

F Special types**F1 Classification**

These vehicles are classified as 'special types' for underwriting purposes and further examples of this diverse range of vehicles are given in chapter 5. Some insurers issue a 'special types' policy, whilst others adapt a commercial vehicle wording used for goods vehicles.

F2 Third party working risk

Mobile cranes and other vehicles used as a 'tool of trade' (e.g. excavators and site clearance vehicles) have a high risk of incurring liability through demolition operations or damage to underground pipes and the like. This third party working risk is normally underwritten by public liability insurers, along with liability arising from non-motor vehicle activity. It is, therefore, normally excluded from the motor policy covering special types, with the exception of the RTA risk, which must be provided by a motor policy. By way of example, a liability incurred by a vehicle working on site (to which the public is prohibited access) would be met by the PL insurer but if the vehicle were standing on a road whilst undertaking, say, construction or demolition work on a building abutting the road, liability would arise from use of the vehicle on a road and require RTA cover.

Some motor insurers provide cover for the working risk under the motor policy, subject to appropriate terms and premium. Where this is so, the cover would typically exclude subsidence, flooding or water pollution, together with damage to pipes or cables, other than as required by the RTA.

F3 Purpose of use

A typical purpose of use wording for a 'special types' policy excluding hire or reward might be **use for the policyholder's business EXCLUDING hire or reward and use whilst drawing a greater number of trailers in all than is permitted by law.**

One including hire or reward but not the hirer's drivers might be **use for the policyholder's business EXCLUDING use for the conveyance of passengers for hire or reward and use whilst drawing a greater number of trailers in all than is permitted by law.**

The equivalent for one including hire or reward and including the hirer's drivers might be **use for the policyholder's business and use for business purposes by any person to whom the vehicle is let on hire by the policyholder EXCLUDING use for the conveyance of passengers for hire or reward and use whilst drawing a greater number of trailers in all than is permitted by law.**

Note that, unlike the goods vehicle wordings, all these wordings exclude social, domestic and pleasure use.



Question 4

What is a typical third party property damage limit for a private car policy?

G Agricultural and forestry vehicles

G1 Classification

Agricultural vehicle policies are issued for vehicles used by businesses for agricultural or forestry purposes or hired to local authorities for those purposes or other defined purposes (see section G3). The policies provide cover for:

- Any tractor or self-propelled agricultural implement used solely for agricultural or forestry work including the haulage of agricultural produce or articles required for agriculture.
- Any other vehicle used solely for agricultural or forestry purposes for which a road fund licence is not required or under a licence with exemption from duty under the Vehicles (Excise) Acts. This could typically include goods-carrying vehicles, quad bikes or special type vehicles used on or about the premises.

The standard policy excludes death, injury or damage arising out of the use of the insured vehicle for crop spraying elsewhere than on the insured's farm(s), other than as required by the RTA. Where wider cover is required, e.g. by contractors spraying on other farmers' property, the policy has to be specially extended.

G2 Agricultural trailers

Agricultural trailers can come in many shapes and sizes and may be defined as wheeled agricultural implements which can be connected to the towing vehicle for the purpose of being operated or drawn.

Can come in many shapes and sizes

Agricultural policies provide third party cover while trailers are attached to the insured towing vehicle and it is possible to offer attached and detached third party cover on trailers and other farming implements which are required to be attached to the insured vehicle in order to operate.

Some policies automatically extend the operative policy cover to attached trailers, so that 'own damage' cover would apply to the trailers if cover for the towing vehicle is comprehensive, but practice can vary. For example, an exception can be where the trailer is one of the following: threshing machine, drum baling machine, trusser, tier, combine harvester or grass drier, for which separate, specific cover would need to be arranged. The reason for treating these trailers differently is that they tend to represent the more expensive types of farm machinery, for which insurers might require alternative rating. Practice varies, however, and some insurers apply no distinction between these and other trailers, whilst others might charge extra premium for trailers with values in excess of a stated amount.

An exclusion might also apply to disabled mechanically propelled vehicles, for tractors are sometimes used to pull other vehicles out of ditches etc. after accidents and it is not the intention to provide damage cover for such vehicles.

G3 Purpose of use description

A typical agricultural policy use wording might be **use for agricultural purposes and use while hired or lent to public authorities for the purpose of driving stone-crushing plant, snow clearance or hauling material for spreading on roads to deal with frost, ice or snow EXCLUDING use for the conveyance of passengers for hire or reward, racing, pacemaking, reliability trial or speed testing and use while drawing a greater number of trailers in all than is permitted by law.**

Note the option for hiring to local authorities, which sometimes need to supplement their own fleet of vehicles during periods of severe weather conditions to undertake, for example, snow clearance. Certain agricultural vehicles are suitable for these purposes.

Farmers often help each other

G4 Indemnity to hirers and drivers

Farmers often help each other and hire equipment from each other. To cater for this, insurers provide indemnity under the agricultural motor policy to anyone who has hired a vehicle and to anyone who is driving it on the order of/with the permission of either the policyholder or the driver. This is subject to the proviso that the hirer or driver is not entitled to indemnity under any other policy and will comply with terms of the policy insofar as they can apply.

This means that a hirer or driver can claim indemnity not only for third party claims but also for damage to the vehicle itself.

H Passenger-carrying vehicles

H1 Classification

Commercial passenger-carrying vehicles comprise hire cars, buses and coaches. These policies permit use for the carriage of passengers for hire or reward, which is, of course, excluded under private motor car policies and goods carrying policies. These present a high passenger risk, the underwriting of which is covered in chapter 5.

There are three main categories of hire cars

H2 Hire cars

There are three main categories of hire cars – private hire, public hire and self-drive hire. The varying nature of the associated risks will be examined in chapter 5, but it is appropriate to distinguish between the classifications when examining the cover available.

The policy wording tends to follow the standard commercial vehicle wording, though some insurers issue a separate policy for hire cars. There is no 'driving other vehicles' extension.

Driving is invariably restricted to the policyholder and named employees/contractors. It is very rare for an insurer to issue an open driving policy for these risks. Use may be restricted to business only; i.e. social, domestic and pleasure use is excluded (or limited to the proprietor/owner-driver) and this may be a requirement of the local licensing authorities.

H2A Public hire

A public hire vehicle (also known as a taxi) is a vehicle with less than nine passenger seats that is allowed to 'ply for hire' (i.e. it has the right to be available on the streets for hire by the general public, without prior appointment), though local by-laws can restrict the areas in which passengers can be accepted. This would include the well known London 'black' cabs.

H2B Private hire

Private hire vehicles are also subject to Local Authority licensing requirements but, unlike public hire vehicles, are not able to ply for hire in the streets, but must be pre-booked by the customer.

They are rated differently

There are two distinct types of private hire risk and they are rated differently. One comprises those cars used for special occasions such as weddings and funerals, where speed is usually not of the essence and the vehicles are out of use for sometimes lengthy periods.

The other is the radio-controlled cars, where the driver often receives instructions from their operator's office for the next customer during an existing journey, thereby keeping the vehicle in almost constant use for certain peak times of demand, often within a relatively small radius. Some, however, specialise in longer distance journeys such as taking to, and collecting from, airports.

A private hire purpose of use wording (excluding use for social, domestic and pleasure) might be **use for the policyholder's business EXCLUDING use for hire or reward other than private hire which shall mean the letting of the vehicle supplied direct to the hirer from the policyholder's garage**. The wording might be adapted to specifically provide for use with or without radio control and the word 'base' substituted for 'garage', as appropriate.

H2C Self-drive hire

Self-drive hire vehicles include motor cars, commercial vehicles and passenger-carrying vehicles with up to twelve seats including the driver's seat. These are vehicles let out on hire without a driver; the hirer usually drives the vehicle themselves or arranges for a friend or associate to drive. These are insured on the basis of individual hirings, ranging from one day to several weeks, for example, for a holiday or whilst the hirer's own car is unavailable. The hirer (and driver if other than the hirer) is usually required to complete an application for insurance and there are limits to acceptance, depending on age, occupation and driving record. Underwriting of these risks will be considered further in chapter 5. The policy would exclude use for the carriage of passengers for hire or reward, unless specially arranged.

A typical hirer drive purpose of use wording might be **use for the policyholder's business and social domestic and pleasure purposes and business purposes by any person to whom the vehicle is let on hire by the policyholder EXCLUDING use whilst drawing a greater number of trailers in all than is permitted by law or use by any person to whom the vehicle is hired, for**.

H3 Buses and coaches

Vehicles with a seating capacity exceeding eight, including the driver's seat are classed as buses or coaches. These are treated as public service vehicles and are subject to PSV regulations, and are insured for hire and reward.

Small buses (defined as buses with 9–16 seats) not used for hire and reward are not subject to those regulations by virtue of the **Transport Act 1985**, provided they have been granted a special small bus permit. These permits may be issued to organisations using such vehicles for education, religion, charity, social welfare or other activities of benefit to the community (e.g. scout groups). The permit allows the organisation to charge individual fares to passengers provided there is no profit involved.

Purpose of use definitions for all policies would **exclude** use for racing, pacemaking, reliability trial or speed testing.

H4 Driving instruction

Private driving instruction by, for example, a friend of the learner driver (who holds an appropriate full driving licence and complies with age restriction and length of experience) would be covered by a private motor car policy, provided the learner driver were disclosed and included under the policy (and the friend is not being paid a fee which exceeds the running costs associated with providing the tuition, whereupon the use would be deemed not for hire or reward). The instructor accompanying a learner driver would be considered a 'user' of the vehicle as they would to an extent be controlling it and could, therefore, incur liability, for which cover is required.

Professional driving instruction, whereby the pupil pays for instruction, however, constitutes hire or reward and is, therefore, not covered by a motor car policy, even one providing use for business purposes.

Vehicles used for professional driving instruction (the tuition risk) are insured as a commercial risk, although some insurers issue an adapted motor car policy form. The policy would typically warrant that the vehicle is fitted with dual controls and that all pupils are accompanied by a qualified instructor employed by the insured. Use would be limited to the business of the policyholder for tuition purposes with any permitted social domestic and pleasure use restricted to named and approved individuals; these would typically be the proprietor or named instructors. Driving of other vehicles would be excluded or limited to the proprietor or another named and approved individual. Personal accident cover and other personal benefits may be excluded. Any claim arising from an accident involving the pupil driving would, of course, attract any standard inexperienced driver's excess. Some insurers, however, impose an equivalent compulsory excess applicable to any permitted driver, including instructors and pupils, and apply it in lieu of the policy excess. This avoids any possible dispute as to who was driving or in control of the vehicle at the time of the accident.

I Contingent liability and occasional business use

I1 Contingent liability

Contingent liability policies are issued in situations where one person may rely on another to arrange insurance but due to that insurance proving inoperative for some reason, incurs a liability in circumstances over which they have no direct control. Typically, this occurs where a principal engages a contractor to do work on their behalf. The principal will try to ensure that the contractor has adequate insurance cover, including indemnity to principal but if the contractor's insurance should fail for any reason, the principal could be left to meet any claims themselves. In these situations, a contingent liability policy would cover the principal.

A further example is the vicarious liability incurred by an employer when they allow an employee to use their own vehicle on the employer's business (see chapter 1, section A6). We have seen that the standard motor car policy provides an indemnity to the employer provided the policy permits business use but the employer has no better rights under the policy than the employee. So, if the employee is in breach of their policy or it is inoperative (e.g. because the employee has failed to renew it or it is avoided for some reason) the protection given to the employer falls alongside that of the employee. To cater for this scenario, the employer can effect contingent liability insurance to cover their vicarious liability.

It is important to remember that the policy does not indemnify the employee/owner of the vehicle. It only covers the employer and there is no cover for the employee if the claim is pursued against them. Likewise, there is no cover for damage to the vehicle.

The policy excludes vehicles being driven by the policyholder or owned by the policyholder (these should be insured in their own right in the policyholder's name). The policy wording is similar to that used for commercial vehicles but there is no RTA cover and a certificate of insurance is not issued. There is consequently no compulsion for these policies to be issued by the motor department and they are sometimes issued by general liability insurers.

Motor fleet policies tend to provide this cover automatically but it can be obtained as a stand-alone product.

12 Occasional business use (OBU)

There could be occasions where an employee's own car needs to be insured for their employer's business but the use allowed by the employee's policy does not cover business use and that cover cannot be obtained, or it is impracticable for it to be arranged; or the employee might use a car belonging to someone else (e.g. a friend or relative) on their employer's business. In such a case, it is highly unlikely that the owner's policy would extend to the business use of the additional driver's employer.

To cater for this, a policy is available to cover only the occasional business user. The policy is restricted strictly to the business of the employer (no social, domestic and pleasure use is permitted) and excludes the carriage of passengers for hire or reward, together with the usual 'racing and pacemaking' exclusion. The policy is inoperative if there is any other policy in force covering the same loss or liability. Cars owned or hired by the employer are excluded.

A policy is available to cover only the occasional business user

OBU is, therefore, not a contingent cover, but a primary cover that replaces the need for the employees to insure their cars for business use. Unlike the contingent liability policy, which indemnifies the policyholder (employer) but not the employee, the OBU policy indemnifies the policyholder or, at their request, their employee. A certificate of insurance is issued in the name of the employer.

It follows that if comprehensive OBU cover is effected, the employee can enjoy the protection of the employer's policy for their own damage cover whilst the vehicle is used on the employer's business. There is some scope for selection against the employer where, for example, the employee has only third party cover for their own personal use but there is comprehensive OBU cover in force and it is difficult to establish whether the vehicle is being used for private or business purposes. Employers are, therefore, sometimes selective in offering this cover to their employees.

As with contingent liability, OBU is often included in fleet policies but can be provided separately.

Question 5

To a member of the public looking for a cab, what is the main difference between a public hire vehicle and a private hire vehicle?



I3 Fleet

We shall see in chapter 5 that risks featuring large numbers of vehicles owned by an organisation or group of companies can be insured collectively and the premium assessed primarily on the basis of that risk posed by the particular fleet, rather than relying solely on the global experience of the insurer's wider motor account.

The policy forms follow those of the relevant types of vehicle, which in the case of, for example, a manufacturing company might comprise a mixture of delivery (goods) vehicles, motor cars used by directors and sales representatives and perhaps fork-lift trucks used in the warehouse. The company might also require contingent liability and OBU cover.

The insurer could issue a collection of the appropriate policy forms for the relevant vehicles or, as is common practice nowadays, issue a 'fleet' policy form covering all the different types of vehicles under one policy document. This is, essentially, a marketing device, as the wording would ordinarily follow those described in this chapter for the various types of the policy. Further examination of the wording is, therefore, unnecessary for our purposes.

J Motor trade

J1 Introduction

The main principles of motor insurance apply equally to motor trade insurances but the operations of motor traders and garage proprietors require special arrangements unique to this business, which includes the custody of, and road testing of, customers' vehicles and driving otherwise uninsured vehicles under trade plates.

The most important feature of these policies is their flexibility in their treatment of both vehicles and drivers.

Here are just a few of the organisations and people who need these types of policies:

- Sales or repair of new or used cars, motor cycles, caravans or commercial vehicles.
- Bodywork repairers.
- Vehicle breakers.
- Agricultural vehicle engineers.
- Vehicle repossession agents.
- Valeters.
- Accessory, tyre and exhaust fitters.
- Auto electricians, vehicle audio and security installers.

Within these trades, the size of the organisation can range from the sole trader, selling cars from their home, to the largest main dealer or chain of body shops. In the same way, vehicles at risk can range from modest saloon cars to high performance vehicles, heavy goods vehicles, coaches or agricultural vehicles.

The motor trader needs a policy that enables them to do their job without having to continually contact their insurer or intermediary to change details of vehicles or drivers.

J2 Types of policy

Three main types of policy are available:

1. Road risks.
2. Internal risks (the premises or 'garage' risks).
3. Combined road and garage risks.

Depending on the type of business, the motor trader may only require road risks cover or they may require both internal and a road risk covers. Either way there is a market for both types of risk.

When both road risks and internal risks are covered, the insurer may issue separate policies or a single combined policy which includes both, together with some non-motor risks in one policy document.

Note that the following is a broad outline of the three main types of policy and is intended to provide a basic awareness and understanding of the subject. The full wordings are extensive and quite complex and are beyond the scope of this study text.

J3 Definition of 'vehicle'

A common definition of 'vehicle' in motor trade policies is as follows:

Any motor vehicle the property of the insured or in the insured's custody or control.

Any vehicle, mechanically propelled or otherwise attached for the purpose of being towed to a motor vehicle described above.

All steam driven vehicles are excluded.

J4 Road risks policy

This provides cover for vehicles either belonging to or in the custody or control of the motor trader when being driven on a road or while in the course of a journey on premises not owned by or occupied by the insured (e.g. temporary overnight garaging). There is no cover for accidents occurring on the insured's own premises.

A typical wording might be '**Any vehicle on a road or temporarily garaged in the course of a journey but not on any business premises owned or occupied by the insured**'. Note, however, that the change to the RTA description of a 'road' to 'road or other public place' (see chapter 1, section D1A) could have the effect of involving the road risks insurer in RTA liability for incidents on garage forecourts if they are deemed to be public places.

Compared with the standard private car wording, this is a fairly restricted cover. A number of road risks policies, however, will include cover for vehicles kept at the insured's home.

This is a fairly restricted cover

The policy wording is similar to the standard commercial policy wording with the following differences.

Cover is provided against loss or damage due to collision or impact, fire or lightning (not explosion), theft (excluding loss of accessories and spare parts unless stolen with the vehicle).

Towing is an integral part of the motor traders business and, unlike the towing of disabled vehicles section of the commercial vehicle policy, the towed vehicle carries the same cover as the towing vehicles under the motor trade policy.

The policy can be for comprehensive risks (or named perils), third party fire and theft or third party only. The policy may include other extensions, depending on the business; for example:

- **Demonstration** – this provides cover for when prospective customers try out vehicles. There is usually a condition that the customer must be accompanied by an employee of the insured but cover can be granted for unaccompanied demonstration on suitable risks, with restrictions on age and experience of customers and the duration of the demonstration. Terms vary between insurers.
- **Loan or hire to customers** – where the customer's car is being repaired the motor trader may wish to offer the customer a courtesy car. This may occur where the repairs are mechanical or unconnected with the insurer. Where courtesy cars are supplied under an arrangement with the customer's insurer, the customer's insurer will usually insure the courtesy car.
- **Driving** – under the road risks policy, on small risks driving may be restricted to named individuals. For larger risks, driving for motor trade purposes would usually be open to all employees and principals.

Private use might be restricted to named individuals on small and medium-sized risks but permitted for all employees on large risks.

Named non-employees may be included

Named non-employees may be included for pleasure use and, on larger risks, use for pleasure purposes may be extended not only to named persons but to any friend or relative of the insured or of directors of the firm. Where cover for pleasure use is provided insurers may require details of vehicles placed at the disposal of drivers for this purpose. In some instances, the use may be restricted to specified vehicles or, particularly with regard to young drivers, the insurer might apply a size and type of vehicle restriction. See underwriting in chapter 5.

It should be noted that use under a trade plate precludes use for private purposes so such cover is not available on a policy rated on a 'trade plate' basis. The various rating bases are explained in chapter 5.

- **Use** – a typical policy would not cover use for racing, pacemaking, reliability trials or speed testing, rallies, trials or competitions and would exclude use for hire or reward.

Policies may be extended to provide elements of hire and reward cover. For example, cover might be granted where a limited amount of Private hire use is required in a rural environment or for occasional hire for weddings but not for an active hire car operation. Private hire would be deemed to mean the hire of a vehicle supplied to a hirer direct from the policyholder's garage and the following exclusions might typically apply:

Excluding:

- 1 hire or reward of any goods carrying vehicle;
- 2 use for private hire of any vehicle with more than 8 seats including the driver's seat;
- 3 use for the carriage of passengers for hire or reward other than private hire.

Where the policyholder is in the business of hiring out the types of vehicles described in the standard exclusions 1 and 2 above, the exclusions may be deleted subject to additional premium.

J5 Garage risks policy

For many years, much of the insurances for risks away from RTA situations (e.g. on premises) were catered for by insurers issuing 'comprehensive road and garage' policies or 'internal risks' policies.

The modern practice is for insurers to issue a combined policy in much the same way as they would for an engineering or manufacturing risk and to market motor trade business as a package, offering the motor road risks and internal liability cover as part of a wider package. This could include the buildings, the contents of the premises on an 'all risks' basis, machinery and plant, the stock of vehicles and any stock in transit, customer's vehicles, the cost of replacing vehicle locks and keys and theft from your premises, glass and money, together with public and employer's liability.

The following options are available in addition to the standard cover:

- **Defective workmanship** – this cover is usually required by motor traders who work on vehicles. It covers the motor trader's liability for injury and damage, including damage to the car, where the vehicle has been returned to the customer and an accident occurs due to faulty work.
- **Products liability** – this covers the motor trader's liability arising from the sale of new and used cars as well as parts and accessories.
- **Conversion** – the motor trader may inadvertently accept a vehicle in part exchange only to find that the 'seller' had no title to the vehicle. Usually there is a warranty attaching to the cover that all eligible vehicles are checked against the HPI, or other, databases.
- **Policy limits** – normally motor trade policies contain limits on the value of any one vehicle to protect the insurer against the possibility of being exposed to a high value vehicle without having the opportunity to apply terms.

Third party property damage limits are usually £1m, £2m or even £5m, but, unlike fleet policies where a higher limit applies to cars, the same limit applies to all vehicles.

Under Road Risks policies, the limit for bodily injury is unlimited to comply with RTA, but under the garage risks policy, the limit for bodily injury is the same as the limit for third party property damage.

J6 Summary

Motor trade insurance provide a wide range of risks and in many respects the cover provided is outside the normal scope of motor insurance practice. Indeed, with the exception of the 'road' risk it is often underwritten in the non-motor account, with the aid of the usual surveys and inspections undertaken for other commercial property and liability business.

K Breakdown insurance and legal expenses

K1 Breakdown insurance

Its main purpose is to provide for breakdown assistance and recovery

Vehicle breakdown assistance has historically been available to motorists as a benefit from membership of the major motoring organisations and affinity schemes. It continues to be available as a stand-alone product but is increasingly marketed as part of the comprehensive motor policy, either as an integral part of the policy or an optional add-on. Its main purpose is to provide for breakdown assistance and recovery, rather than recovery after an accident, which is the province of the comprehensive motor policy. The way in which the two policies complement each other is addressed later.

The following is a brief summary of the cover available, the premium for which varies depending upon scope of benefits selected and sometimes vehicle age and type. It would be helpful to you to obtain copies of at least two vehicle breakdown policies if you can and compare their scope.

K1A Scope

The scope of cover can be based on specified vehicles, persons, or both.

1. **Vehicle based** – the policy would limit cover to vehicles specified in the schedule to a stand-alone policy or those covered by an underlying motor policy, regardless of who is driving or travelling in the vehicle.
2. **Personal cover based** – the policy would limit cover to the nominated persons, regardless of the vehicle being driven or travelled in. Generally the nominated persons are the insured or insured and partner although some providers will extend cover to additional family members.

Where this applies, it will be limited by vehicle description, so that there is a physical limit to the insurer's liability. A typical limitation might be '**a vehicle the policyholder or his spouse/partner (not business partner) are travelling in provided it is a car, light van, motorised caravan, estate car or motorcycle registered in the UK and carries no more than the number of persons recommended by the manufacturer (not exceeding 8) and not exceeding gross vehicle weight and dimensions: 3,500 kg in weight, 7m in length, 3m in height and 2.25m in width**'. Vehicles over a certain age may be excluded.

Conditions would include a requirement that the vehicle is serviced, maintained and operated as recommended by the manufacturer and has a current valid MOT certificate, if applicable.

If the vehicle is a caravan or trailer it would need to be of standard manufacture and comply with the appropriate size and weight restrictions. It must be fitted with a standard 50mm tow ball and being towed by the insured vehicle at the time of the breakdown.

3. **Combined cover** – It is, however, possible to extend the vehicle based scope to include personal cover and vice versa.

K1B Policy cover

The main standard benefits are:

- **Roadside assistance** – following immobilisation of a vehicle (breakdown) occurring during a journey the insurance will arrange for roadside assistance including labour charges. There is usually an element of local recovery included if the vehicle cannot be fixed at the roadside. This would normally be to either a suitable repairer or other destination of the insured's choice within, typically ten miles of the incident.

Provision may be made for sending telephone messages to family members, friends or business associates to warn them of unforeseen travel delays.

Breakdown occurring within one quarter mile from the policyholder's home or place where the vehicle is usually kept is not covered, although an option to provide cover for vehicles that fail to start when at home can be included for an additional premium. See below.

- **'At home' assistance** – this cover is available for additional premium to cater for breakdown occurring within the exclusion zone specified under the standard roadside assistance. The 'at home' cover would typically apply to incidents occurring less than one quarter mile from either the policyholder's home or the place where the vehicle is usually kept; this might be a nearby garage owned or rented by the policyholder or the home address of another driver of the vehicle. To prevent anti-selection against the insurer this cover would normally not be effective until the day after the policyholder had arranged this cover for the first time.
- **Nationwide recovery** – in addition to the roadside assistance cover above, if the vehicle cannot be repaired within a reasonable time (typically by the end of the working day) cover will include the transport of the vehicle (and any passengers in the vehicle at the time) together with its contents, to a single destination of the policyholder's choice within the UK.

Passengers would be deemed to be those present in the vehicle at time of breakdown.

- **Additional benefits** – in addition to roadside assistance, 'at home' assistance and nationwide recovery, the following options may be available:
 - Provision of a hire car for up to a specified time (for example, 24 or 48 hours) to enable completion of the journey if the vehicle cannot be made usable within the specified timeframe (e.g. same day of breakdown). The time limits vary. The type of vehicle would be specified by engine cc limit and the hire made conditional upon the hirer's conditions and fuel costs excluded.
 - The cost of overnight accommodation for the passengers and driver up to a maximum amount; for example, £150.
 - As an alternative to overnight accommodation the refund of the cost of public transport for the driver and up to four passengers to complete their journey up to a maximum of £150.

Usually, these options would only apply as an alternative to Nationwide Recovery.

Exclusions are:

- The cost of parts or cost of labour which is not incurred at the roadside.
- Cover if the vehicle had broken down, or was unroadworthy, when cover was taken out. In other words, the recovery service is not intended to be used as a means of avoiding existing repair costs.
- The cost of supplying a spare wheel and tyre if a serviceable one is not provided by the policyholder.
- The cost of, if needed, a locksmith or a bodyglass or tyre specialist.
- The cost of ferry crossings or toll charges that the recovery agent may incur.
- Recovery of a vehicle stranded in a ditch, bog, beach, snow or water or has overturned.
- Breakdown at the premises of a motor trader.
- Onward transportation of animals (including horses) or livestock.

*Intended
to dovetail
with the
comprehensive
motor policy*

K1C Motor insurance and breakdown assistance compared

Breakdown cover is intended to dovetail with the comprehensive motor policy. If, for example, a vehicle is stranded in a flood, the comprehensive motor policy would normally meet the cost of accidental damage repair, including recovery of the vehicle and delivery to the repairer. The breakdown policy would normally not engage due to the exclusion above.

Conversely, the motor policy applies to accidental damage and loss by accident or theft and specifically excludes mechanical breakdown, which is the province of breakdown insurance.

The overnight accommodation benefit under the motor policy, if included, applies if a vehicle is involved in an accident, whilst the equivalent benefit in the event of breakdown would be provided under the rescue section of the breakdown assistance insurance.

K1D Wider breakdown and rescue cover

The above is necessarily a very brief outline of the cover provided by breakdown insurance and you should obtain specimen policies to achieve an awareness of the wider scope of cover available for, for example, motoring assistance whilst in Europe. A detailed study of continental breakdown and recovery and the other wider benefits is not, however, required for this course.



Question 6

What is a typical third party property damage limit for a typical commercial vehicle policy?

K2 Uninsured loss recovery and motor legal expenses insurance

As we have already seen, provision is made in the Motor policy for the payment of legal costs to defend the policyholder or other persons indemnified by the policy in actions brought by third parties for bodily injury and property damage.

A policyholder (or other insured person) can, however, incur further substantial legal costs, both in pursuing an action against other parties and in defending actions outside the scope of the third party liability cover. For example, as the 'innocent' party in an accident they can pursue the 'at fault' motorist for their 'uninsured' losses which might include, amongst other things, the costs of alternative transport or fares and other expenses, together with compensation for injury and loss of earnings incurred as a result of the accident, which are not insured by the motor policy.

Legal expenses insurance is an additional insurance product which provides cover against the risk of making or defending a legal action, even if the action does not reach court.

Think

Can you think of any other circumstances where the insured would need legal representation that is not already covered by the liability section of a motor policy? Then read on to see if they are covered by a legal expenses policy.



Legal expenses insurance was introduced into the UK in the 1970s and has become increasingly important since 2001, when the introduction of the **Access to Justice Act 1999** signalled the withdrawal of legal aid for all personal injury claims except medical negligence.

There are two types of legal expenses insurance: before the event (BTE) and after the event (ATE).

We shall now discuss each of these in turn.

K3 Before the event (BTE) legal expenses insurance

BTE is the traditional form of legal expenses insurance and was the only type available before advent of the Access to Justice Act 1999. As the name suggests, it is taken out in anticipation that it would be required if there is a subsequent accident and the premiums are consequently relatively low, when compared to ATE, with premiums ranging typically between £10 and £20 per year. This form of insurance has been widely available for over 25 years, the service having originally been available as a feature of the wider services provided by the major motoring organisations or undertaken by insurance intermediaries as a service to their clients, in conjunction with solicitors if the claim involved compensation for injury.

BTE is the traditional form of legal expenses insurance

The policy is typically sold either as an optional extra within the motor policy itself or as a stand-alone product, offered by the intermediary. It is offered at inception or renewal of the underlying motor policy.

K3A The BTE policy

For this purpose we will summarise the cover typically provided in conjunction with an underlying motor car policy. BTE cover is also available for motor cycle and commercial vehicles, including fleets, but the scope and conditions vary accordingly. It is also available in conjunction with other forms of insurance, such as household, where the benefits correspond to the product and would, for example, cover costs incurred in pursuing boundary disputes.

This is necessarily only a summary and you should obtain a specimen motor legal expenses policy wording as an aid to study. The wording is commonly featured in the standard motor policy booklet but this is not universal practice.

K3B Vehicle use and persons covered

The policy follows the scope of the underlying motor policy in regard to the vehicle covered, use and drivers. It is usually restricted to the 'insured car' and does not extend to vehicles covered by the DOC extension. It applies to drivers permitted by the underlying policy, together with any passenger carried in the car.

K3C Prospects of success

There must be a prospect of the claim succeeding for the duration of the claim. 'Prospects of success' means that it is more likely than not that the insured person will recover damages and make a successful defence and appeal, if there is one. The prospects of success will be assessed by a lawyer or other qualified person appointed by the insurer. 'More than likely' is deemed to be at least a 51% chance of success.

K3D Cover

The policy covers costs and expenses incurred for recovery of an insured person's uninsured losses as a result of an accident involving the insured car which causes:

- a) damage to the car or to any personal belongings in it;
- b) death or bodily injury to an insured person (the driver and passengers).

The indemnity limit under this section is usually £50,000 but some insurers provide up to £100,000.

Cover applies to incidents occurring within the territorial limits of the motor policy, which would also include those foreign countries to which the policy applies by virtue of any requested foreign use extension. Some insurers automatically provide the BTE cover not only for the policy territorial limits but for other countries within the EU and those others subscribing to the EU Motor Directives.

K3E Exclusions

- Any claim deliberately or intentionally caused by an insured person is excluded.
- Costs and expenses incurred prior to the insurer agreeing to them are not covered.
- Any legal action an insured person takes which the insurer has not agreed to or where the insured person does anything to hinder the insurer or its appointed representative is not covered.
- Any fines, penalties, compensation or damages which the insured person is ordered to pay by a court or other authority are excluded.
- Prosecutions relating to an insured person's alleged dishonesty or violent conduct, together with prosecutions resulting from drink or drug related offences or parking offences are excluded.
- Applications for judicial review are excluded.
- The general exclusions to the underlying policy apply in regard to drivers, use, contractual liability, nuclear clause, earthquake etc., insofar as they can apply.

K3F Conditions

The general conditions to the underlying policy apply insofar as they are applicable but the following are specific to the legal expenses section:

- Any appeal or defence of an appeal must be reported to the insurer at least ten working days prior to the deadline for any appeal.
- An insured person must keep to the terms, exceptions and conditions of the policy and cover will not apply if an insured person can claim under another policy.
- The Contracts (Rights of Third Parties) Act 1999 does not apply and any claim relating to any non-contracting party's rights to enforce all or any part of the policy are excluded.
- Incidents forming the basis of the claim must be reported to the insurer as soon as possible and in any event no later than 180 days after the date the insured person knew or should have known about the incident.

K3G Appointment of solicitor (or other representative)

The insurer will appoint the solicitor but if it is necessary to start court proceedings or there is a conflict of interest, the insured is free to nominate an alternative.

The insurer will appoint the solicitor

If the insurer does not agree to the insured's choice, it may choose another solicitor but if there is still a disagreement the insurer will ask the president of the relevant national law society to choose one to act. The insured and insurer must accept that decision.

K3H Progress of claim

The onus on the insured to co-operate follows the normal obligation required by the underlying policy and would include the insured's need to co-operate with the appointed solicitor and keep the insurer advised of the progress of the claim, together with notice of offers of settlement and payment into court.

If the insured settles or withdraws a claim without the insurer's agreement, fails to give suitable instructions to the solicitor or unreasonably dismisses them without the insurer's consent the cover ends immediately and the insurer reserves the right to reclaim any costs and expenses it has incurred.

K3I Recoveries

The insured must take every available step to recover costs and expenses incurred in the action and must repay to the insurer any costs and expenses that are recovered.

K3J Notes

A policyholder's NCD under the underlying policy would not be affected solely because of claims under this section of a policy, nor if a stand-alone insurance applied.

If there is no BTE insurance in force the innocent party would need to pursue the claim themselves or instruct a solicitor (or other ULR service) and, if appropriate, take out ATE insurance.

Whilst the main purpose of the policy is to provide for the recovery of uninsured losses and attendant legal costs, BTE policies sometimes include additional benefits, such as costs for representation in defence of prosecution for certain motor offences but this is not universal practice.

K4 After the event (ATE) legal expenses insurance

A characteristic of ATE legal expense insurance is that customers can obtain insurance after the event giving rise to the claim; in other words after the dispute or accident has happened. Typically, the customer will employ a solicitor to act for them to recover compensation and it is the solicitor who purchases the ATE insurance on behalf of the customer. ATE protects policyholders against the risk of having to pay their opponent's legal costs as well as covering their own. When customers buy ATE they usually do not have to pay the premium up front. If they win, their opponent pays damages and costs including their ATE premium. If the policyholder loses, the ATE cover pays the other side's costs as well as covering its own premium. ATE premiums are based on the risk of losing the case.

K4A Conditional fee agreements (CFA)

*no-win, no-fee
agreement*

Under a CFA, sometimes referred to as a no-win, no-fee agreement, the solicitor agrees not to charge the customer if they lose the case. If they lose, the person bringing the claim is still liable for their opponent's legal costs but this is covered by the ATE insurance that they bought before bringing the claim. If they win, the solicitor will usually add a success fee of up to 100% of their charges on top of their normal hourly rate. These costs will be taken from the losing opponent, who may also have insurance. As the client is not paying the solicitor directly a CFA makes the solicitor a partner in the claim.

CFAs are almost always linked with ATE insurance because few people could afford to cover an opponent's costs and damages should they lose the case, so the arrangement allows individuals who cannot now benefit from legal aid to bring legal claims that would otherwise be impossible.



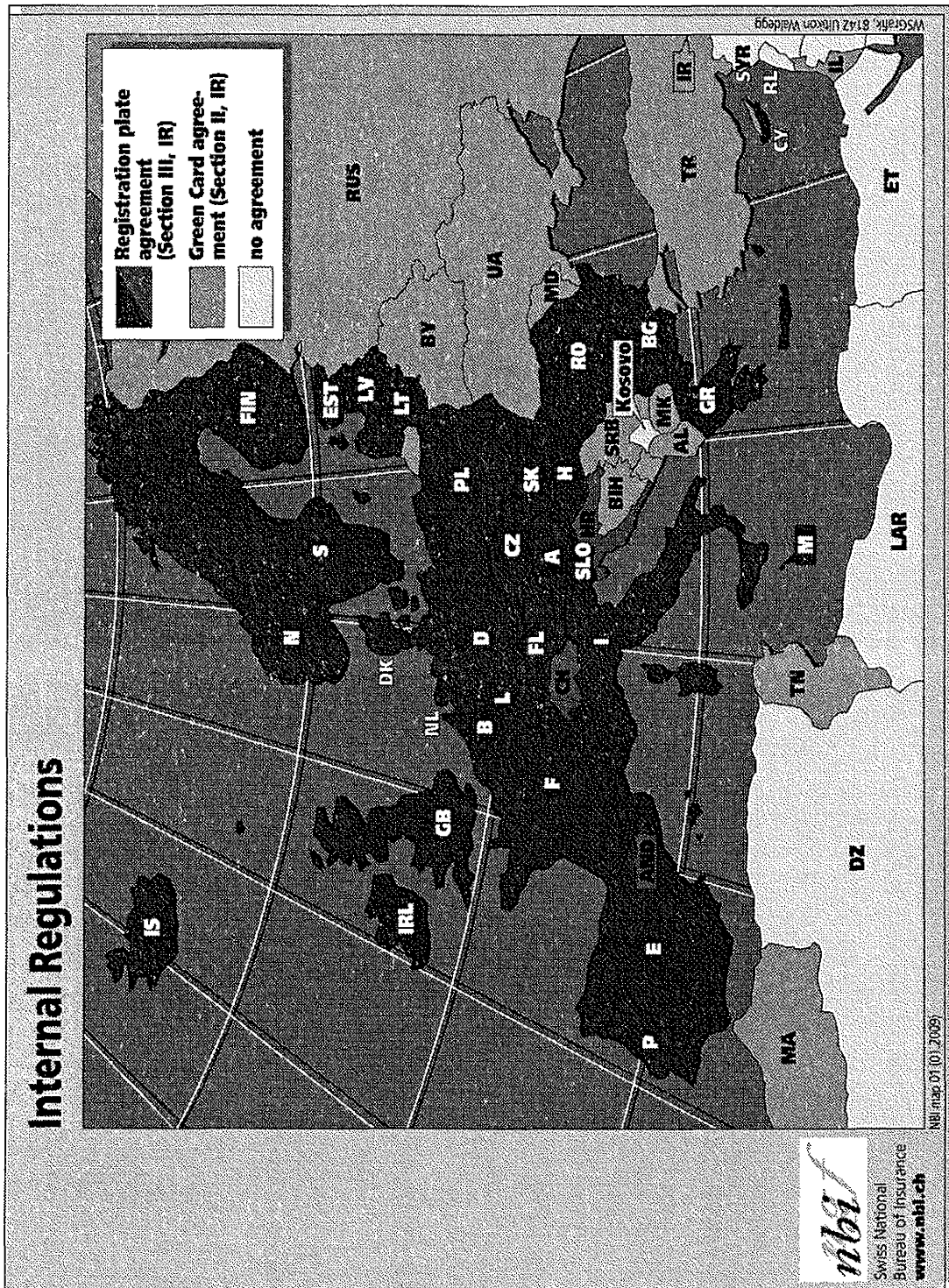
Activity

Look up After-the-event legal expenses insurance under CII Knowledge Services Fact Files on the CII website and record the differences between ATE and BTE (available to CII members only).

To learn more about the market for legal expenses insurance and how it has developed visit the Ministry of Justice website: www.justice.gov.uk and search for the 'Legal Expenses Insurance Report'.

Appendix 1: The Green Card system

Source: Swiss National Bureau of Insurance



Question answers

1. Preamble, operative clause, general exclusions and conditions.
2. Repair; replace; pay cash.
3. This is usually 79 but varies and can be as low as 65.
4. A private car policy – £20m.
5. A public hire cab can be hailed on the street but a private hire cab must be booked from the operator's office.
6. £1m, £2m or £5m.

Self-test questions

1. **Following their vehicle being declared a total loss, a policyholder borrows a friend's car, and uses their DOC cover to visit showrooms to look for a replacement car. What cover is there under their policy for this use?**
2. **A driver has an accident on a country road where they drive into the ditch. There is no one else involved and there is only damage to the car. The police charge them with careless driving. What cover is there under their policy in respect of legal representation?**
3. **A driver has borrowed their friend's car and is a named driver on the policy. When they return it, they hit their friend's garage door. Is there any cover under the motor policy for the damage to the door?**
4. **A car owned by an executive hire organisation is sent to a private airport to collect a group of businessmen who are flying in for a meeting. As the weather is bad, the driver drives right up to the aeroplane's landing slot but damages another aeroplane on the way. What does the motor policy say on this subject?**
5. **A private car policyholder decides to become a private hire operator. They use the same car, but insure it as a minicab. What effect will this have on the TPPD limit in their policy?**

6. **During a journey, a part of the car's steering mechanism breaks, causing the car to swerve into a lamppost. As the accident was due to mechanical breakdown, what cover is there under the policy in respect of the damage to the car and to the lamppost?**
-
7. **The policyholder's car has been advertised for sale in the papers. When looking at the car, a prospective buyer assaults the policyholder and drives off in the car. How do you think the insurers will interpret the loss by deception exclusion?**
-
8. **The policyholder's girl friend has her coat stolen from the car. What cover is there under the policy for personal effects not belonging to the policyholder?**
-
9. **A group of neighbours decide to travel to work together instead of each using their own cars. One of the group has a Renault Espace and a firm's parking place. He offers to be the regular driver. The group agree to reimburse him his reasonable costs. How do you think the insurers may react when they are told about this arrangement?**
-
10. **Arriving at a smart hotel for a brief stay, the hotel doorman offers to park the policyholder's car. The driving is restricted to the policyholder only. What does the policy say about this service offered by the hotel?**
-

11.

Explain the relevance of *Dodson v. Dodson* (2001) in relation to the driving other cars cover under a motor car insurance policy.

You will find the answers at the back of the book

4: Key market practices related to motor insurance

Chapter section	Syllabus learning outcomes
A New business process and documentation	3.1, 3.4
B Mid-term policy alterations and documentation	3.2, 3.4
C Other mid-term activity	3.2
D Renewals and the renewal process	3.3
E Legal issues arising from documentation issued via insurance intermediaries	3.5
F Electronic documents and electronic data interchange (EDI)	3.1

Learning objectives

After studying this chapter, you should be able to:

- ☐ explain acceptance and declinature of risks;
- ☐ describe proposal forms/declarations, policy documents, schedules and endorsements;
- ☐ explain the purpose and use of cover notes and certificates of insurance, together with the rules and practice for their issue, auditing and record keeping;
- ☐ discuss the processes for mid-term policy alterations and renewals;
- ☐ discuss the legal issues arising from the delivery and surrender of certificates of insurances and documentation issued via intermediaries;
- ☐ explain the process for considering cases of misrepresentation and non-disclosure and the options available to insurers for voidable policies.

Introduction

In this chapter we will examine the practices and processes for issuing, amending and renewing motor policies. This will not include the means by which risks are underwritten and premiums priced (which is covered in chapter 5); nor the practices and processes applicable to claims handling, which are addressed in chapter 6, although certain of these overlap due to the close interface between the two functions.

A New business process and documentation

A1 The proposal

You will be aware of the law which covers insurance contracts and the duty of utmost good faith from your study of IF1 and P05 and you should remind yourself of the basic principles at this stage.

As with other forms of insurance, the applicant for motor insurance is required to provide information considered by the insurer to be material for its assessment of the risk. This is provided by way of answers to both specific and general questions traditionally contained in a proposal form or other form of declaration, completed by the proposer (or by an agent acting on their behalf) and signed and dated by the proposer. As an alternative, private motor insurance has been arranged by telephone for some years and this is currently the most common method of proposing for, and obtaining, motor insurance, whilst the internet is increasingly becoming another major distribution channel.

The information provided is validated and evaluated

The information provided is validated and evaluated by the insurer and a decision reached on whether to accept or to decline. If the risk is accepted, the applicant is provided with either a written or oral quotation (depending on the distribution channel) detailing the terms and premium required by the insurer. The applicant can then choose to accept or decline the quotation immediately or defer a decision until alternative quotations have been obtained. Some insurers will guarantee a quotation for up to 30 days, whilst others will only stand by it on the day of issue.

If a conventional paper proposal form is used, it is customary to provide the proposer with a copy either automatically or on request, if the risk is accepted and a policy is issued. If, as an alternative, information is taken by telephone or internet, it is recorded in a 'statement of facts' which is sent to the policyholder with the request that it is checked for accuracy and any discrepancy notified immediately to the insurer. Some insurers require a copy of the statement of facts to be signed and dated and returned to them but this is no longer common practice. Like the conventional proposal form, the statement of facts is an important document, which may be called as evidence in the event of contractual dispute or in civil or criminal court proceedings.

Apart from the initial validation and evaluation at point of acceptance or declinature, for accepted business subsequent validation checks may be undertaken to verify certain information, thereby improving accuracy of underwriting and preventing fraud at this stage. There is a range of databases available to insurers, access to which is authorised by the proposer at the time of proposal; this authority is obtained by requiring the proposer to signify acceptance of a 'fair obtaining notice' which is incorporated in the proposal form/internet application or read out during the telephone application (or is part of a recorded message). The best known of these databases is the Claims and Underwriting Exchange (CUE), which holds details of claims, and to which a number of motor and home insurers subscribe but membership is not universal nor is it compulsory. The uses of CUE and other databases are examined in more detail in chapters 5 and 6.

It is traditional for insurers to require evidence of any applicable no claim discount entitlement. This would be in the form of the previous insurer's renewal notice or other document issued by the previous insurer for this purpose. If the NCD proof does not support the entitlement claimed (or is not forthcoming) the insurer will re-evaluate the proposal and adjust the premium and/or terms or decline the risk, as appropriate.

A2 Premium payment

You will recall from your study of P05 that the validity of the contract is dependent upon the proposer paying, or agreeing to pay, the premium and that a promise to pay is as good consideration as payment itself. Payment may be made in full or by instalments (for which it is usual to charge a fee or interest). The various credit arrangements are not unique to motor insurance and do not form part of this study.

A3 Commencement of cover

If the risk is accepted and premium paid, or agreed to be paid, the insurer will commence cover from the time and date requested by the proposer. This might be granted at the stage the application is received or from a future time and date but, as far as RTA cover is concerned, by law cannot be ante-dated by virtue of s.175 of the RTA. Where cover is to commence from a future date the certificate is usually timed at 00.01 on the commencement date.

A4 The policy documentation

You will be familiar with the policy document, schedule and endorsements from your study of chapter 3 and aware that a certificate of insurance must be delivered to the proposer (or their authorised agent) for cover to be effective for RTA purposes – refer to chapter 1, section D1E.

At one time it was a regulatory requirement for insurers to issue a policy summary or 'key facts' document with the policy documents and whilst this is no longer mandatory some insurers still follow this practice.

A5 Cover notes

It is usual for a temporary covering note (known as a cover note) to be issued in those cases where the permanent (usually annual) certificate of insurance is not issued from the outset. This is done to provide evidence of cover whilst the insurer is either preparing the permanent documentation or delaying the issue of same, whilst awaiting further information from the proposer or undertaking further enquiries of its own. The need for cover notes has reduced with the advent of telephone and internet sales and the use of electronic data interchange (EDI), which is explained later.

The cover note serves two purposes

The cover note serves two purposes. First, it is a temporary policy document which identifies the proposer and insured vehicle(s) and summarises the type of cover, driving and use limitations, together with selected excesses, pending issue of permanent documents. It includes a statement that it provides cover in the form of the insurer's usual form of policy (full details of which would have been made available at the proposal stage).

Its second purpose is to provide a temporary certificate of insurance, which is incorporated in the document. This is required to follow a standard wording prescribed by law – see below under 'certificates of insurance' for more details.

A5A Cover note duration

The cover note is operative for a shorter period than the full term proposed, typically 30 days, although shorter or longer periods may be granted.

Some wordings state that cover will expire **at the same time** on the expiry date as it began on the commencement date. The importance of the bold words was demonstrated in *Cartwright v. McCormack* (1963), which resulted in this practice being adopted. In that case the cover note contained the words 'this cover note is only valid for 15 days from the commencement of the date of risk'. The effective time and date of commencement was entered as 11.45 a.m. on 2 December 1959 and an accident occurred at 5.45 p.m. on 17 December. It was held that the 15 day duration encompassed the whole of the 15th day and that cover consequently expired at midnight on 17 December.

Whilst the above wording is still in use, as an alternative many insurers show the actual time and date of expiry, as shown in the specimen featured in appendix 1 to this chapter.

Note that, in addition to the time and date of commencement, the cover note bears the time and date of issue. The time and date of commencement must not pre-date the time and date of issue, as this would constitute ante-dating – an offence under the RTA.

A cover note may be cancelled by either party, in the same way a permanent policy may be cancelled but the wording can sometimes provide for a shorter period of notice than that in the annual policy.

A5B Continuation cover notes

If it is decided not to continue cover beyond expiry of the cover note, either by proposer or insurer, then it ceases upon expiry. If cover is to remain in force it is necessary for a continuation cover note or the permanent certificate to be issued in good time to ensure there is no 'gap' between the expiry of the cover note and commencement of the continuation document.

A5C Types and auditing of cover notes

Cover notes may be issued by insurers themselves or by intermediaries on their behalf. These are traditionally in the form of pre-printed documents which require manual insertion of the particulars identifying the proposer and vehicle, together with other outline cover details.

These documents are numbered sequentially in books of, typically, 25 or 50 cover notes which, in view of their importance as evidence of RTA cover, are kept securely to prevent theft and misuse. Each cover note comes in four self-carbonating parts; the original is detached from the book and passed to the proposer/policyholder and copies are held by the insurer and intermediary. The final copy remains in the book for auditing purposes.

These documents are numbered sequentially

Nowadays, it is usual for insurers and intermediaries to issue cover notes electronically and this has become the predominant mode of issue for personal lines. This method has the benefit of automatically setting diary dates to alert the issuer to impending expiry and the need to notify the proposer of expiry or issue a continuation, as appropriate. It is also an aid to auditing, as systems can be specified to prevent documents being issued out of sequence, whether intentionally or otherwise. See section F for more about electronic documentation and data exchange.

Activity

Perhaps family or friends will have cover notes that have been issued which you can look at and compare the wording and content of the different insurers' cover notes.

**Question 1**

For what period of time would a cover note typically be operative?

**A6 Certificates of insurance**

The importance and legal status of the certificate of insurance has been explained in the previous chapter.

You will recall that s.147 of the RTA refers to the need for the certificate to be in a prescribed form and that relevant rules are set out in the **Motor Vehicles (Third Party Risks) Regulations 1972**, as amended. (Refer to chapter 1, section D1E.)

Under the Regulations there are three formats for certificates – Forms A, B and C.

Forms D, E and F prescribe the formats for Certificates of Security and Deposit and are not part of this study.

A6A Certificate Form A

This prescribes the information which must be shown for policies covering vehicles specified by their registration details, thus:



Example	
FORM A	
Certificate of Motor Insurance	
Certificate No.....	Policy No..... (Optional)
1. Registration mark of vehicle. 2. Name of Policyholder. 3. Effective date of the commencement of insurance for the purposes of the relevant law. 4. Date of expiry of insurance. 5. Persons or classes of persons entitled to drive. 6. Limitations as to use.	
I/We hereby certify that the policy to which this certificate relates satisfies the requirements of the relevant law applicable in Great Britain. Authorised Insurers	
NOTE – For full details of the insurance cover reference should be made to the policy.	

There follows a note that Form A is to be used for policies (other than covering notes) relating to one or more specified vehicles. The Form A certificate is known as a 'specified vehicle certificate' and is used for policies covering a single vehicle or small number of vehicles, where a separate certificate is issued for each vehicle.

At the foot of certificates appears the following notice, which is not prescribed by the regulations but was added voluntarily by the market when the Second EU motor directive was implemented.



Example
Advice to third parties – nothing contained in this certificate affects your right as a third party to make a claim.



Think
What do you think the purpose of the above 'advice' is? Where a third party is involved in an accident, they will not be put off making a claim simply because the driver of the car is not a named driver according to the certificate of insurance.

A6B Certificate Form B

Form B is identical to Form A except that 'description of vehicles' appears in place of 'Registration mark of vehicle' against item 1.

The description inserted by the insurer might typically read '*Any motor car the property of the policyholder or hired to him under a hire purchase agreement*'. This form of certificate is used for motor trade and large fleet policies and is known as the 'blanket certificate'.

A6C Certificate Form C

This is the wording prescribed for certificates incorporated in cover notes, thus:

Example FORM C Certificate of Motor Insurance I/We hereby certify that this covering note satisfies the requirements of the relevant law applicable in Great Britain. Authorised Insurers
--



Apart from specifying the information to be shown in the six forms, the Regulations contain rules as follows.

A6D Notification, production and record keeping

- The insurer issuing the certificate must keep a record of the information required to be shown in the certificate for every policy issued for seven years after expiry of the policy.
- The insurer must provide the relevant information, without charge, on request to the Secretary of State or a chief officer of police.
- The insurer must provide the prescribed information to the MIB or its nominated subsidiary (i.e. the MIIC) in electronic form.
- Insurers are required to notify the Secretary of State of policies which cease before their natural expiry (i.e. mid-term cancellations) where the insurer has not received the certificate of insurance (or Statutory Declaration that it has been lost or destroyed), except where the policyholder has died.

A6E Content of certificates

- Reference to 'Great Britain' in all forms can be extended to Northern Ireland, the Isle of Man, the Island of Guernsey, the Island of Jersey and the Island of Alderney, as appropriate, depending on whether the insurer is authorised to insure persons resident in those countries.
- The certificate must not contain any exceptions prescribed by s.148 of the RTA – see chapter 1, section D1F.
- Certificates must be printed and completed in black on a white background but may contain a background pattern (in colour or otherwise) provided it does not materially affect the legibility of the certificate. This is to help deter forged certificates. Most certificates are printed on paper but the regulations provide for other material and at least one insurer issues certificates in the form of a wallet sized plastic card.
- Certificates must not contain any advertising matter, apart from the insurer's badge or logo which, if used, must appear at the bottom of the certificate or on its reverse or as part of the background pattern.

These rules exist to ensure certificates are in a consistent format to facilitate inspection and interpretation by the police and taxation authorities, including post office staff. The note at the foot of the certificate warns third parties that nothing in the certificate affects their right as a third party to make a claim, lest they might assume that any driving or use limitations featured could prevent their submitting a claim.

A6F Issue of certificates

Ante-dating is prohibited

As discussed previously, under no circumstances may the commencement of a certificate be ante-dated; this is a criminal offence (RTA s.175 – see chapter 2, section A3D). Ante-dating is prohibited even if cover has been confirmed by the insurer but a certificate or cover note has not been issued due to an administrative oversight by the insurer or intermediary acting on its behalf. In such a case the insurer would provide evidence, including a formal statement of the circumstances of the oversight, in support of the policyholder, acceptance of which would be at the discretion of the court.

As explained in chapter 1, section D1E, it is common for insurers to grant immediate cover and it is permissible for them to issue permanent certificates, timed and dated from the time and date the proposer accepts the offer at point of sale.

The existence of the certificate embodied within a temporary cover note does, however, enable the subsequently issued permanent certificate to be dated from the commencement of the earliest continuous cover note. Provided continuation cover notes are issued in a timely fashion without leaving a break in continuity, the commencement date of the first cover note can, therefore, be featured on the annual certificate. If, however, there is a break in continuity of the cover notes, the permanent certificate must be dated from the commencement date of the cover note in force at the time of issue of the certificate. If no cover note is in force when it is produced, the permanent certificate must be dated from its date of issue.

Apart from the RTA requirement to issue a certificate to the policyholder, the insurer must, on request by the policyholder, issue a fresh certificate if they are satisfied the original has been lost or destroyed. The insurer must similarly issue a fresh certificate if the original has been defaced but must not do so unless the defaced certificate is returned to it.

In the case of a transfer of interest in a policy (see section B5), the regulations specifically require the certificate holder to return it to the insurer within seven days from when it ceases to be effective. Furthermore, it states that the policy may not be transferred to any other person until the certificate has been returned (or the insurer is satisfied that it has been lost or destroyed). Unlike the RTA requirement for the formality of a statutory declaration in the event of policy cancellation, a transfer of interest merely requires that the insurer is satisfied regarding the loss or destruction before the transfer takes place.

Where a certificate in Form A (i.e. a specified vehicle certificate) provides cover for driving other vehicles the insurer must, on demand by the policyholder, issue a further certificate.

Question 2

For how long after the expiry of a policy must an insurer keep a record of the information shown in a certificate of insurance?



A6G The certificate as part of the policy

As noted in chapter 3, the certificate is a mechanism by which the insured vehicle and driving and use limitations are specified and is to be read in conjunction with the policy and schedule for this purpose.

Activity

Obtain several certificates of insurance from family or friends and compare their wordings with the above examples.



A7 Windscreen discs (WIDs)

As an aid to enforcement of compulsory insurance following the abolition of motor fuel duty and, with it, the regular check on insurance, discs containing insurance particulars must be displayed on vehicles registered in Jersey, Guernsey and Alderney. Insurers are, therefore, required to issue discs to those of their policyholders resident in these countries, in addition to certificates of insurance. Note that the requirement to display a WID relates to vehicles registered in the Channel Islands, rather than residential status. For those vehicles affected, a WID will be issued whenever a certificate is issued.

This practice has not been adopted in the UK and, with the advent of the MID, is unlikely to become a requirement in the future.

A8 Policy record creation

Any essential part of the new business process is the creation of a record as a point of reference for future activity. This will comprise all policy and premium information and will enable and support the following activity:

- Maintaining a record for RTA purposes – see section A6D regarding certificate record retention.
- Establishing and verifying cover for claims and recording of claims.
- Dealing with other specific enquiries about the policy.
- Extraction of policy, premium and claims information for management information and statutory returns to the FSA/HM Treasury.
- Submission of data to external databases, including MID data to MIIC.
- Receiving changes to information, whether self-generated (e.g. rate changes) or changes notified by the policyholder.
- Creating a renewal record and invitation to renew.

B Mid-term policy alterations and documentation

Virtually all motor policyholders require changes to their policies from time to time and some make numerous changes. Apart from changes of name (e.g. due to marriage), address and occupation, which are relevant to a number of the customer's insurances, examples of common changes to motor policies are those of the insured vehicle, changes to driving limitations and requests for foreign use extensions. The scope for mid-term changes is considerable and they account for a large part of the motor insurer's workload.

The policyholder's duty of disclosure at the point of original proposal is covered in detail in P05 and is discussed in chapter 5 when we examine underwriting of new motor proposals. This duty is reopened insofar as it might be material to the change proposed. If, for example, a policyholder insured on a third party only basis has had an accident or loss resulting in substantial damage to their car and decides to change cover to comprehensive when requesting a substitution to the replacement vehicle, there is a duty to disclose the accident, together with any other material facts which have arisen during the interim, such as convictions when applying for the change to the policy.

Each change requires a reassessment of the risk

Notification of mid-term changes (also known as 'mid-term adjustments') is made by way of a supplementary proposal form, internet or telephone instruction, as used for new proposals. Each change requires a reassessment of the risk but for most personal lines policies this is streamlined by the use of 'expert' systems, whereby the computer system automatically compares the changed information with that originally recorded and seeks out other intervening activity, such as any relevant interim claims that might have been registered. The insurer's underwriting criteria (discussed in chapter 5) will be automatically applied and if the case requires special evaluation (for example, in view of a serious claim) an alert would be raised, enabling the insurer to consider the need for investigation and possible renegotiation of terms. Any change could not be imposed unilaterally and would need to be agreed by the parties, both of whom do, of course, have the ultimate right to cancel.

If the change is not finalised at point of notification and new documentation issued immediately, a temporary cover note may be issued. This is mandatory if there is a change to the information shown on the RTA certificate (i.e. name of policyholder, vehicle registration, driver or use limitation).

Changes to premium are also automatically generated for most types of policy, with the exception of certain large premium commercial classes, for which individual rating is necessary. For the vast bulk of policies, the premium is re-calculated by the system and the new annual premium compared with that paid for the current period. The number of days remaining to expiry is calculated and applied to the annual difference, divided by 365 days, thus producing a pro-rata additional, or return, premium.

Example

Policy commencement 1 April 2009 (expiry date 31 March 2010)
Substitution from Group 6 to Group 8 car from 1 July 2009.

New Annual premium for Group 8	400.00
Existing annual premium for Group 6	350.00
Annual difference	50.00
Pro-rata difference (see below)	37.50

Number of days between 1 July 2009 and 31 March 2010 is 274 days
274 days divided by 365 days x £50 = £37.50



Certain adjustments are not calculated pro-rata; for example, some cancellations (which are addressed in section B3). Temporary adjustments (e.g. temporary additional vehicles and temporary driver changes) may also attract greater than pro-rata charges. Those policies which require extensions to provide foreign use on an 'as-required' basis will apply standard charges for such cover, which is not necessarily calculated as a pro-rata proportion of the annual premium. Some insurers and/or agents apply handling fees for mid-term changes. Where this is so, it is an FSA requirement that the fees are drawn to the proposer's attention at point of sale. Such fees should be applied only to policy changes, as distinct from alterations to schedules or statements of facts resulting from, for example, a mid-term disclosure of a conviction.

Certain adjustments are not calculated pro-rata

If a policyholder part-exchanges the existing vehicle for a new one the premium calculation is a straightforward pro-rata additional or return amount. Where, however, the existing vehicle is sold privately there will usually be a time lag between acquisition of the new and disposal of the old and cover is required for both vehicles for the overlapping period. This is usually calculated pro-rata, without the need for the issue of a separate policy, provided the overlap does not extend beyond too lengthy a period.

As we shall see when examining pricing in chapter 5, an insurer's rates for new and renewed business are prone to regular change but it is practice to base the revised premium for adjustments on the equivalent rate applicable to the table used for the current year's premium.

Any relevant change to information held for the policy on the MID is submitted to MIIC electronically. Mid-term alterations, such as changes of address, vehicle substitutions and foreign use extensions are usually generated by necessity, but some changes (such as changes to cover and excesses) arise when the policyholder reassesses their requirements at renewal, when considering alternative premium options and, as a result, a number of adjustments take effect from renewal date. Where this is so, there is no pro-rata calculation and the revised renewal premium simply replaces the originally quoted amount.

Adjustments to the larger fleet rated policies and motor trade risks are dealt with differently to others. For these, to save on administrative cost to the policyholder and insurer, it is usual for insurers to accept declarations of additional and deleted vehicles on a periodic basis (typically at the end of each month, quarter or half year of the insurance year) and adjust the premium retroactively. Motor trade policies generally run until the following renewal before insurers make any adjustments. There is no need to issue certificates of insurance where these are of the 'blanket' variety prescribed in Form B of the Regulations. Despite this, there remains the need for the policyholder (or intermediary on their behalf) to notify individual changes to MIIC for updating of the MID, as they occur.



Activity

Refer to the MID website <http://www.mib.org.uk> and examine the FAQs relating to MID and temporary vehicles on fleets and motor trade policies.

B1 Mid-term documentation

The changes to the policy, and usually the additional or return premium, will be shown on an updated policy schedule (the amendment schedule) and any appropriate endorsements applied. If the change necessitates a change to the information on the certificate of insurance, a fresh certificate is issued, dated from the date of the change or commencement of the current cover note in the event of there being a break in cover, in line with the practice for new proposal certificate issue. If premium is paid by instalments, an Advance Notice of Direct Debit Payments would be issued, where relevant.

Whilst changes to policy cover are usually recorded by a change to the schedule, a replacement policy is sometimes issued.

B2 Endorsements

Mid-term alterations are sometimes referred to as 'endorsements', a term you will recall from its appearance in chapter 3. This rather confusing scenario has evolved from the fact that in the days prior to the introduction of amendment schedules policy changes were made by physically attaching an endorsement slip to the original policy document, thereby 'endorsing' it. The term is rarely used in this context nowadays but it commonly features in older case law.

B3 Cancellation

There are three situations where cancellation arises. These are:

- The policyholder's right to cancel during the 14 day cooling off period.
- The policyholder's right to cancel.
- The insurer's right to cancel.

The conditions applicable to each of these vary and these are explained in chapter 3, section B15D.

The RTA requirement for the policyholder to surrender the certificate (or make a statutory declaration of its loss or destruction) in the event of mid-term cancellation, whether of their own volition or by the insurer invoking it, are enhanced by many insurers requiring the certificate to be returned as a contractual condition, precedent to allowing the commensurate return premium.

*In the event
of mid-term
cancellation*

The onerous liabilities imposed on insurers by the RTA and MIB Article 75 relating to the timely surrender and recovery of certificates and the need for 'good housekeeping' were explained in chapter 1, section D11 and chapter 2, section A2.

You will recall from chapter 3, section B15D that insurers commonly charge 'short period' rates for first year cancellations to recognise the cost of acquiring and issuing the policy, whereas some apply short period rates to cancellations in renewed years. These are derived from scales which feature percentages, as shown in the example below. Here, the insurer would charge one fifth of the annual premium instead of the pro-rata one twelfth.

Table 7.1: short period rates

Period not exceeding	% premium due	Period not exceeding	% premium due
One month	20%	Five months	60%
Two months	30%	Six months	70%
Three months	40%	Seven months	80%
Four months	50%	Eight months	90%
Over eight months full premium applies			

As an alternative to the short period scale, some insurers apply a flat fee in addition to the pro-rata charge for first year cancellations.

Question 3

What justification do you think there is for insurers to charge short period rates for some types of cancellations?



The prompt updating of the insurer's record is important as failure to display the fact that cover has expired could mislead the viewer of the record. It is also important that the MID is updated promptly to reflect the expiry and best practice guidelines exist to which insurers are expected to adhere. Detailed knowledge of these guidelines is not required for this course but it should be noted that where cancellation has been invoked because of default of instalment premium, the date of termination for MID purposes will be the date upon which the policy cancellation notice took effect (i.e. upon expiry of the cancellation notice), not backdated to the final date for which cover was paid up, as the insurer's potential RTA liability could continue until the expiry of the cancellation notice. Furthermore, where a policy is avoided (see section C2) the effective date of cover ceasing for the purpose of MID is the date on which the policy is formally declared void, not the retroactive date of avoidance. In this case, the insurer similarly has a potential RTA liability and it is important that the MID does not mislead enquirers.

Instructions from the policyholder to cancel mid-term are commonly given verbally (e.g. by telephone) and where this is so it is best practice for the insurer (or intermediary) to issue confirmation to the policyholder, rather than waiting for the policyholder to confirm their instruction in writing, although confirmation should still be sought where this is required by the policy.

Acceptance of verbal instructions by telephone to cancel is open to possible mischief (or even fraud) by persons misrepresenting themselves as the policyholder and FSA rules require insurers and intermediaries to have checks in place to ensure that changes notified by telephone are indeed made by the policyholder. The above practice of issuing a confirmatory letter would alert the genuine policyholder to the misrepresentation and provides the insurer with the opportunity to remind the policyholder of the requirement to return the certificate.

B4 Suspension

Most motor car policies provide for cover to be suspended if the vehicle is 'laid up' (i.e. taken off the road) and, provided the period of suspension is not less than four consecutive weeks and it is not as a result of damage sustained in an incident which is the subject of a claim under the policy, a credit is allowed calculated pro-rata for the period of suspension. Where cover is other than third party only it is usual to continue to provide accidental damage, fire and theft cover (as appropriate to the underlying policy cover) during the period of suspension, as these risks, unlike the third party road risk, remain whilst the car is off the road. Where this applies the credit is calculated as a proportion of the pro rata calculation, to make allowance for the remaining risk. A typical credit would be 75% of the pro-rata amount, where only fire and theft cover remains in force. Historically, the suspension credit was deducted from the forthcoming renewal premium or held to credit against future business but it is practice nowadays to allow it as a refund at the point that the full cover is reinstated or at expiry of the policy, whichever is first. As RTA cover is suspended, insurers require the surrender of the certificate of insurance as a condition precedent to permitting suspension and a fresh certificate, duly re-dated, is issued when full cover resumes. The MID is updated to reflect that the policy is inoperative for RTA purposes during the period of suspension.

It was considered theoretically incorrect to 'suspend' a policy when a vehicle is disposed of, as the subject matter of the policy had ceased to exist and the policy had, therefore, automatically come to an end. It is, however, common for a motorist to be without a vehicle for a short time whilst seeking a replacement and insurers have tended to allow total suspension for a limited period to facilitate this, rather than go to the expense of cancelling and then issuing a fresh contract, which might also be disadvantageous to the policyholder whose 'no claim' discount is in the course of accrual and would be curtailed by the alternative of cancelling and issuing a new policy when the replacement vehicle is acquired. This previous objection might in any event now be overcome by the decision in *Dodson v. Dodson* (2001) (see chapter 3, section B4).

B5 Transfers of interest

The transfer of ownership of a vehicle usually results in the cancellation of the existing cover for it (either by way of its deletion from the policy or policy cancellation), together with the provision of cover for the new owner under a new, or existing, policy in their name, the latter by substitution as described above. It is nowadays rare for a policy to be transferred to the new owner but, where this is so, it is necessary to go through the 'new proposal' process outlined in section A1 above, to obtain the full risk profile of the new owner.

Remember that the Motor Vehicles (Third Party Risks) Regulations 1972 require that the certificate of insurance must be returned (or the insurer must be satisfied that it has been lost or destroyed) before the transfer of interest takes place.

One example where such transfers arise is where the policyholder dies or is obliged to give up driving because of ill health. In the event of the policyholder's death it is usually appropriate to provide temporary cover in the name of the executors or administrators of the deceased's estate, pending settlement. Often the vehicle will pass to a surviving spouse/domestic partner and, where the survivor has previously been a named driver under the policy, insurers will sometimes allow an appropriate no claim discount on the basis of that driver's claim free record under the policy.

An interesting scenario arises where the administrators omit to provide prompt notification of a policyholder's death and the policy provides cover for additional drivers, for you will recall that, where a policy permits driving by someone other than the policyholder, cover is subject to the policyholder's order or permission to do so. In *Kelly v. Cornhill* (1964), where the policyholder's son was involved in an accident eight months after the former's death (but during the original twelve month period of insurance, for which cover had originally been requested for the son, to the exclusion of other drivers) it was held on the facts of that case that the permission had not automatically ceased on the death of the father. It is conceivable that the decision might have been different in other circumstances, however, and it is good practice to notify such changes immediately to ensure the operation of cover.

C Other mid-term activity

In addition to adjustments to the policy, there is scope for substantial other mid-term activities for which processes are necessary. For example, those rare cases mentioned in chapter 1, section D1J (where the insurer finds it necessary to commence criminal proceedings for the failure to surrender the certificate within seven days of cancellation taking effect) comprise an important 'mid-term' activity, albeit it is not an 'adjustment' to the policy.

C1 Claims

Apart from the essential, and often extensive, activity explained in chapter 6, notification of a claim can often require changes to the policy, apart from processes required when the forthcoming renewal is considered.

Whilst it is usual to defer changes to the existing acceptance terms until renewal, the nature of a claim sometimes makes it necessary to carry out immediate enquiries and, if appropriate, seek an amendment in terms for future cover. Such an example might be an incident caused by the policyholder suffering a loss of consciousness at the wheel, where medical enquiries reveal the onset of a serious medical condition, requiring withdrawal of the driver's licence and attendant suspension of the policy or change to permitted drivers.

If the incident giving rise to a claim falls in the preceding period of insurance (i.e. prior to renewal date) it is necessary to review renewal in line with the insurer's normal renewal review process described below, including any necessary change to no claim discount status.

C2 Misrepresentation and non-disclosure

The new information requires review

If, during the policy year, a misrepresentation or non-disclosure comes to light, whether or not as a result of notification of a claim, the new information requires review and a decision reached as to whether cover can continue (and, if so, whether alternative terms and premium should apply) or the policy should be avoided. At this point you should refer to the chapters in P05 relating to contract and utmost good faith, to refresh your understanding of the background to this situation and the avoidance of policies. In particular the areas of innocent and fraudulent misrepresentation/non-disclosure, materiality and inducement, together with their importance to the insurer's consideration of its position and rights, should be considered.

This activity is necessary, irrespective of whether the misrepresentation or non-disclosure arose at original inception of the risk, at renewal or at the time of a relevant adjustment to the policy. The process will involve seeking the policyholder's comments and, if appropriate, explanation for the irregularities and a decision reached as described above. An initial view needs to be taken on the provision of cover whilst enquiries are being made and any explanation being sought because if the insurer allows the policyholder to continue to rely on the policy in the interim and a loss or liability arises from an interim accident (or other event), the insurer could be deemed to have waived its right to avoid the policy in respect of that subsequent event. It is, therefore, advisable for insurers to warn the policyholder not to rely upon the protection of the policy during the interim in those cases where, on the basis of the new information, the insurance is voidable. Alternatively, cover might be provided under an alternative policy, based on the new information, making it clear that such action is being taken without prejudice to the insurer's right to avoid the policy, which is subject to review for misrepresentation/non-disclosure.

The insurer's decision will turn on a number of features. First, the matter of whether the non-disclosed/misrepresented information is material (i.e. whether it would have influenced the judgment of a prudent insurer in setting the premium or accepting the risk). Next, whether the information induced the actual insurer to do so.

A conviction for speeding would be considered material by all insurers but, taken in isolation, might not have induced the insurer in question to do other than accept the risk at standard terms, in which case the policy would not be voidable. Another insurer's acceptance terms might, however, provide for a premium loading for the single conviction, in which case it would have induced acceptance and that insurer would have the right to avoid.

A conviction for speeding would be considered material

As explained in P05, in law the insurer may avoid a contract on the ground of misrepresentation whether made fraudulently, negligently or innocently. Where it is fraudulent the insurer may retain the premium, whereas in the other cases the premium is refunded if the policy is avoided. There are, however, constraints on the extent to which an insurer may rely on non-negligent/non-fraudulent misrepresentation and non-disclosure, where the policyholder could not reasonably be expected to have disclosed the material fact. These feature in the FSA ICOBS rules (which apply to retail customers, as defined), where the irregularity is being viewed in the context of a claim. You should refer to P05 for more detail, including the distinction between retail and commercial customers.

If the insurer invokes its right to avoid, the policy will be considered void *ab initio* (from the beginning), i.e. from the point at which the contract became voidable by virtue of non-disclosure or misrepresentation (this could be the original inception, the renewal of the policy or from the time of a mid-term adjustment to it, to the extent that the misrepresented or non-disclosed information is material to the adjustment). Except in the case of fraud, the premium will be refunded in full; failure to grant a refund where there is no fraud could constitute waiver of the insurer's right to avoid.

Consideration would need to be given by the insurer as to the desirability, or otherwise, of seeking a court declaration of its right to avoid, given the liabilities it might incur under the RTA or Article 75 of the MIB Domestic Regulations in the event an RTA liability should arise, as explained in chapter 2.

If, as an alternative to avoiding, the insurer decides to charge the retrospective premium and/or terms it would usually make a without prejudice offer to do so and it would be up to the policyholder to accept or reject that offer. If accepted, the revised terms would apply retroactively from the point of non-disclosure, including computation of the revised premium, if appropriate. If rejected, the insurer could fall back on its right to avoid or might simply waive that right but invoke cancellation of the policy. If the latter course is taken the insurer would only be obliged to refund a proportion of the premium but would leave itself open to a late reported claim arising from an incident during the period of cover.

The alternative terms would not necessarily be those which would have applied, had the correct information been provided at the outset. There is an authoritative view that such action is insufficient, certainly in the case of negligent misrepresentation, for the negligent policyholder would be in no worse position than that which would have applied had the true facts been disclosed and the disincentive for incorrect disclosure would, therefore, be removed. Any proposer so inclined would, however, run a very serious risk of a less favourable outcome, dependent upon the insurer's acceptance terms and the nature of the loss or liability, were an incident to occur giving rise to one. Furthermore, the insurer has an alternative, supported by the FOS, whereby the value of a claim could be scaled down in proportion to any underpayment of premium, or benefit lost if the insurer's acceptance terms would have excluded the loss. Deliberate misrepresentation often results in avoidance. The proportionality principle is explained in P05.

The practical implications of invoking the right to avoid in the context of claims scenarios, including the application of proportionality settlements to motor claims, are examined in more detail in chapter 6.



Reinforce

Look at chapter 1, sections D1F and D1I and remind yourself of insurers' obligations where there are third party claims on policies which are otherwise ineffective.

C3 Witness statements

Mention was made in chapter 2 of the volume of police enquiries received by MIIC arising from their use of the MID in regard to suspected uninsured driving offences. Insurers, too, receive enquiries, either via MIIC or direct from the police, and are required to provide evidence for use in criminal proceedings, arising from breaches of insurance-related legislation. This requirement can ultimately be enforced by subpoena, and compliance is, therefore, effectively mandatory. Evidence is typically provided by way of a written witness statement and, where necessary, by providing verbal evidence in court.

You will recall that most insurance-related prosecutions arising from road traffic offences fall under one or both of two headings and you will be aware of the detail of these from chapter 1. These are:

1. Making a false statement or withholding material information (s.174 of the RTA).
2. Using, or permitting the use of, an uninsured motor vehicle (s.143 of the RTA).

Others might involve prosecutions for fraud, forgery or failure to surrender certificates of insurance.

Requests for written statements are normally received from the police authority dealing with the alleged offence, by way of telephone enquiry followed by letter/fax; alternatively, the handling authority might request the police authority local to the insurer's office to call at the insurer's premises to take the statement, though this practice is nowadays less common than it used to be.

The handling officer will, naturally, be aware of the alleged offences and have a good idea of the nature of the evidence required to enable a case for prosecution to be prepared. Most police officers are not, however, expert in insurance matters, nor are they the judges of whether an offence has been committed; similarly, insurers are not qualified to state whether or not an offence has been committed. These are ultimately matters for the court to decide.

It follows that great care must be taken in the compilation of statements and it should always be borne in mind that the witness could ultimately be required to justify their statement under cross-examination in a court hearing. It is particularly important to limit the statement to one of fact, not opinion.

Great care must be taken in the compilation of statements

In regard to s.174 offences, where a conventional proposal form was used for a proposal, a copy of it would be produced as an exhibit – for telesales, the Statement of Facts and call script; for internet business, the statement of facts and screen prints. Care must be taken when assessing the relevance to acceptance of the risk of accidents/losses and convictions and, in regard to the latter, whether a conviction was disclosable, having regard to the provisions of the **Rehabilitation of Offenders Act 1974**, discussed in chapter 5.

It should be remembered that, whilst a misrepresentation/non-disclosure of material fact might constitute an offence under s.174, it would not ordinarily support a prosecution under s.143. Refer to chapter 2, section A3B. You will also recall that a driving limitation based on age of the driver would not support a 'no insurance' prosecution as it is prohibited under s.148, whereas an excluded driver by name or one not included under a named driver or insured only driving policy would normally be liable to prosecution (refer to chapter 2, section A3A).

D Renewals and the renewal process

Most motor policies are issued for a period of twelve months and, for the vast majority of those which are not terminated during the insurance year (either by the policyholder or the insurer), it is usual for the insurer to invite renewal for a further twelve months (i.e. to offer a fresh contract on identical or similar terms to the existing one), although there is strictly no obligation on the insurer to do so.

Exceptions are short period insurances and long-term agreements (i.e. those policies for which a longer period than twelve months applies, e.g. three years at a fixed annual premium), for which renewal is not necessarily invited as a matter of course.

The renewal retention rate (i.e. the percentage of the cases for which renewal is invited that are actually renewed) is of great importance to motor insurers. Whereas new policies necessarily incur an acquisition cost due to the expense of advertising and abortive quotations, the cost of inviting and renewing is comparatively low. Furthermore, policies established over several years are less likely to seek alternative cover and, therefore, contribute a degree of stability to the account.

Insurers consequently create robust renewal processes to try to ensure renewal is invited for all eligible policies in a timely fashion. There is also an FSA requirement to invite renewal of policies issued to retail customers in good time (ICOBS) or give adequate notice of the intention not to invite renewal. The importance of giving such notice is particularly relevant for motor insurers in view of the requirements of MIB Article 75 (see chapter 2, section A2).

D1 Renewal process

A typical process would entail the establishment by the insurer of a new (renewal) profile record. The original inception (or last renewal) day and month will be retained, with the year advanced by one. Any permanent mid-term adjustments during the expiring year will be incorporated in the renewal profile, together with automatic incremental changes (such as the drivers' ages and age of vehicle, which advance by one year when renewal date is reached), with the premium calculated accordingly. Increments, and reductions to no claim discount are made and eligibility for protected NCD status assessed as part of this process. The operation of NCD is examined in detail in chapter 5.

As insurers change their rates regularly for most classes of business (usually at least annually, or often with much greater frequency), the premium will invariably differ from the previous year, even if there have been no changes to the policy, or any increase/reduction to no claim discount.

The record anticipates that renewal will be taken up and the premium 'debit' is raised accordingly. Not all insurers follow this practice; some do not raise the debit until the policy is renewed. Preparation is made to notify MIIC of the renewal, so that the MID is updated.

**Certain risks will
require special
attention**

Certain risks will require special attention before renewal is invited. A risk featuring a particularly poor claims history would, for example, be 'flagged' for review and possible imposition of special terms or a driver might suffer from a medical condition, for which a report is required. Similarly, those risks already subject to special terms will come up for review with a view to improving those terms, once a suitable period has elapsed without further blemish.

Once these changes are finalised the 'flag' is released and the case allowed to process in the normal way. The treatment of these cases (renewal underwriting) is addressed in chapter 5.



Activity

If you work for an insurer, find out the process adopted by your employer's motor and accounting departments for the establishment of renewal records and application of premium payment and how these are adjusted if renewal is not taken up (see below under lapsing of renewals).

D1A Renewal invitation (notice)

The renewal process continues by sending an invitation to the policyholder to renew by way of a renewal notice. A renewal notice will include, among other things:

- The insurer's details including its registered office address.
- The name and address of policyholder.
- The name and address of agent (if applicable).
- Policy number.
- Renewal date and period of insurance.
- Registration details of the insured vehicle(s).
- The renewal premium (including amount of IPT, if applicable).
- The no claim discount entitlement for each insured vehicle, usually expressed in the number of years claim free, together with notification of whether the policyholder is now eligible to protect their NCD.

The renewal notice will usually include a prominent reminder to the policyholder of their duty to disclose any material changes to the risk that have occurred since inception (or last renewal) and a warning of the consequences of failing to do so, together with examples of the type of changed information that must be disclosed (e.g. convictions, accidents, details of additional drivers, physical infirmities).

Some insurers issue an updated 'statement of facts', showing the information on which the insurer is currently relying, thereby giving the policyholder the opportunity to check what has, or has not, previously been disclosed.

D1B Notice to policyholder

If the insurer has altered its standard policy terms (e.g. its standard excess for windscreen claims might have changed during the year) this alteration will be highlighted in a notice to policyholders accompanying the renewal notice. The policyholder will also be informed of any changes which are unique to their own policy and the availability of a new policy document. These might include special conditions imposed because of an adverse claims or conviction history during the past year, or the removal of such 'special' terms after a suitable time has elapsed without further blemish. Renewal underwriting, including the use of external databases and cross-referencing of related policies to check overall claims experience, is covered in more detail in chapter 5.

D1C Renewal schedule

Insurers may also issue a renewal schedule. This is an updated version of the last issued schedule; i.e. the one issued at original commencement, last renewal or an adjustment schedule.

D1D Payment of premium

The renewal notice should make it clear that cover ceases on the date of expiry of the current insurance year and that the policyholder should ensure that the premium is paid and received by the insurer on or before that date if continuous cover is to be maintained.

An insurer is under no obligation to accept the premium if not paid in good time but it is always open to it to waive that right for contractual purposes and for some forms of (non-motor) insurance a period of grace (typically 15 days) is sometimes allowed, during which time the premium may be paid to achieve renewal without a break in cover.

This is not possible for the RTA element of motor policies for, as we have seen, RTA cover is not in force unless and until an RTA certificate is delivered to the policyholder and insurers are precluded from ante-dating certificates, even where the non-issue was due to the insurer's failure to issue a certificate in good time. Days of grace, consequently, do not feature for motor renewals.

D1E Temporary renewal cover note

To overcome the potential problems, motor insurers have historically included in their renewal notices a temporary cover note, providing RTA cover for a period of, usually, 14 or 15 days from and including the renewal date. Where provided, the existence of this cover note permits the release of the annual certificate, dated from the original renewal date, if issued within the duration of the temporary cover note. This is of particular value where the premium is tendered in good time but, due to processing delays or misposting of funds by the insurer's accounting division, the renewal receipt and renewal certificate are not despatched until some days after the policy renewal date.

The cover provided by the renewal cover note is subject to the terms, conditions and exceptions of the expiring policy and does not apply if insurance for the same liability has been taken out with another authorised insurer. The latter exception is an important protection for the insurer inviting renewal for it means that, in most cases, the extended period of risk will be curtailed by the commencement of cover within its duration, often from its beginning. Furthermore, where the policy is renewed late with the existing insurer (within the 14/15 day period) the insurer obtains the full premium for the original period for which renewal was invited but the original expiry date of the policy is maintained.

The insurer is, therefore, exposed to the extended RTA liability only in those cases which do not renew and do not insure elsewhere, for a maximum of 14 or 15 days. This additional exposure is allowed for in the insurer's rating structure.

The cover only applies to policies providing RTA cover so would not, for example, apply to a motor policy which provided off road cover (e.g. fire and theft only or a motor trade internal risks policy) during the expired year.

If the cover note is produced to the authorities as evidence of insurance, the expired certificate for the previous year must be produced with it.

Over the years, the provision of this cover note introduced an element of misunderstanding for some policyholders as to the scope of cover it provides and, to some extent, confusion within the industry itself. Furthermore, it was felt that the operation of the MID and its interpretation by the authorities could be hampered by its existence. As a result of the latter, the Greenaway Report of 2005 (see chapter 2, section B1) recommended that the practice of issuing the temporary renewal cover note should be discontinued and, whilst most insurers followed the recommendation, this did not meet with universal acceptance. There is, consequently, a divergence of practice and Article 75 of the MIB domestic regulations duly makes provision for different treatment, depending upon the practice adopted (chapter 2, section A2).

It removes a 'safety net'

One disadvantage of discontinuing the renewal cover note is that, whilst it encourages greater discipline among policyholders to renew within the original period of insurance, it removes a 'safety net' which could otherwise reduce the incidence of motorists' unintentionally driving uninsured. Another is that those insurers that have discontinued the cover note have had to amend their processes to ensure certificates are not ante-dated, even where the late payment is accepted for contractual (non-RTA) purposes and the original renewal period maintained.

A specimen temporary renewal cover note is shown at appendix 2 to this chapter.

D1F Renewal confirmation

Upon receipt of premium payment the insurer will issue a renewal confirmation or receipt. This would usually accompany the renewal certificate.

D1G Commercial renewals

Special considerations apply to the process for certain commercial motor renewals. Large fleet risks and some others, such as contingent liability and occasional business use risks, can be subject to retroactive premium adjustment, calculated at the end of the expiring period, and this forms part of the renewal process for these risks. It is also customary for the current 'holding' fleet insurer to release information relating to vehicle exposure and claims experience to enable competing insurers to provide alternative quotations to the policyholder in good time. The content of these fleet experience summaries is examined in chapter 5.

D1H Amended renewals

If a claim is notified for an incident occurring in the expiring year of insurance (or a mid-term change takes place) after the renewal invitation has been processed it is necessary to recalculate the premium, alter terms and reissue documentation, including, where appropriate, a revised certificate of insurance.

As the initial process is initiated several weeks before renewal date and changes to motor policies are relatively frequent, the chances of an amended renewal arising are fairly high. It is important that such changes are processed by the insurer as a priority, so that the policyholder's ability to renew in a timely fashion is not unduly impaired, thereby minimising the risk of unintentional uninsured driving.

D1I Reminders

There is no obligation upon the insurer to issue reminders in the event of non-payment, but as renewal retention is very important to them it is common for reminders to be sent shortly before expiry date if renewal instructions have not been received beforehand. Such a reminder can also serve the purpose of drawing the policyholder's attention to the dangers of driving uninsured and the importance of these reminders has, therefore, arguably increased since the withdrawal by many insurers of the temporary covering note referred to above.

D1J Lapsing

If renewal is not taken up by the policyholder, the policy automatically lapses and the insurer makes an appropriate 'credit' adjustment to accounting records to cancel out the 'debit' created when the renewal record was established.

There is no requirement for the policyholder to surrender the expired certificate for the expired year, nor for the insurer to seek its return. In those cases where renewal is invited via an intermediary, however, it is necessary for the renewal papers, including the renewal certificate of insurance, to be returned to the insurer. Removal of the 'debit' from the intermediary's account with the insurer is usually dependent upon compliance with this activity.

As with cancelled and avoided policies, it is important that the insurer's record does not mislead enquirers and those accessing the record. If the renewal invitation is not taken up the insurer should promptly update its record and the MID to show that the policy has expired.

D1K Mode of payment

Premiums for most motor policies may be paid by cheque or debit/credit card or, if desired, by automatic direct debit. The latter is a useful aid both in preventing the risk of payment being inadvertently overlooked, with the consequent potentially dire consequences of cover being unintentionally discontinued, and in improving the insurer's retention levels. Where the premium is payable by direct debit the renewal invitation documents will include the certificate of insurance for the coming year. If paid by instalments, a formal agreement is necessary to comply with the **Consumer Credit Act 1974** and credit referencing checks may be undertaken. These are not unique to motor insurance and further examination of this topic is beyond the scope of this study.

E Legal issues arising from documentation issued via insurance intermediaries

From your study of P05 you will be aware of the principles of the law of agency and the circumstances in which an agent's authority might be in question, as to whether they are acting on behalf of the insurer or their client. This distinction is relevant to all classes of insurance but has enhanced significance to motor insurance because of the existence of RTA requirements, particularly in regard to the issue of cover and delivery of certificates of insurance, including cover notes.

Agency law in relation to insurance remains something of a grey area

Whilst there has been a deal of case law over the years, agency law in relation to insurance remains something of a grey area and is currently under examination as part of the Law Commission's review of Insurance Contract Law, of which you will be aware from your study of P05. The various nuances insofar as they affect motor insurance documentation are, perhaps, best understood by examination of the relevant case law.

E1 Granting of cover

An independent intermediary is generally regarded as the agent of the proposer for the purpose of advising the proposer on the type of insurance they need but the position can vary when it comes to completion of a proposal form and the provision of information to the insurer. Different considerations apply to tied agents (i.e. those representing one insurer only) who are normally regarded as agents of the insurer, unless there is collusion between agent and proposer.



Activity

Refer to P05 and summarise the circumstances in which the agent is a) deemed agent of the proposer and b) deemed agent of the insurer. Compare the cases of *Newsholme Bros v. Road Transport & General* (1929) (a motor case) and *Stone v. Reliance Mutual* (1972).

Where, however, the intermediary (independent or tied) is empowered to grant cover on the insurer's behalf it will normally be deemed to be acting as agent for the insurer. For motor insurance, the agent's authority to issue cover is invariably evidenced by the physical presence of a temporary cover note, issued by the intermediary (but bearing the insurer's details), but a verbal assurance that cover has been granted can suffice. In *Stockton v. Mason* (1978) the policyholder's wife, upon telephoning the broker to notify a substitution of vehicle under an 'any driver' policy, was told that it would be in order and that they would attend to it. The broker subsequently sent a letter stating that cover was restricted to the insured only, due to the type of vehicle now insured, but this was received after a serious interim accident, involving an additional driver. It was held on appeal that, as the broker had implied authority to issue interim cover on behalf of the insurer, normally recorded in cover notes, there was a valid contract of interim insurance. In making the remark, the broker was acting as agent for the insurer and the insurer was liable.

E2 Delivery of certificates of insurance

In chapter 1 we examined the requirement of the RTA, whereby a policy shall be of no effect for RTA purposes unless and until an effective certificate of insurance is delivered by the insurer to the policyholder. Physical delivery is necessary but posting constitutes delivery as the postal authorities are regarded as agent of the receiver.

Insurance intermediaries are also regarded as agents of the policyholder for this purpose, provided they have express authority to accept certificates on the policyholder's behalf. Such authority is often included in the Terms of Business Agreements between the parties. The agent's authority in this regard was examined in *Starkey v. Hall* (1936). In this case the policy documents (including certificate) were held by a finance company to which the premium was being paid in instalments and which would not release them to the policyholder until the instalments were complete. It was held that there was no delivery in this case. Significantly, the finance company was not under a duty to hand the certificate over to the policyholder at their request, whereas an agent authorised by the policyholder would be required to do.

*Agents of the
policyholder*

F Electronic documents and electronic data interchange (EDI)

Traditionally, insurance documents have been produced in paper form and until fairly recently have been sent exclusively by conventional post. This remains the principal means of delivery between insurer (or intermediary) and the policyholder but increasingly greater use of electronic delivery is being introduced as more customers have access to robust home personal computers and printers.

Policy documents sent electronically offer a speedier means of delivery and reduce postage costs to the mutual benefit of insurers and their customers. Electronic delivery of certificates of insurance is also being developed and is scheduled to be introduced when the necessary changes to the RTA and relevant regulations have been implemented, although both electronic and conventional posted documents will continue in parallel for the foreseeable future.

Electronic Data Interchange (EDI) is the exchange of business data

Electronic communication between intermediaries and insurers has also evolved in recent years, with resultant considerable saving on previously duplicated costs. In its simplest form Electronic Data Interchange (EDI) is the exchange of business data in a common format directly from one computer system to another and is widely used in most major industries. In the insurance sector it enables the data gathered and processed by the intermediary to transfer directly to the insurer's 'back office' system, thereby avoiding the need for insurers to duplicate the work.

The intermediaries' instructions to incept, amend and renew policies are invariably submitted by EDI for personal lines, and some commercial, business, which forms the bulk of transactions. Such duplication remains necessary for larger commercial risks, for which standardisation is less suitable, although the use of email and emailed attachments alone has helped streamline all communication.

Appendix 1: Specimen cover note

TEMPORARY COVER NOTE

Number: ABCD 00109999 **Policy Number:** MC 1234567 **Issue Date:** 1st May 2009 **Issue Time:** 0930

Proposer:

Matthew Parry
6 Alder Way
Great Marton
Anywhere
AN13 3CZ

Having proposed for the insurance of the motor vehicle in accordance with the details described in the Schedule below, the risk is hereby covered in the terms of the Insurer's usual form of Policy applicable thereto and subject to the Special Conditions, Restrictions or Excesses (if any) indicated below for the period and time stated unless the cover be terminated by written notice to the insured at the address shown, in which case the insurance shall thereupon cease and a proportionate part of the annual premium will be charged for the time this insurance has been in force.

OPERATIVE FROM

Hours (24hr clock)	Day	Month	Year
0001	5th	May	2009

EXPIRY

Hours (24hr clock)	Day	Month	Year
2359	4th	June	2009

VEHICLE DETAILS

Make	Model	Body	Year of First Registration	C.C.
Ford	Focus Zetec	Hatchback	2009	1600

No. of seats	Value	Registration Number	Cover	Type of policy
4/5	£14,000	XYZ 1234	Comprehensive	Private car

PERMITTED DRIVERS

Proposer and Jane Parry only

Provided that the person driving holds a licence to drive the vehicle or has held and is not disqualified for holding or obtaining such a licence.

PROPOSER'S OCCUPATION: Sign writer

PERMITTED USE

Social domestic and pleasure purposes and use by the proposer in person in connection with his business. Excluding use for racing, competitions, rallies, trials, hiring, commercial travelling or for any purpose in connection with the motor trade.

SPECIAL TERMS/CONDITIONS/EXCESSES

£200 accidental damage excess

THIS COVER NOTE HAS BEEN PREPARED ON A LASER PRINTER AND IS NOT VALID IF IT HAS BEEN ALTERED IN ANY WAY.

CERTIFICATE OF MOTOR INSURANCE

I hereby certify that this cover note satisfies the requirements of the relevant Law applicable in Great Britain, Northern Ireland, the Isle of Man, the Island of Guernsey, the Island of Jersey and the Island of Alderney.

A Signature

Executive Officer
Indemnity Insurance plc
(Authorised Insurers)

Countersigned by: *A Signature* (Agent)

Agent's name: A N Other

Address of issuing office: Access House, Elder Way, Everywhere, EW13 4SCZ

Reason for issue: New Business

Advice to Third Parties – Nothing contained in this certificate affects your right as a third party to make a claim.

Appendix 2: Specimen renewal temporary covering note

RENEWAL TEMPORARY COVER NOTE

The cover referred to in the covering note below is given solely to enable the policyholder to comply with the provisions of the stated legislation. It operates only if and when such legislation requires the issue of a Certificate to the policyholder and only provides such indemnity against liability to third parties as is necessary to comply with the requirements of the stated legislation and gives no other cover whatsoever.

Covering Note

Insurance is hereby granted in the terms of the policy referred to in this Notice for a period of fifteen days commencing from and including the renewal date referred to in this Notice but only in respect of such insurance as is necessary to comply with the legislation stated hereon subject otherwise to the terms, conditions and exceptions of the said Policy and in accordance with the particulars of the Certificate(s) of Motor Insurance relating to the said Policy up to the said renewal date, and provided that an insurance covering the aforesaid liability has not been effected with any other authorised insurer.

Certificate of Motor Insurance

I hereby certify that this covering note satisfies the requirements of the relevant law applicable in Great Britain, Northern Ireland, the Isle of Man, the Island of Guernsey, the Island of Jersey and the Island of Alderney

.....(Authorised insurer)

The provisions of this cover must not be regarded as providing a period of grace in which to tender the renewal premium which should be paid before the renewal date so that the appropriate certificate of motor insurance may be delivered to the policyholder by that date. No obligation rests on the insurer to accept the renewal premium if tendered after the renewal date.

Note: If you should find it necessary to produce to the Authorities the covering note, the previous certificate(s) referred to therein must be produced with it.

SPECIMEN

Question answers

1. 30 days.
2. Seven years.
3. In the first year of insurance, the insurer has higher than normal expenses involving the issue of the policy, the setting up of a record and populating various databases.

Self-test questions

1. **We have seen that motor insurers use either proposal forms or statements of fact to arrange policies. What are the main differences between these methods?**

2. **A client calls his Intermediary to say that his cover note has not arrived in the post. When he checks, the intermediary finds that he forgot to issue one. The client had bought the vehicle the day before. Is the intermediary able to write a cover note dated the day before?**

3. **List the main differences between a cover note and a certificate of motor insurance.**

4. **Explain the relevance of *Starkey v. Hall* (1936) in relation to cover notes and certificates.**

5. **Why do you think windscreen insurance discs have not been adopted in the UK?**

6. Explain the difference between pro rata and short period rates.

7. In what ways do insurers treat motor trade and fleet policy adjustments that differs from other policies?

8. List the process involved where an insurer decides to cancel a motor policy in mid-term.

9. Explain how motor trade and fleet vehicle details are advised to the Motor Insurance Database (MID).

10. What facility is normally available to a private car policyholder who wishes to take their car off the road for several weeks or months say, during winter?

11. **Under what circumstances might a police officer make enquiries regarding a driver's insurance position?**

You will find the answers at the back of the book

5: Risk perception, evaluation and underwriting of motor insurance

Chapter section	Syllabus learning outcomes
A Underwriting strategy	4.1.1
B Rating, pricing and analysis	4.1.1, 4.1.2, 4.1.5, 4.1.6, 4.1.7
C Underwriting – motor car	4.1.3, 4.1.4, 4.1.8
D Rating and underwriting – motor cycles and commercial vehicles	4.2.1
E Motor trade	4.2.1
F Fleet rated risks, contingent liability and occasional business use	4.2.2, 4.2.3
G Reinsurance applied to motor insurance	4.1.9
H Underwriting mid-term changes	4.3.1
I Renewal underwriting	4.3.2
J Liaison between underwriting and claims functions	4.3.3

Learning objectives

After studying this chapter, you should be able to:

- ☐ discuss insurers' corporate and underwriting strategy and objectives and distinguish between account level and case underwriting;
- ☐ explain rating models and pricing methods, including the basis of calculation of pure risk premium;
- ☐ outline the main and subsidiary risk factors, including area/district, cover, driver age, driving restriction and car group;
- ☐ discuss elasticity of supply and demand in the context of the pricing of motor insurance;
- ☐ discuss the evolution and operation of no claim discount and its variations;
- ☐ explain risk evaluation and visualisation, validation methods and fair obtaining notices;
- ☐ explain the assessment of drivers and other users, together with assessment of vehicles, including modifications;
- ☐ outline the use of driving limitations applicable to motor car and other classes;
- ☐ explain the factors affecting the claims and expense ratios, including acquisition and renewal retention rates and affinity schemes;
- ☐ discuss the main differences between the risk assessment and underwriting of motor car, motor cycle and commercial risks, including goods vehicles, hire cars, buses and coaches, special types, agricultural and forestry vehicles and motor trade;
- ☐ explain the method by which fleet business is underwritten and rated, including the data provided by fleet experience, together with the underwriting of contingent and OBU risks;
- ☐ outline the main types of reinsurance applicable to motor insurance;
- ☐ explain the key aspects of mid term and renewal underwriting;
- ☐ discuss the importance of effective liaison between the underwriting and claims functions and outline key developments which can impact the accuracy of underwriting analysis.

A Underwriting strategy

In chapters 1 and 3 we identified the various types of motor risk and how insurance provides for those risks. In this chapter we shall examine the methods by which motor insurance risk is underwritten and how the various rating factors are used to set rates and the pricing of individual risks.

A1 Pooling of risks

You will recall from your study of IF1 that the concept of insurance is that the losses of the few who suffer misfortune are met by the contributions of the many who are exposed to similar risk of loss and liability. In order to underwrite, the insurer brings together a large number of individual risks into a common pool or fund and, in operating this pool, the insurer benefits from the law of large numbers.

Not all risks present the same degree of risk to the central pool and it is an important part of the underwriting and pricing process to exercise selection of risks and charge each accepted customer an equitable premium, which represents the degree of risk they bring to the pool. For example, a driver with an adverse claims record should expect to contribute more, in terms of premiums, to the common pool than a driver with an otherwise identical profile but whose record is claim free.

It will not attract business of the desired calibre

If the insurer fails to distinguish between risk variation and does not exercise prudent underwriting judgment and pricing it will not attract business of the desired calibre. At the same time it will attract those risks likely to produce adverse results, a process sometimes known as 'anti-selection'.



Reinforce

Refer to IF1 and refresh your understanding of the pooling of risks, the law of large numbers and allocation of equitable premiums.



Think

Using private car insurance as a model, what features can you think of that either increase or decrease the risk?

A2 Strategic objectives

Each insurer will have its own strategic objectives, from which its underwriting strategy is derived and it will establish boundaries within which it wishes to operate in regard to acceptance of risks and its development in terms of future growth, market share and profit.

Within the motor market there are distinct segments, roughly equating to the main personal lines classes and commercial insurances, with which you are familiar from your study of chapter 3. The main personal lines products (motor car, motor cycle and small goods vehicles) tend to lend themselves to standardised rating and acceptance terms, while using sophisticated rating and pricing models to try to secure and retain business in an intensely competitive market. Underwriting expenses are thereby to some extent minimised to help balance high acquisition costs generated by expensive media advertising. By contrast, non-standard personal lines and commercial business generate higher average premiums but require more customised individual underwriting and the allocation of higher commission rates in lieu of the high advertising costs associated with the acquisition of personal lines classes. Some insurers seek to specialise in single segments, whilst others operate across both personal and commercial lines, giving the market its breadth and ability to cater for the diverse needs of the customer.

Having decided upon its strategic objective, the insurer's underwriting strategy will be broken down into key elements, including premium targets, claims and expense ratios and expected investment returns. These elements, which are explained in the following sections, will be kept under constant review and the strategy will be adjusted from time to time in response to changed corporate objectives or market conditions.

The term 'underwriting' can be misleading, as it is used to describe a number of activities. By definition, it means acceptance of risk and applies to the global activity of the insurer. When it is said that an insurer 'writes' a particular class of business we are really referring to the fact that it transacts that class of business. In this chapter, however, we shall be examining underwriting in the narrower sense, whereby risk is evaluated and priced. These activities require distinct skills which must be brought together to achieve a successful outcome in terms of consistently successful results.

*The term
'underwriting'
can be
misleading*

B Rating, pricing and analysis

The rating and pricing of motor insurance has historically tended to be more complex than some other classes, reflecting the wide variation in cover provided and the competitiveness of pricing for a class which produces premium income representing some 32% of total UK General Insurance premium income.

Think

In 2007, total net premiums (written premium less reinsurance premiums paid by the insurer) amounted to £32.9 billion of which motor comprised £10.5 billion (source ABI).



Rating is the process whereby the insurer arrives at a premium to be charged for a given risk within the motor account. The premium will comprise the following main elements:

- the anticipated cost of claims, derived from frequency and average claims cost;
- expenses incurred in operating the motor account, including payment to intermediaries;
- the cost of reinsurance and levies;
- contribution to profit.

The cost of claims is by far the most difficult to assess and will be addressed in detail after we consider the other main elements.

B1 Rating

B1A Expenses

Expenses fall into two categories:

1. Variable costs (which vary according to the volume of work transacted) and would include, for example, the cost of dealing with the quotation and proposal, creating a record, issuing documents, handling claims, policy alterations and renewals and intermediaries' commission.
2. Fixed costs, such as buildings and other facilities together with the cost of employing senior specialists in financial accounting, actuarial, underwriting, claims, agency and marketing, human resources and training departments.

B1B Reinsurance and levies

The cost of reinsurance for motor is usually a percentage of the insurer's gross written premium but may vary where relatively small premiums are exposed and the reinsurers apply minimum premium levels. The types and pricing of reinsurance are covered later.

Levies include industry levies for subscription to trade bodies and contribution to central services such as fire services, accident research (including MIRRC – see chapter 2) and levies, such as those payable to the MIB, the FSA and the FSCS, with which you are familiar from your study of IF1.

Insurance premium tax, referred to in chapter 3, is regarded as part of the premium and is not included in levies for the purpose of calculating premiums.

B1C Contribution to profit

Whilst motor insurance is an extremely competitive market and margins are small, the insurer should make an allowance in its pricing for the margin of profit it expects if its projections prove to be accurate. Nevertheless, there will be years when there is a trading loss, even after investment income is taken into consideration.

An extremely competitive market and margins are small

B1D Claims cost

You are familiar with the elements of risk which create the costs incurred by insurers in meeting claims. The two main elements are:

- Vehicle repairs, replacement and total loss settlements, for both own damage and third party claims. To some extent this cost is predictable, using past results and making allowance for inflation due to the increasing costs of repair and labour. Insurers have access not only to their own results but market indexed data to help track and project average costs.
- Third party claims (other than for vehicle damage) including third party bodily injury awards. These will include the costs of hire cars and alternative transport costs and can similarly be capable of relatively straightforward tracking in normal circumstances. Where, however, there is a change in law, either by Statute or a landmark common law decision an insurer's assumptions and projections can require sometimes drastic revision.

For example, the inclusion of third party property damage within the scope of compulsory insurance (RTA 1988) resulted in a marked increase in insurers' liability under the MIB Domestic Agreement and MIB central fund levy contributions.

B1E Periodic payment orders

A more recent example is the introduction of structured settlements by the **Social Security Act 1989**. These are sometimes used for cases of serious injury requiring long-term care, whereby the claimant receives a payment to meet their immediate needs, together with periodic payments to provide income for future provision and care. These were introduced as an alternative to traditional one-off (lump sum) payments to injured parties, which have the disadvantage that the claimant's projected life expectancy, might prove inaccurate or the lump sum might not realise the required investment return due to poor financial advice, under-performance or even failure of the investment fund. The structured settlement can be arranged by way of the insurer investing the amount which would otherwise have been paid and making the periodic payments itself or by the purchase of an annuity, which effectively relieves the insurer (and reinsurer) of the burden of keeping their files open for the duration of the claimant's life, with the expense that entails.

Whilst this arrangement is a solution to the main disadvantages to the claimant associated with lump sum payments, it was initially available only subject to the agreement of both parties; insurers were under no obligation to accede to the claimant's request. This position changed with the introduction of the **Courts Act 2003**, which gives the courts the power to order periodic payments, without the consent of the parties, if it considers it is the best way of meeting the needs of the claimant and that the court is satisfied that the continuity of payments is reasonably secure. The significance of the change introduced by the Courts Act for insurers is that in the UK insurers no longer have control over whether a settlement award will be subject to periodic payments, and it is to be expected that the number of structured settlements will rise.

B1F Discount rates

Another is the change to discount rates used in calculating damages, introduced in 1996. In arriving at an award for a lump sum payment to provide income for future care, an awarding court needs to arrive at an assumed rate of return on investment of the lump sum. The assumed rate is critical to the adequacy of the award and the claimant is effectively placed at the mercy of the volatility of the investment market. In the UK, in two legal cases, in 1998 and 1999, it was held that the assumed growth rate should be aligned to the return on Government bonds (GILTS), which provide a more modest expectation than the more volatile share prices previously used. These decisions were subsequently upheld on appeal to the House of Lords and the Lord Chancellor has the power to vary the rate under the **Damages Act 1996**. The Ogden actuarial tables are the recognised guide for calculating the damages and the Ogden Working Party makes periodic recommendations for changes to the applicable discount rate. The impact of this change is that lump sum awards were increased to allow for the assumed lower rate of return used for calculating investment returns and has consequently had a significant effect on the average cost of third party liability and motor claims.

B1G Claims estimates and reserving

The insurer must have regard to the fact that the actual settlement cost of a claim will in some cases not be known for some years; typically, 50% of claims might be paid within twelve months, 40% within the next twelve and the remaining 10% in subsequent years. It is, therefore, necessary to estimate the likely cost of known future liabilities and the accuracy of reserving is critical not only to pricing but the ultimate solvency of the insurer's account. The knowledge and skill of the claims handler in estimating liability at case level when the claim is established and as it develops is complemented by sophisticated actuarial methods of tracking developments and making reserve provisions at account level. Models exist to predict the ultimate claim cost by examining the development of the cost from one year to the next and averaging the effect over time on payment amount. These methods are necessarily complex and are beyond the scope of this course.

When making provision for future liabilities at account level, as distinct from estimating for individual cases, it is necessary to create a reserve to cater for claims that will be made for events which have already taken place in the period under statistical review but are not yet known to the insurer. These are known as incurred but not reported (IBNR) claims.

A further requirement in pricing is to bring past payments up to current equivalent levels by applying an inflation factor. This activity will become clearer when we later examine fleet rating.

**Question 1**

What are the disadvantages of one-off lump sum payments in cases of serious injury requiring long-term care?

B2 Main rating factors

Before considering the structure of rates we will first examine the main rating factors to develop a feel for the way in which they help measure risk and enable homogeneous risks to be grouped together to achieve standard or 'book' rates. Main rating factors will include the following.

B2A Class of business

These comprise motor car (private and business, excluding hire), motor cycle, goods-carrying vehicles, agricultural and forestry vehicles, hire cars, coaches and buses, motor trade, contingent liability and occasional business use and special types. Each of these is described in chapter 3 and for which you will have an understanding of the scope of cover. Few insurers underwrite all these classes, some specialising in only one or two of them.

B2B Extent of cover

With the exception of motor trade internal and contingent liability, each of the classes normally provide up to three main levels of ascending cover. These are third party only, third party fire and theft and comprehensive, the scope of which will similarly be familiar to you from chapter 3. Basic premiums for each will naturally be greater the wider the scope of cover.

B2C District of garaging or use

If a vehicle is used in an area of high traffic density a commensurately higher frequency of claims can be expected. Furthermore, urban areas generally exhibit higher crime rates than rural areas. Insurers seek to take account of such distinctions when rating individual risks by grouping them according to rating 'districts'. As the vast majority of vehicles are likely to be regularly driven over a wide area of several, or several hundred, miles these areas defy definition and most insurers compromise by adopting the area in which the vehicle is usually garaged or kept.

This creates some anomalies as, whilst many vehicles are used in a small radius from the garaging address, some drivers travel long distances daily to travel to work or for business purposes. Conversely, some vehicle owners commute by train and drive the short distance from home to the local rail station, yet both would be allocated the same rating district, unless the insurer went into detail about mileage covered and some insurers, indeed, include mileage as a distinct rating factor to help address this anomaly. A further consideration is that certain areas might feature housing with garage facilities, whilst others have off street or otherwise open parking, thereby exposing vehicles to malicious damage or theft, which would be diminished for vehicles garaged overnight.

Some vehicle owners commute by train

At one time insurers grouped risk addresses into a relatively small number of rating districts for motor car, comprising islands surrounding mainland UK, rural counties, rural county towns and the central counties, provincial towns and cities, large cities and major conurbations, Central London and Northern Ireland. The subsequent introduction of postal coding offered the opportunity for a more refined approach. Postal codes exist for local government administrative purposes without consideration for commercial use but they offer a convenient method of identifying garaging addresses by relatively small geographical areas, when compared with the previous split by counties and towns; many insurers classify not only by outward, but inward, post code (or sector). The differential between rating districts has consequently narrowed, with insurers using up to 50 rating districts. The value of this narrowing of differential will be appreciated later when we examine analysis and pricing.

Goods-carrying vehicles, hire cars, coaches and motor trade road risks have traditionally been allocated to fewer rating districts, reflecting the wider radius that these would often cover, compared to most private cars. Many insurers, however, allocate more rating districts for small goods vehicles used for local deliveries, where the radius of use is not dissimilar to private cars.

District rating is relevant to certain categories of 'special types' and agricultural vehicles and these are explained later when addressing underwriting of these classes.

B2D Class of use

For motor cars the use classifications are those outlined in chapter 3; namely the following. These are rated in ascending order, reflecting the increasing exposure of use during travel between home and place of work and use during the day on business:

- Social, domestic and pleasure (SDP) (excluding commuting).
- SDP (including commuting).
- Class A (Class 1).
- Class B1 (Class 2).
- Class B2 (Class 3).

Use for hire cars is classified for private hire, radio controlled and public hire and self-drive hire whilst use for coaches distinguishes between those used for hire and reward (Table 2 use) and those not so used or used in accordance with a minibus permit (Table 1). Whether use is limited strictly to the UK or includes regular travel to continental Europe is also a factor.

Use of motor cycles is usually rated for SDP and business use combined, without separation for the two elements, but excluding hiring. Use classification for goods vehicles are local delivery of own goods (Table 1), local haulage (Table 2 use) and long-distance haulage (Table 3 use), whilst use of agricultural vehicles is rated for solely agricultural and forestry work, with additional premium for tree felling and separate rating for use which is restricted to golf courses, parks and sports fields.

Use rating for special types, contingent liability and occasional business use is covered later under the section on underwriting of these classes.

B2E Age of driver

One of the most important factors in the assessment of motor risk is the driver of the vehicle. It is also the most difficult to classify as it encompasses age, driving experience, accident and conviction history, together with the temperament and character of the individual and their perception of, and approach to, risk.

The most easily measured of these is age

The most easily measured of these is age and it consequently assumes great importance in the pricing model for motor personal lines, where the main driver is usually constant and driving is often limited to named persons. By contrast, for commercial lines drivers tend to change and 'open' driving is often required.

Statistical data for personal lines shows a clear variation in the frequency and cost of claims as age increases, with younger drivers displaying a markedly higher relative cost.



Activity

Look up the discussion paper 'Young Drivers: Reforming learning to drive' on the ABI website www.abi.org.uk for graphs depicting the accident frequency curve.

B2F Driving limitation

Results by age, like other factors, cannot be used in isolation as other influences need to be taken into consideration, such as driving limitation and the ages of additional drivers. The need to 'weight' results will be examined later.

The modern trend is towards restricted driving for motor car policies, with more policyholders willing to accept restriction to insured only or named persons (often policyholder and spouse/domestic partner) in return for reduced premium. In many cases such restriction is imposed by the insurer; e.g. for certain high performance/high value vehicles or drivers under 25, who are more likely to share driving with young drivers. Where 'open' driving is requested and granted, it is usual to find that drivers under 21, 25 or 30 are, nevertheless, excluded and the true 'any authorised driver' private car policy, once the choice of the majority, is quite rare nowadays.

Cars used for business (other than hire cars) and commercial vehicles are more likely to require open driving. Driving limitation for other classes will be addressed later in this chapter.

B2G Classification of vehicle

Classification of vehicle is an important rating factor but, compared to driver, is relatively easy to classify.

At one time cars were assessed on their engine capacity (cc) and value and allocated to one of seven rating variables but this system was replaced with one whereby each individual model within make is assessed according to performance and repair cost and allocated to a group.

These recommended allocations are in the public domain and are generally followed by insurers when a new vehicle model is released, albeit individual insurers use different numbers of groups in their rating structures and move models between groups over time, depending on their own claims experience. The original seven groups was expanded over the years to achieve a smaller variable between premiums and the market norm for classifications recently increased from 20 to 50 groups.

Among the determining factors in deciding on a group are the new car price, reflecting variations in trim and total loss settlement cost, vehicle performance in terms of acceleration and top speed and the cost of parts, repair times and security features (see section C2X).

Activity

Look up the website www.thatcham.org/abigrouprating. Read the summary under 'Insurance Group Rating' and then obtain the recommended group ratings for four different makes/models.

**B3 No claim discount**

No claim discount (NCD) has the effect of reducing the premium (the gross premium) by a percentage, resulting in a premium net of NCD.

At one time the NCD was regarded as a reward by way of the 'return' of part of the premium paid at the beginning of the period of insurance in consideration for no claim being made and the discount (or bonus) usually amounted to no more than 10%. Hence, it is still sometimes referred to as a No Claim 'Bonus' (NCB), perhaps implying it will be returned to the insured. In reality it was, and still is, not a refundable bonus but a discount against the succeeding renewal premium and the insured, therefore, receives the discount only if the policy is renewed.

The discount allowed against the premium varies between insurers and there is a progressive scale, whereby the discount accrues in succeeding years until a maximum is reached, assuming of course there is a continued absence of claim. The following is an example of a scale for a motor car policy. Motor cycle and commercial policies have different scales and some policies, such as those limited to fire and theft cover only, contingent liability and OBU do not feature NCD.

After first year free of claim	Discount 30%
Second year	Discount 40%
Third year	Discount 50%
Fourth year	Discount 60%

If a claim occurs the discount is lost. Originally this meant that the holder of a 60% NCD would see it reduce to nil after a single claim in the same way any other level of NCD would do so. As the level of premiums and the percentage rose over the years, the financial value of the NCD to the insured increased and it began to assume something of a status symbol among some motorists, perhaps signifying a level of driving competence.

It makes no difference whether or not the incident giving rise to the claim is the responsibility of the insured. It is a 'no claim' discount – not the proverbial 'no blame' discount – and a claim would ordinarily leave the NCD unaffected only in the event of the insurer making a full recovery of its outlay, without incurring irrecoverable costs, leaving the claim as settled with NIL payment and 'allow' NCD. An exception to this rule is the claim where payment is made solely for replacement windscreens or windows.

A very large proportion of 'driving' accidents involve an element of responsibility on the part of two or more parties and claims are invariably settled on a split liability basis, resulting in loss of NCD for all concerned under their respective policies. A claim arising from damage by an unknown third party (damaged whilst parked, including malicious damage and thefts) similarly results in loss of NCD, when the insured would consider it 'no fault' on their part. Bearing in mind the value of the NCD in terms of premium reduction it is not surprising that disputes over the decision reached by the insurer is a common source of dissatisfaction and complaints.

The market reacted by introducing a 'step-back' process, whereby not all the discount would be lost in the event of a single claim. By way of example:

4th year NCD	single claim in one year	step back to 2nd year
4th year NCD	2 or more claims in one year	step back to nil
3rd year NCD	single claim in one year	step back to 1st year
3rd year NCD	2 or more claims in one year	step back to nil
1st or 2nd year NCD	one or more claims in one year	step back to nil

This example is a four year scale. Some insurers have scales rising to five or six years, with corresponding step back and the maximum percentage discount can reach as high as 70% for new business with an upper limit for renewed policies of up to 75%.

A further development was the introduction of 'protected NCD', whereby, typically, once the maximum level of NCD is reached it will remain unaffected, provided not more than two claims are made in any five year period of continuous insurance. Some insurers permit three claims instead of two in five years and there are further variations on this.

A further variation is the 'guaranteed NCD'

Yet a further variation is the 'guaranteed NCD', whereby the maximum discount remains intact, irrespective of the number of claims. This is tantamount to a 'net premium' policy, i.e. a policy for which there is no NCD but the premium takes into account the policyholder's claim free years of insurance without specifying the percentage allowed in the calculation.

As protected, guaranteed and 'net premium' policies would not otherwise have the advantage of deterring small claims, they invariably feature a compulsory excess and are normally reserved for mature drivers (typically 25 or over). Some insurers provide the facility automatically whilst others include it subject to additional premium.

The step back and protected NCD concessions are not a complete answer to the dissatisfaction that is often generated by NCD decisions as a 'disallow' claim can still ultimately affect the NCD if the maximum permitted claims limit is exceeded but they have gone some way to reducing the number of disputes.

Activity

Look at the selection of policies available to you and examine how each insurer describes its NCD scale.



B3A Introductory and accelerated NCD

Insurers commonly offer an introductory discount (sometimes known as introductory NCD) to those proposers without recent previous insurance whose profile is satisfactory. The discount might typically be restricted to mature proposers (aged 25 or over), who have held a full driving licence for a minimum period (say, two years), are free of conviction and have no accidents losses or claims in the preceding three years or more. Where this applies the NCD at the succeeding first renewal (subject to no claim) might be first year or second year, depending on the insurer's practice.

Another innovation is the accelerated NCD, whereby a proposer can qualify for a full year's NCD after just six months, provided a further full twelve months policy is effected. This was first introduced by one insurer some years ago with the intention of encouraging policyholders to change their renewal date from a particularly busy month (in terms of policies falling due for renewal), thereby helping smooth the insurer's renewal date profile and easing workload for the insurer and its intermediaries. It has reappeared in a number of guises over the years, at times of fierce competition for business and is not a universal market feature.

A concession granted by some insurers is the allowance of an enhanced introductory discount for proposers without previous insurance history in their own name, but who have been an additional driver under a policy issued by that insurer, based on the number of years that the driver has featured and been claim-free under the policy in question.

Similarly, some insurers allow a discount to those who have driven company cars without claim and, having lost the facility of the company car, find themselves in the position of applying for insurance without an NCD. In such cases, the proposer would usually be required to produce evidence of the claim free history from the insurer of the company car, perhaps supported by a letter from the employer as for large company fleets the insurer might not be in a position to readily evaluate the claims history at individual driver level.

B3B NCD transfer

Originally NCD was unique to the renewal of a policy and not necessarily transferable for the purpose of its allowance against a premium for a policy with another insurer. It has, however, long been practice to permit transfer between insurers subject to proof of the discount from the previous insurer. Acceptable proof is usually the holding insurer's renewal notice but a suitable letter from the insurer is acceptable alternative evidence.

The new insurer allows NCD on the basis of its own scale, taking into account the number of claims free years earned, not the percentage granted by the previous insurer. Practice varies on transfer where the risk features a previous claim (or claims) which would have affected NCD, had it not been for protected or guaranteed NCD. The previous insurer might well have charged additional premium for the facility, in consideration of allowing the protected discount which would, of course, not benefit the new insurer. There is no standard approach and allowance of NCD can be a matter for negotiation.

Furthermore, whilst it is earned in the name of the policyholder NCD is only allowed for the vehicle in respect of which the claim free period applied (or the vehicle immediately replacing that vehicle). In other words it is not generally permitted to be used for more than one vehicle. Were this so it would be possible for a policyholder with NCD to insure any number of cars used primarily (and possibly owned by) others, to whom no NCD applied in their own right. Despite this, some insurers have allowed the NCD on second cars in circumstances where they are confident the policyholder will be the main driver of both. Where such a concession is made, the policy needs to be monitored for future driving restriction changes.

B3C Effect on pricing

NCD is a factor which operates separately from other rating factors and has a considerable impact on the premium received by the insurer. It has historically been deducted from gross premium after all other rating factor loadings and discounts have been applied, producing a premium 'net' of NCD. For example:

Annual Premium	1,000	Annual Premium	1,000	Annual Premium	1,000
NCD 30%	300	NCD 50%	500	NCD 60%	600
Net premium	700	Net premium	500	Net Premium	400

If it is established by an individual insurer that, on average, all policies in its account have a 50% NCD then, irrespective of the sophistication of its rating methods employed in arriving at the gross premium, it will receive only 50% of it.

Given the lack of standardisation in market practice and processes for granting, transferring and proving NCD on transfer, coupled with the fact that a policyholder can effectively purchase their continued entitlement to NCD, rather than earn it by claim-free motoring (the vast majority of private car policyholders enjoy the maximum NCD available to them), it has been questioned whether it remains a meaningful rating factor.

Some insurers have, in fact, discontinued the practice of discounting the gross premium by NCD, instead weighting it by other factors and thereby producing a variable discount. The ability to transfer NCD between insurers is unaffected by this change, as it is the number of years claim free that the discount represents that is relevant to the new insurer, not the discount applied by the previous insurer.

NCD, nevertheless, remains an established feature of the personal lines motor product, which has marketing value by virtue of its appeal to the majority of motorists and looks set to remain so for the foreseeable future.

B4 Pricing methods

B4A Earned vehicle years (EVY)

In chapter 1 we touched on a measurement of exposure, known as vehicle years. A vehicle insured for twelve months is one vehicle year, two vehicles insured for six months each also constitutes one vehicle year and so on.

In grouping together a large number of individual risks for statistical evaluation the analyst will select a period during which the risks were exposed (for example, risks exposed between two selected dates twelve months apart) and collate the various durations for which each policy was in force during that period. The total of these exposures will be said to comprise 'earned' vehicle years, whereas the total number of policies commencing or renewing in that period would be referred to as 'written' vehicle years.

B4B Earned premiums

A policy inception or renewed on the very day that the period under review commenced and remaining in force until the last day of that period would have a written premium which was totally 'earned' in that period. Most policies would, however, have inception and renewal dates spanning different parts of the review period and many would feature premium adjustments for policy changes. The portions of the premiums exposed during the review period, therefore, need to be totalled and expressed as 'earned' premiums.

Many would feature premium adjustments

We now have four key elements from which to measure results and base rating upon – the total claims cost, the number of claims, earned premium and earned vehicle years – and we shall examine the alternative methods of deriving premiums from matching claims to each of the units of exposure.

Irrespective of which of these is used, however, it is necessary to divide the account into the various risk factors which are known to influence results, including those basic rating factors we have already examined in section B2.

B4C Analysis

It soon becomes apparent that the various factors are interdependent and to analyse all combinations would produce many thousands of separate 'cells'. For example, if we were to analyse an account profile by rating district (50 variables), driver age (50 variables), car group (50 variables), use of vehicle (3 variables) and cover (3 variables), these alone would produce in the region of 1 million cells. Multiply this figure by some subsidiary rating factors, such as excess and post code and the number of variables would outweigh the total number of insured vehicles in the UK, let alone the much smaller policy counts of even the largest motor insurers.

It would be self-defeating to drill down to this level of detail as there would be an insufficient number of exposures in each cell to produce credible statistics and insurers, therefore, content themselves with analysing an optimum number.


Example: analysis by age of main driver with comprehensive cover

Age	Exposure (EVY)	Claims (No.)	Frequency(%)	Av. Cost	Claims Cost	CCPVY
17	1,500	500	33.3	2,500	1,250,000	833
50-55	100,000	15,000	15.0	2,000	30,000,000	300

This simple breakdown by a two-way analysis (driver age within cover) provides enough information to calculate a claims cost per vehicle year (CCPVY), sufficient to provide a basis for projecting what is known as a 'pure loss' or 'risk premium' for each risk profile. In this example just two age splits are shown; age 17 and age band 50-55. There would be further bands for all other driving ages and, where appropriate, subdivisions by individual age. Cover would typically be split comprehensive and non-comprehensive (third party only and third party fire and theft combined) but separate experience could be extracted for the third party covers.

**All factors are
capable of
being analysed**

All factors are capable of being analysed, provided they are identifiable and the data can be readily accessed from the insurer's computer systems. Individual vehicle makes and models are, therefore, coded, as are occupation and any other factor which is not otherwise readily identifiable. These codes are allocated when the data is input at the new proposal, mid-term adjustment or renewal stage.

B4D Establishing the pure risk premium

Taking the example above, the claim cost per vehicle year for drivers aged 50-55 with comprehensive cover would be £300, derived from dividing the total claims cost by the exposure (100,000 vehicle years). To this 'pure loss' would be added expenses (including all operating costs, levies and commission) and contribution to profit, producing a standard or 'book' premium for this risk. Thus:

Pure loss	300
Exp	75
RI & levy	20
Profit	5
Premium	£400

This process can be repeated for any chosen number of profiles but, as we have already established, the volumes of exposures could soon become too small to provide sufficient data for analysis capable of providing credible results for small cells.

B4E Use of parameters

A method of achieving a more detailed analysis is to attach a value to each of the frequency and average cost, thereby producing an 'expected' frequency and average cost. A method used to derive this 'expected' experience is one based on the study of actual claims experience in earlier periods and expressed in a formula which, for any policy or claims record, requires the addition of several numbers, one for each of the risk factors considered, known as 'parameters'. There could, for example, be parameters for age of main driver, age of vehicle and post code, each showing a variation, depending on relative claims experience.

It is, therefore, possible for an insurer to project relative values for different risk profiles, without necessarily having much, or any, current data in that particular cell.

There are other far more complex modelling methods available to insurers, the operation of which is beyond the scope of this study text. It is sufficient for the purpose of this study that you are aware of the main elements present in the data used as a basis for pricing and the need to make adjustments to compensate for any deficiencies in the quality of the results used in projections.

It is evident from the simple construction of premium above that, apart from the critical matter of claims cost, the insurer must add an amount to cover expenses and levies and provide for profit. Historically, quite arbitrary percentages were applied for expenses but modern methods now allow these to be allocated with greater sophistication. These too are outside the scope of this study.

It will be seen, however, that a relatively large fixed cost such as the insurer's industry levies must be allocated to individual premium rates and that the absence of data at individual risk level means that this 'bottom line' expense would need to be allocated quite arbitrarily across all policyholders' premiums.

As mentioned earlier, insurers obtain the benefit from investment return on the premiums and claims reserves they hold, pending their incurring liabilities for claims and payment of expenses. This investment income is a positive factor in assessing the underwriting result and is, therefore, one to be taken into account in setting premiums. The value of investment income necessarily varies with economic conditions and in recent years has been less of a benefit than previously, thereby increasing the focus on the value of prudent underwriting, pricing and reserving.

B4F Claims to premium basis

The sum of the claims amount paid and the estimated future liability is known as the incurred claims cost and the proportion of the incurred claims cost to the premium charged for the risk is known as the 'incurred claims ratio' (or incurred loss ratio) and expressed as a percentage. The amount of the premium allocated to expenses is known as the expense ratio.

An alternative and more pragmatic method of pricing to the 'pure loss' method described above is to examine how the account is performing and establish the claims ratio for given cells, adjusting the basic premium for each to maintain the desired ratio, whilst making assumptions on the change in expected claims cost. The latter would take into account the same considerations used in the claims estimating process previously described.

This method has a drawback in that, whilst the claims cost is equally valid, the earned premium (unlike the corresponding earned vehicle years) will contain loadings introduced at case level for individual risks and ideally these should be isolated and examined separately. A further disadvantage is that, certainly for personal lines, basic premiums are continually changing and to perform analyses for each stream of business written at a particular rate can be a formidable task.

Nevertheless, the claim ratio method is a practicable and basically sound process which, used in conjunction with validation from analysis of the relativities in claims cost by factor and sense-checking by the 'pure loss' method, is an established and accepted method of pricing.

The addition of a percentage, or other value, for expenses is made, subject to the constraints mentioned above.

B5 Pricing strategy and practice

Having established the rates that these analyses indicate should be applied the insurer is faced with the challenge of implementing them in a competitive market. It is one thing to know (or have a very good idea) of the level of premium required to achieve the desired outcome and quite another to acquire new, and retain existing, business.

Two main elements need to be considered:

- The reaction of the customer.
- Market competition.

B5A The customer

First, there is the behaviour of the customer to consider. Basic economics tells us that not all customers act in the same way to a change in price and that a change will not result in a corresponding rise or fall in the sale of a product or, in the case of insurance, the acquisition, and retention of, business.

Those of you who have studied economics will be familiar with the term 'elasticity'. In simple terms, elasticity is the measure of the change in demand as a result of the change in price. Ordinarily a reduction in price might be expected to result in an increase in demand (e.g. increased purchase of an insurance product) but customer behaviour can be influenced by other factors, such as affinity to a particular brand or even an aversion to something which by its very low price implies unsuitability or lack of quality and can have the effect of negating the expected reaction. A changed price which has this effect is regarded as 'inelastic'.

The insurer will, therefore, try to predict how the customer will react to a change in price. This will vary upon the actual amount of increase likely to prompt the customer to seek a comparative premium and the behaviour pattern of the customer. The latter will vary depending upon factors such as age and socio-economic group and explains why insurers often target particular affinity groups and why they select alternative marketing strategies for different methods of distribution (e.g. direct, internet and intermediary channels).

The pricing strategy will be influenced by the insurer deciding which segments of the insuring public it wishes to attract and retain, based on outcome in terms of claims experience and expenses and, ultimately, profit.



Think

To what extent do you think that access to internet quotation comparison sites has influenced the elasticity of demand for private motor insurance?

B5B The market

Another key consideration is market competition. There are approximately 80 insurers actively underwriting motor insurance, operating in various sectors of the market. Each will have its own business plan which will dictate its pricing and underwriting strategy at a particular time. Each insurer, when deciding upon a change to its pricing will therefore seek to test a number of risk profiles within its portfolio against the appropriate market to try to establish what effect a price change would have on its competitive position.

Another key consideration is market competition

Comparisons can be made using a number of comparative quotation systems or the services of firms specialising in monitoring the market. Those insurers active in the intermediary market necessarily have to make their rates available to their agents and whilst the rates of some of the direct writers are not so readily available, it is possible to establish to some extent the levels and variables used by them by a process of 'reverse engineering', i.e. obtaining a set of premiums for different rating factors for an identical risk.

B5C What if?

The insurer will, therefore, try to estimate not only its own market position as a result of a price change (up or down) but the impact it will have on its retention of business, premium income and profitability. In other words what would happen to a particular segment of the account if a particular change were implemented.

B5D Non-standard rates

Mention was made above of loadings applied at case level for individual risks. These would be applied where a risk is considered unsuitable for standard rating at the insurer's 'book' rate due to an adverse feature, such as a poor accident or conviction record. This is explored in more detail in section C, which addresses case underwriting.

Question 2

What are the main two elements to be considered in determining a pricing strategy?



Activity

Access a number of price comparison sites using various risk profiles. Compare the prices shown and the amount of information given on each product.



B6 Interpretation of results

Before leaving this study of pricing and reserving, brief mention should be made of the interpretation of insurer's published results.

In this section we have looked at the methods of setting rates based on data which has been analysed, often using sophisticated tools to ensure their relevance to the risk segment under review. You will not come across these results unless you have access to them in your day-to-day work in an analysis or underwriting function, as they are confidential to insurers and sensitive to an insurer's competitive position.

You may, however, have access to results in the public domain, at individual insurer level and showing written and earned premiums and claims cost and frequency, within private car, motor cycle, commercial vehicle and fleet categories. These are derived from statutory returns insurers are obliged to submit to HM Treasury in these categories. Private car data is published showing results for comprehensive and non-comprehensive risks, but this cover split does not feature for other reporting classes.

These results are a useful means of forming a view on how the market is operating at a high level and industry experts produce informative analyses on how individual insurers are performing in comparison to the market average. When considering these results, however, you should bear in mind that they have limitations and that the average and earned premiums suffer from the major deficiency mentioned above.

You will see, for example, that an insurer's average third party premium is often greater than its average comprehensive rate, yet the latter provides a wider scope of cover. This phenomenon is easily explained by the fact that third party cover is particularly attractive to younger drivers and others who are less able to afford comprehensive cover by virtue of their risk profile. It follows that the third party rate will include more loaded premiums than comprehensive.

*Is underwriting
an art or
science?*

C Underwriting – motor car

The question is sometimes posed – is underwriting an art or science? Viewed from the perspective of the actuarial and analytical skills used in developing rating and pricing models it might be concluded it is the latter but we have already identified that a successful insurer additionally needs awareness both of the market in which it is operating and of the legal and economic factors which influence trends and, ultimately, results. It is this essential 'feel' for risk and the market in which it is operating and competing which enables the successful insurer to bring together the skills and understanding essential to success.

C1 Visualisation of risk

This section will focus on the underwriting of risks at case level, how the factors are evaluated and why decisions need to be reached on whether an individual risk should be accepted at book rates, special terms applied or the risk declined.

The evaluation process applies whether the risk is proposed by conventional proposal form (which is still used for a deal of commercial business) or by telephone or internet, which have become the favoured means for personal lines. The same underwriting techniques used for individual evaluation can to a great extent be applied to automated underwriting by way of so called 'expert systems', which attempt to encapsulate human knowledge and expertise into a computer program. Those cases which fail to successfully navigate the automated process are referred for human intervention.

C2 Motor car underwriting factors

We will begin with motor car risks (excluding cars used for hire and reward and tuition) which will be examined later, together with other lines.

The information typically sought will include the following.

C2A Proposer's name and address

These are obtained primarily for identification and communication purposes. In rare cases, however, the proposer's name will draw attention to an individual in the public eye who presents a particular feature known to the public at large (and, therefore, also the underwriter), which might not have surfaced from the standard proposal questions. The address can similarly alert the underwriter to a special risk feature and, as we come to later, will often be the garaging address for the vehicle.

C2B Date of birth of proposer (or main driver)

This is required to calculate the proposer's/main driver's age which, as we have seen above, is an important rating factor. Ages of additional drivers are also captured to aid evaluation but not all insurers obtain dates of birth of drivers other than the proposer or main driver.

A specific question would be asked to establish the identity of the main driver(s), which is discussed later.

C2C Proposer's occupation(s) and employment status

This is an important feature, not only when viewed in the context of the purposes for which the vehicle will be used, but to evaluate other physical and, sometimes, moral hazard. The occupations of additional drivers will also be obtained, for the same reasons.

A proposer employed in the motor trade, for example, whilst acceptable for private car, would not be granted unrestricted use in connection with their occupation as some motor trade activity must be insured by motor trade policies. You will recall that the standard class 1 and 2 (Classes A and B1) exclude use in connection with the motor trade. The private car proposer would, therefore, only be granted a policy limited to social, domestic and pleasure or, alternatively, granted personal business use, excluding specified motor trade activity (see chapter 3). By way of further example, a courier requiring business use to deliver goods would alert the underwriter to a hire and reward risk which would be assessed as a commercial risk.

Some occupations present an increased risk, not necessarily because of the driving exposure but by virtue of their connection with a particular industry or due to their high earnings or vulnerability to loss of career prospects in the event of sustaining an injury as a passenger. For example, a relatively minor injury or disfigurement to a highly paid professional sports person or media/acting celebrity could produce a very substantial award for damages when compared to a non-celebrity. Whilst the policyholder could present a normal risk when driving, they are very likely to be a passenger in the vehicle at some stage and unlimited third party liability would consequently attach. They are also more likely to be carrying passengers of their own occupational circle with similar earning capacity and career vulnerability.

Some occupations present an increased risk

Details of any part-time occupations are usually sought, in addition to full-time occupations and these can sometimes require special attention, even though the main occupation might be an acceptable one. For example, an appreciable number of motorists with what insurers would regard as standard acceptance occupations are engaged in part-time work on the fringes of the entertainment industry, such as musicians and club and casino security guards. A car used by a croupier or security guard employed at a gambling establishment could be vulnerable to vandalism or attacks due to vendetta. Vehicles used at night are also generally vulnerable to greater exposure in terms of expensive passenger claims than those used during daylight hours, demonstrated by official government statistics and market experience.

At the other end of the spectrum are occupations traditionally regarded as presenting a lower than average risk, such as local government employees, civil servants and NHS employees, for whom discounted premiums may be granted.

The employment status is also considered. If the occupation is stated as unemployed, the insurer would wish to know the previous employment, lest it indicates an association with an occupation circle requiring special consideration. Where the proposer and other drivers are fully retired and driving is restricted to them alone a discount may be available if usage can consequently be limited to social, domestic and pleasure, excluding commuting.

C2D Affinity groups

Discounted premiums are also allowed for affinity groups, such as members of motoring organisations and historic trusts, and other schemes. These might be justified because the association in question draws together a group of individuals which presents a low claims risk (e.g. advanced motorists) or has an affinity with the particular association or brand, likely to generate loyalty with an attendant low renewal lapse rate and consequently lower expense ratio for the insurer. This was considered earlier when we addressed marketing and pricing strategy.

C2E Type of driving licence held and driver's experience

The driving licence status, whether full or provisional, and the date on which the UK driving test was passed are obtained. A person accompanying a learner driver is deemed to be partly controlling the vehicle and arguably should be in a position to take over the wheel if the driver gets into difficulty. Some insurers will, consequently, not issue an insured only driving policy to a learner unless they are satisfied the accompanying driver has appropriate DOC cover of their own or is a professional driving instructor with appropriate cover for tuition risks.

*The underwriter
would be on
enquiry*

A proposer who has held a provisional licence for a lengthy period might be an indication of either difficulty in passing the test or someone who habitually drives unaccompanied in disregard of the terms of their provisional licence. The underwriter would be on enquiry and if appropriate could endorse the policy to exclude indemnity if the provisional licence conditions are breached. Some motor policies do of course automatically make such provision.

In deciding whether to apply different treatment to persons with a short length of residence or driving experience in the UK, the insurer has to have regard to the possibility of its constituting indirect discrimination for the purpose of the **Race Relations Act 1976**. The seeking of information from all applicants at proposal stage would not, in itself, constitute unlawful discrimination but to do so selectively, depending upon the applicant's ethnic or national origin might do so. Any differential treatment based on lack of experience of driving in the UK would need to be justified on sound statistical grounds.

Article 1(2) of the EC Driving Licence Directive states that all driving licences must be mutually recognised within the EU. Where the holder of a valid licence takes up normal residence in a Member State other than the one which issued the licence the host nation is obliged to recognise the licence. There are also rules which require a new UK resident arriving from other than an EU country abroad to take out a UK licence at the latest twelve months after arrival and if the UK test is not passed in good time to comply with the provisional licence conditions.



Activity

Access the DVLA website and look up leaflet INF38 'Driving in Great Britain' as a visitor or new resident.

Check the position regarding licences of drivers coming to Britain from abroad.

C2F Gender and age

The relative claims cost for female drivers is lower than for males. This is particularly marked at the lower ages but the gap narrows as age advances to the point that it is marginal by the time late middle age is reached. This is reflected in premium levels and these traditionally vary depending upon the age bands adopted by individual insurers. These may be grouped in three or five year bands but for personal lines it is now common for insurers to rate by individual age.

The **Sex Discrimination Act 1975** prohibits unlawful discrimination on the grounds of gender and has an effect on insurance to the extent that premiums for certain classes, like motor, distinguish between sexes for rating purposes. There is nothing to prevent discrimination, provided it is lawful, and insurers may apply alternative premiums on this ground if their action is supported by actuarial or statistical data. Motor insurers duly publish high level data to enable them to lawfully differentiate on this ground.

Activity

Look up the ABI website www.abi.org.uk and read the section on Facts and Figures/ABI Statistics and read the section on Data by age and gender.

**C2G Physical and mental condition**

You will be aware of the types of medical condition relevant to motoring from chapter 1, section C3C. Whilst physical loss of limb, one eye or deafness might inhibit driving ability to an extent this can be offset by the driver adapting to the loss by developing greater use of other faculties and, if appropriate, vehicle adaptations such as the fitting of hand controls. Other physical disabilities caused by, for example, diseases of the nervous system can similarly be countered by appropriate medical treatment and the vast majority of disabled drivers find they have little or no difficulty in obtaining motor insurance at standard terms when judged solely in regard to their disability.

The **Disability Discrimination Acts 1995 and 2005** make it unlawful to unfairly discriminate against disabled people in matters such as employment and the provision of goods, facilities and services, which includes insurance. Prior to the 1995 Act, insurers were unconstrained in how they limited acceptances or applied special terms, based on medical condition or infirmity and, like sex discrimination legislation, the Acts do not, in fact, prevent such discrimination, provided it is lawful. From an underwriting perspective, less favourable treatment is justified only if it is based on information that is relevant to the assessment of the risk. This includes actuarial or statistical data, medical research information and medical reports about the individual, and it is good practice for an insurer to have a documented underwriting philosophy which forms the basis of its practices and can be used to achieve competence of its staff through training.

In addition to seeking details of any relevant medical condition, the insurer might seek disclosure of any condition requiring the prolonged use of drugs or other medication.

Those disabilities likely to cause collapse at the wheel are of particular relevance to the motor risk, and several studies have been carried out over the years on the effects of, among other conditions, epilepsy and diabetes on driving. The use of modern drugs has, however, enabled many sufferers to satisfy the DVLA requirements, subject to periodic review, and limited duration driving licences are granted, as appropriate. The existence of a limited duration licence does not in itself constitute a ground on which an insurer could justify imposing special terms. In practice, for many conditions where they are satisfied that accurate notification of a disability has been made to the DVLA, and DVLA has granted a licence in knowledge of it, many insurers are willing to accept the risk without detailed investigation and assessment.



Activity

Further details on deciding whether to decline a proposal, or apply special terms, on the ground of disability can be found in the ABI publication 'An Insurers' Guide to the Disability Discrimination Act 1995', which can be accessed on the ABI website www.abi.org.uk.

C2H Driver's accident history

Insurers take into consideration any history of previous accidents, claims or losses when assessing future risk. This has proved to be an indication of the likelihood of future claims, either due to the driver's general approach to the driving risk or exposure in terms of usage or vulnerability to a particular type of loss. A generally high frequency of claims, therefore, needs to be considered, whilst an unusual incidence of, say, theft or malicious damage claims would be investigated as considered necessary and the risk excluded or suitable restrictions or security requirements imposed.

Care must be exercised if the cost of a claim is taken into account, as cost is not necessarily an indication of the severity of an accident or the degree of a driver's negligence. For example, a motorist who drives into the rear of a vehicle of modest value might generate a third party claim for a relatively low amount, whereas precisely the same act, involving a high value 'prestige' third party vehicle, could produce a claim cost several times greater than the first example. Equally, an accident might result in an injury to a third party (e.g. a whiplash injury), when another identical accident produces no injury claim. Remember that, in evaluating a risk based on its previous history, the underwriter is seeking to project the future risk.

C2I Driver's conviction history

The driver's conviction history is another important underwriting consideration as an indicator of physical or moral hazard. Insurers invariably apply loadings for most motoring convictions. Some might take no action for an isolated speeding offence sustained by a mature driver with an otherwise blemish-free record, whilst others might take it into consideration. There is no standard approach and you should check with your colleagues in the motor department to establish the typical variation in practice.

Insurers invariably apply loadings for most motoring convictions

Excess alcohol convictions invariably attract severe terms, with cover often restricted to third party only or third party fire and theft and driving other cars excluded, depending upon the level of blood or breath/alcohol count. Some insurers apply an exclusion whereby indemnity is withheld if the cause of the loss or liability resulted from the driver being under the influence of drink or drugs and a DR conviction resulted. As such an exclusion is prohibited by the RTA s.148, the insurer would be obliged to meet a third party claim but would have a right of recovery against the driver and could decline the own damage claim. There are practical difficulties in applying such an exclusion, because of the sometimes lengthy time lag between offence and conviction and it is used sparingly, often only for individual risks featuring a previous related offence, although a small number of insurers feature it as a standard exclusion.

In addition to motoring convictions, insurers usually enquire if there have been any convictions (or pending prosecutions) for any non-motoring offence related to, for example, fraud, dishonesty (including robbery, theft and handling stolen goods) or arson.

Proposal questions are carefully worded to make it clear which types of conviction and types of penalty are required to be disclosed and insurers make it clear that they are interested in knowing about fixed penalty notices and endorsements, which might not be regarded as 'convictions'.

Insurers request details of not only convictions but pending prosecutions and you will recall that the materiality of a fact is judged by reference to the position that existed at the time of the proposal, irrespective of whether conviction ensued. Refer to P05 to remind yourself of the facts in *Brotherton v. Aseguradora* (2003).

C2J Rehabilitation of Offenders Act 1974

Insurers are constrained in their treatment of risks featuring convictions by the **Rehabilitation of Offenders Act 1974**, the main objective of which is to enable convicted persons to 'wipe the slate clean' for the purpose of gaining employment, once a prescribed period had elapsed since the date of the conviction, without further conviction. After that time, the conviction becomes 'spent' and does not have to be disclosed in certain circumstances, including applications for insurance. The conviction becomes 'spent' and need not be disclosed by the proposer, even though specifically requested by the insurer.

Note that there is nothing in the legislation to prevent an insurer from asking an open question, such as 'have you ever been convicted of an offence?'; but if the conviction is spent, the proposer can legally give a negative answer. Furthermore, if a spent conviction is disclosed the insurer must ignore it if it was spent at the time of disclosure. An offence is committed if the insurer does not do this, as is wrongful disclosure to a third party.

**The
rehabilitation
period for a fine
is five years**

The main elements of a motoring conviction are a fine, endorsement, period of disqualification (suspension from driving) and period of imprisonment, which feature as either 'disqualification, prohibition or penalty' for the purpose of the Act. The rehabilitation period begins on the date of conviction and becomes spent when the penalty ceases to have effect. The rehabilitation period for a fine is five years and disqualification is spent when it ends. Imprisonment is spent after seven or ten years, depending on the length of custodial sentence but sentences of more than 30 months are never spent. Where more than one penalty is imposed in connection with a conviction, the longer of the respective periods of rehabilitation prevails.

This Act has created a degree of uncertainty and constraint for insurers and promises to continue to be something of a moving target. This is demonstrated by a history of case law, culminating in *Power v. Provincial* (1997), where it was held that a driving licence endorsement is not a 'penalty' and would not, therefore, feature for the purpose of establishing the rehabilitation period. Prior to this, the duration of the rehabilitation for endorsements had the effect of extending it from typically five years (the spent period for fines) to eleven years for certain endorsements, including excess alcohol.

Other important considerations are:

- The period of rehabilitation is halved if the offender was under 18 at the date of conviction.
- If a subsequent conviction for an offence triable on indictment (not necessarily a motoring offence) is sustained during a period of rehabilitation it has the effect of extending the original period of rehabilitation to the date when the subsequent conviction becomes spent. An indictable offence is one which, by virtue of its severity, must be tried in a Crown Court, although certain indictable offences may be heard summarily (e.g. by a Magistrates' Court).
- An insurer is obliged to disregard a circumstance ancillary to the spent conviction. A circumstance ancillary might be the proceedings leading to the conviction but it is considered legal opinion that it would include an accident giving rise to a conviction. It, therefore, seems that the insurer must refrain from imposing special terms for an accident linked to, say, a careless driving conviction once the conviction becomes spent, whereas there is no constraint on the terms imposed for an accident without an accompanying conviction.



Activity

Look up www.NACRO.org.uk for more details of the Rehabilitation of Offenders Act 1974 including the rehabilitation periods for the various penalties.

Access DVLA website leaflet INS57P and look at the length of time endorsements remain on the licence and compare this with the rehabilitation periods for offences dealt with by fines.

C2K Previous insurance applications

Insurers sometimes ask whether the proposer has previously been declined insurance, had a policy cancelled, been refused renewal or had special terms imposed and a positive answer would place the new insurer on enquiry, with checks sometimes being made with the previous insurer.

This can be something of a grey area and there has been uncertainty in the past over what constitutes refusal to renew or the imposition of special terms, for this purpose. It has been held that the application of a standard policy excess for a young driver did not constitute a material fact and that the lapse of a policy due to non-payment did not amount to refusal by the insurer to renew, whereas in *Holts Motors Ltd v. South East Lancashire Insurance Co. (1930)* the insurer's declinature to invite renewal because of the claims record was held to constitute a refusal to renew.

Nowadays, insurers apply loadings for isolated incidents and relatively minor single convictions and it is not always made clear to the policyholder that 'special' terms have been applied. Not all insurers ask the specific question and, where this is so, the right to rely on it might be in question.

Question 3

When considering a driver's accident history, why should care be taken when considering claim cost?



C2L Vehicle details

The method for classifying vehicles by group rating is explained above. To a great extent, that classification is adequate for most underwriting purposes but for the higher performance makes and models it is usual for insurers to set acceptance parameters according to the driver's age, driving experience, accident and conviction history. Driving is then duly restricted to those named and approved persons, it being rare to find 'any driver' cover for such vehicles.

A very young and/or inexperienced driver would, therefore, find it difficult to obtain adequate cover at an affordable premium (or possibly any cover at all) for a very high performance vehicle.

C2M Modifications

Apart from the classification of vehicle by group for rating purposes, described above, the insurer will ask if it has been modified from the maker's standard specification, making it clear that it is interested not only in modifications which can affect vehicle performance and road holding, such as engine modification and fitting of wider wheels or other non-standard parts, but cosmetic modifications, such as alloy wheels, the fitting of spoilers and other body styling kits designed to enhance the vehicle's appearance.

The former would be obvious to most motorists but some might not otherwise appreciate that visual modifications can make a vehicle more attractive to thieves. Even the attachment of incorrect badges, indicating that the vehicle is more desirable than it really is, can be enough to create a 'look-alike' with an increased risk of theft or unauthorised taking. Extensive enhancements rendering a vehicle 'unique' can create difficulty in assessing and agreeing value in the event of a total loss settlement.

Extensive use of plastic or fibreglass body panels can increase the likelihood and extent of damage and cost of repair and replacement and may also affect the risk of injury to passengers and pedestrians due to the removal of crumple zones and the presence of sharp edges.

**Activity**

Google 'Demon Tweaks' to view a range of modifications and accessories.

Care should be taken to check that, where performance has been enhanced by, for example, the fitting of a more powerful engine than the standard for the product, the brakes and suspension have been upgraded to accommodate the enhancement. Where appropriate, an independent engineer's report might be required to assist the underwriter's evaluation of the modification(s) and the effect on the risk.

Vehicles with left-hand drive present a potentially increased risk by virtue of the driver's reduced vision when overtaking, except, of course, when being used outside the UK in most other European countries.

As an alternative to conventional petrol and diesel fuel, motorists have for some time had the alternative of liquid petroleum gas (LPG) and more recently, bio fuel. Insurers' approach to rating vehicles that are adapted to use these fuels varies but most will underwrite vehicles modified in this way, provided the modification was carried out by an approved installer and a sight of the installation certificate might be required.

Depending upon the nature of the modification, the insurer might require an increased premium by way of a premium loading or allocating a higher group rating, together with possible application of a compulsory 'type of vehicle' excess or driving restriction.

C2N Parallel and grey imports

Parallel imports are vehicles built to European specifications and exported to the UK by a non-UK main dealer, having been purchased at lower than UK values. For underwriting purposes they are treated the same as the vehicles marketed by UK dealers.

*These can
present
difficulty*

Grey imports are those built for the non-EU market and are usually of a different specification to the UK equivalent, whereas the specifications of parallel imports are usually the same as the UK equivalent. These can present difficulty with the availability of replacement parts and replacement of the vehicle itself, where the policy provides for this. Like modified and left-hand drive vehicles, these may require a special group rating and possibly special conditions.

The proposal question for modifications could be extended to ask if the vehicle has been imported, previously scrapped or adapted beyond UK specification.

C2O Value of vehicle

Whilst the new list price of the vehicle (and, therefore, its initial replacement cost) is used in the initial classification of grouping, confirmation of the precise value of the vehicle is not always requested at proposal stage for the typical private car risk.

It is, however, sometimes used for acceptance evaluation and rating for high valued vehicles and for those cases where third party fire and theft cover is requested on a relatively high valued vehicle in relation to the cover required. It is, therefore, usual to enquire if the vehicle's value is in excess of a stated limit, beyond which the insurer will give the matter individual consideration.

Where obtained, value can be an indication that a vehicle has been extensively modified. For example, a high value vehicle with a purchase 'list' price of £40,000 with a total cost of £57,000, including all optional extras, might be a case in point.

Value is always required for vintage, classic or collectors' cars, for which agreed value policies may be issued. These policies are discussed below.

C2P Age of vehicle

The age of the vehicle is reflected in relative claims cost, due to cars generally being used less as they become older and the reduction in value, which comes into play when there is a theft or other total loss claim. They are also cheaper to repair due to simpler construction, use of less sophisticated materials and the likelihood of the customer agreeing to the use of non-manufacturer produced parts.

They are also cheaper to repair

As with age of policyholder, variation in pricing can be calculated by individual age of vehicle or by placing ages in age bands.

C2Q Date of purchase

Some insurers obtain the date of purchase. This, when viewed in conjunction with the NCD entitlement or lack of previous insurance, can be an indicator of misrepresentation. The insurer would, for example, be on enquiry if the proposer declared that he had no previous insurance history but had owned the vehicle for some time before the proposal.

C2R Ownership and registered keeper

As we discussed in chapter 3, whereas ownership creates insurable interest it can also exist by virtue of the insured's liability to third parties; and there are legitimate reasons why someone will require motor insurance for a vehicle, of which they are neither legal owner nor registered keeper. The owner might, for example, be a non-driver because of a medical condition or might simply have no inclination to drive and relies on a family member or acquaintance to drive for them, whilst retaining ownership and responsibility for running costs. The policy could be issued in the name of the owner, subject to their exclusion from driving but it is equally permissible for the driver to insure the vehicle, noting the owner's interest in the policy. Where this is so, the policy would normally provide for any total loss claim payment to be made to the owner and some policy wordings automatically provide for this.

C2S Ownership of, and access to, other vehicles

This information, when used in conjunction with date of purchase, can be an aid to establishing if any NCD claimed is applicable to the vehicle proposed. It can also help paint a picture of the likely extent of use by declared additional drivers, particularly where there are young additional drivers. If, for example, the proposed car is relatively old and the proposer, a mature driver, has access to a relatively new car (including any company car) the prudent underwriter would be on close enquiry as to whether they were being presented with a misrepresented proposal (see below).

C2T Fronting

Answers to the above questions on ownership and registered keeper could place an insurer on enquiry if there is an indication that the risk is being 'fronted'. This is a term used to describe an attempted ruse, whereby the risk is presented as that of an experienced and mature driver (often with a substantial NCD entitlement), with a view to obtaining a lower than justified premium, when the main driver is in fact someone young or inexperienced, such as the proposer's son or daughter.

There is a significant minority who believe it is legitimate practice

Insurers, therefore, use this combination of questions to tease out the truth for those cases which might be misrepresented. Misrepresentation of the main driver, owner or registered keeper would, of course, render the insurance voidable and constitute a criminal offence. It is, nevertheless, quite common practice and, apart from those who deliberately set out to defraud insurers (and thereby defraud the honest policyholder), there is a significant minority who believe it is legitimate practice, a misconception fuelled by the occasional unintentional but, nevertheless, misleading advice given by others.

C2U Garaging address of vehicle

This is required for establishing the rating district and may differ from the policyholder's home address. Where this is so the insurer might be on enquiry as to whether the policyholder is the main driver.

If it is established that the policyholder does not normally reside at the garaging address and there are no other drivers resident there, special security conditions might be applied, due to the vehicle being left unattended for perhaps lengthy periods.

Misrepresentation of garaging address, using a contact address in a lower rated area than the true garaging address with the intention of obtaining a lower premium, is not uncommon and, where practiced, would, of course, render the insurance voidable at the insurer's option, whilst also constituting a criminal offence.

C2V Mileage

Mileage can be a good indicator of exposure but needs to be considered in the context of other factors. A relatively high mileage might be incurred through regular commuting in motorway conditions, whereas a vehicle used for local journeys or retailing in highly populated areas, with a similar or lower total mileage, might constitute a greater risk. Some insurers, nevertheless, use mileage as a rating factor for private car business and this might be particularly relevant where the occupation indicates an absence of extensive business use.

Mileage is an important rating factor for vintage, classic and collectors' cars, for which low rates are applicable due to very limited usage and policies sometimes stipulate the maximum mileage permitted.



Activity

Examine a selection of private motor proposal forms or access some quotation sites and note how each of them ask questions relating to the above rating factors.

C2W Pay-as-you-drive

A relatively recent development is a method of calculating premium based predominantly upon actual mileage driven and the hours between which the vehicle is used. This type of insurance is suitable for those drivers who rarely travel in the rush hour or late at night and can be particularly attractive to those young drivers who face the prospect of generally high premiums but who are willing to restrict their travel, avoiding late night journeys when serious accidents tend to occur.

The mileage and hours are monitored by a global positioning system (GPS) linked to a black box fitted into the vehicle. The premium is initially estimated on a declaration of expected mileage and times of travel and subsequently adjusted, based on actual data received by the insurer. The premium is not based solely on these factors; if, for example, a vehicle is not used at all for a period the insurer could still be on risk for fire, theft and accidental damage and the cost of issuing the policy needs to be considered. A minimum premium per month would, therefore, typically apply.

A benefit of this product is that the fitting of the black box facilitates the use of an anti-theft tracking device, described in C2Y.

C2X Agreed value policies

In the event of theft or total loss insurers usually base the claim settlement figure on the market value at the time of loss. This can be a contentious area and is the major source of pursued complaints for motor business; valuation for claims settlement is covered in detail in chapter 6.

Market value is particularly difficult to establish for vintage and 'collectable' vehicles, the value of which depends to a great extent on rarity and condition and unlike most cars, which depreciate over time, some vintage and collectors cars appreciate in value. Many owners consequently find conventional market value settlements unacceptable and some insurers are willing to grant cover on an agreed value basis, whereby in the event of a theft or total loss the insurer will pay a stipulated amount, which is agreed at inception and, usually, at each renewal.

It has been argued that such policies are not truly contracts of indemnity but provided the insured is in no better position than they would have been had the loss not occurred the indemnity principle is preserved. Apart from the agreed value, the policy is a conventional one, featuring contribution and subrogation conditions.

Care does, however, need to be taken in underwriting these policies as there is the danger that an unscrupulous policyholder who, having rebuilt a vehicle using their own labour and time, could submit a spurious theft claim, thereby effectively obtaining capital sum income, possibly for an amount greater than their own costs and without incurring income tax liability. Claims are, therefore, viewed accordingly and insurers might require photographs of the vehicle at inception of cover and at appropriate intervals and, where appropriate, require an inspection and valuation at the proposer's expense.

Premiums for vintage and collectors cars can be relatively low, due to low claims frequency, reflecting the care often lavished on them by their owners and low mileage covered. Policies for these usually feature a mileage limit of typically 3,000 miles or 6,000 miles per year. Collections of vintage cars garaged at one location do, however, present an accumulation risk for which an insurer might seek facultative reinsurance (discussed later).



Activity

You might want to browse a copy of *Classic Car* magazine and note the advertisements relating to insurance for classic cars and other vehicles.

C2Y Security

Most modern cars have robust immobiliser systems

As mentioned above, security systems are taken into account when new vehicles are allocated group classification. Most modern cars have robust immobiliser systems and central locking systems which are difficult to penetrate without access to keys (or lock transmitter) and the incidence of theft has fallen since these became standard in the wake of particularly adverse experience of theft and unauthorised taking (so called 'joy riding') in the early 1990s.

Apart from the now standard manufacturer's immobiliser systems, there are enhanced devices for the more expensive cars which tend to be stolen to order, often with a view to export. For these, a tracking device, whereby an electronic chip in the vehicle is activated and monitored by satellite, is an effective method of aiding recovery and installation might be a mandatory insurance requirement for certain high risk vehicles.

After sales devices and systems are also available for vehicles which pre-date the standard fit systems or might be appropriate for a modern vehicle for which upgrade is desired because it is kept in a particularly vulnerable location. Even the most basic steering wheel lock has proved to be an effective deterrent and these, like other immobiliser systems, are assessed and graded for their resistance to attack.



Activity

Access www.thatcham.org and study the section on security. What are the differences between a Thatcham Category 1 device and a Thatcham Category 2 device?

C2Z Excesses

Most proposers for comprehensive cover will be offered the option of taking a voluntary excess in return for a premium discount. The excess is a requirement that the policyholder bears the first part of a loss (the amount being specified) and it follows that the value of this to the insurer is reduced if the policy is already subject to a compulsory or 'policy' excess.

Voluntary excesses are not always offered

As a consequence, voluntary excesses are not always offered for those policies subject to a compulsory excess for adverse claims or conviction history or to proposers and policyholders under 25, who automatically attract a policy excess due to their age. Where included on a policy with a compulsory excess (e.g. an excess imposed for type of vehicle) the excess is cumulative and the discount for the voluntary excess could be lower than that normally applying were there no compulsory excess.

Where, as is common, the premium calculation includes a percentage discount for a voluntary excess, care is taken to cap the value of the discount so that it does not exceed the value of the excess itself and some insurers might typically cap the value of the discount at a level not exceeding half the value of the excess.

C3 Validation of disclosure and obtaining additional risk data

There are a number of options available to the insurer to validate information disclosed or to seek additional information about a risk.

C3A Vehicle

Most insurers link their quotation systems to databases holding vehicle information from the DVLA and SMMT vehicle databases. This enables the insurer to populate its new business record with the vehicle make and model and year of manufacture, simply by requesting the vehicle registration details and accessing the database during the point of sale process. Return of the data is instant, enabling the insurer to check with the proposer that the vehicle information obtained is accurate before the proposal proceeds further. All vehicle makes and individual models are allocated a unique code which individual insurers and intermediaries use to transfer the information to their own systems.

Other data returned includes the colour of the vehicle, which some insurers use as a rating factor, it being the case that statistically certain colours are proven to be more distinguishable to other road users, including pedestrians, particularly at night and in poor visibility conditions.

C3B Driving licences and licence summaries

Insurers do not have automatic access to a driver's licence information, namely the age, address, date of birth, licence entitlement and conviction/endorsement history, but can achieve this by requiring a sight of the licence or a mandate from the licence holder for the insurer to obtain the required information from DVLA. This might be made a requirement precedent to providing cover for a non-standard risk.

C3C Modified vehicle reports

Most modest modifications will be assessed on the strength of the information disclosed or, in the case of cosmetic alterations, on photographic evidence. Where, however, the modifications are extensive, perhaps involving major upgrading of engine power (for which suitably upgraded suspension and braking would be required) a qualified engineer's report, obtained at the proposer's expense, might be requested. The expertise of the insurer's own engineer might typically be required to assist the underwriter in assessing this aspect of the risk.

C3D Medical reports

Most cases featuring medical conditions will be assessed without additional information to that requested at proposal stage and, to some extent, the insurer will be guided by the decision of DVLA to grant a licence.

There might, however, be something to suggest the risk requires special consideration, including any concern the insurer might have as to whether a full declaration has been made to the DVLA, perhaps from information arising from a reported accident. In such a case, or any other where the accident arose from an actual or suspected medical reason, the insurer might request a declaration from the driver, summarising the medical condition, treatment prescribed, medical treatment received and confirmation of dates of notification and acknowledgement from DVLA.

Where necessary, a report from the medical practitioner or specialist might be required. In following this course the insurer would have due regard to the provisions of the Disability Discrimination Acts, with which you are familiar from earlier study.

C3E Accident and loss history

Checking of previous accidents, claims and losses can be undertaken by accessing one of several databases, the best known of which is the Claims and Underwriting Exchange (CUE), to which a number of motor insurers subscribe but to which subscription is neither mandatory nor universal. Whilst CUE is a particularly useful tool for verification of claims, the cost of accessing it and matching data output makes it less viable as an underwriting tool, in view of the volume of new risks processed, the majority of which are accurately proposed, and the fact that the cost must ultimately be borne by all customers. Nevertheless, it is used extensively by some insurers at point of proposal or policy issue (but not necessarily at point of quotation) and can be used selectively for segments of business known to produce a high incidence of misrepresentation or non-disclosure. Like the DVLA database for vehicles, CUE can be accessed on-line during the point of sale process, if desired, thereby enabling any query to be resolved with the proposer at that stage.

Another well established database is the Motor Insurance Anti Fraud and Risk Register (MIAFTR) to which virtually all motor insurers contribute, but which only holds records of thefts and other total loss claims. Like CUE, MIAFTR can be used as an underwriting tool but both also serve the purpose of highlighting multiple claims, in addition to non-disclosure and misrepresentation and are used more extensively in the claims process. More information on both databases, together with others, is provided in chapter 6.

C3F Proof of no claim discount

As explained in the section on NCD above, it is customary for the insurer to require evidence of NCD before allowing the appropriate discount to a new proposer on transfer and a sense check is undertaken to ensure that the discount indeed justifies a reduction in premium for the risk proposed. The proof itself is in the form of the official renewal notice issued by the previous insurer, which will show the number of years claim free that applies to the vehicle for which renewal was invited. If the previous policy was terminated mid-term there will be no renewal notice and a letter is required from the previous insurer, confirming the claim free years at date of cancellation.

It is not unknown for unscrupulous proposers to obtain duplicate evidence of NCD for the purpose of using it more than once, either for a separate policy or to misrepresent the position after a claim has occurred which will affect the NCD. Such ruses can be identified by prudent review of the documentation, looking for the inconsistencies that exist in the dates and vehicles shown on the previous insurer's documentation. It is also the case that NCD proof is sometimes forged. Where the new insurer suspects the integrity of the NCD proof it has the option of seeking verification from the previous insurer.

Consideration has been given in the past to establishing a database of NCD entitlement to improve the speed with which new business is transacted and help identify those cases where NCD transfer is not permissible. The scope of variations in market practice (outlined in section B3) make this a, perhaps, formidable objective to achieve but it remains a possibility and if eventually it becomes available will, no doubt, prove its worth for as long as NCD remains a relevant factor.

C3G Credit scoring

It is established practice for banks and other financial institutions to undertake searches of databases to establish creditworthiness when considering account and loan applications. Insurers too have access to these databases and they are used to both support the underwriting process and validate claims. The scope of the factors is examined in detail in chapter 6.

To establish creditworthiness

The weight given to this aspect of the risk profile is a matter for individual insurers. The process might typically include a wide range of factors which are allocated points and a 'score' obtained, for which an underwriting acceptance or pricing decision is made. An insurer might, for example, use the information to distinguish those proposers to whom the facility of payment by instalments might, or might not, be granted.

C3H Mapping and census information

Geographical data is particularly useful for underwriting of property risks, both for private homes and commercial properties. It is less valuable for motor underwriting but is, for example, an aid to measuring accumulation of exposures prone to flooding for reinsurance purposes.

National census data is also a useful tool for both marketing and underwriting, providing age, gender, employment and vehicle ownership by geographic area. Whilst of limited application as an evaluation or validation tool for the individual proposer this is, nevertheless, valuable data for general pricing.

C4 Loadings and discounts

We have already discussed the methods by which insurers arrive at their standard or 'book' rates for the various profiles of risk and each proposer whose proposal is acceptable will be quoted a premium derived from that profile premium. Included in the book premium will be a 'loading' for features which increase the base risk premium, such as class 2 or class 3 business use and age loadings for young drivers. Discounts will include those for voluntary excesses and age of vehicle discounts. Some of these will not actually be 'discounts'; this would depend upon the rating model and factoring method used, but for this purpose we are distinguishing between factors which increase and decrease risk.

Aside from loading and discounting within the book rate, insurers will apply loadings and discounts which are unique to the particular proposer/policyholder and based on their individual risk profile, rather than the global experience for risks in their wider segment. As discussed above, a premium loading might apply for a vehicle modification or driver's claims or conviction history. Alternatively, it might apply for a particular occupation.

Where this is so, the risk is regarded as 'non-standard', a term which is widely used in the market but one which defies universal definition and acceptance. Some within the industry regard certain high risk commercial business, such as taxis and other hire cars, as non-standard, by virtue of their presenting high risk, for which there is a relatively limited market; but this is true also of agreed value, motor trade and fleet business, which is not 'non-standard' in this sense. For the purpose of this course, when we refer to non-standard it is to business for which a premium loading has been applied to normal book rates (or other special terms applied) for a feature which reflects, for example, the conviction or claims record of the individual proposer.

A discount might apply if there are two or more cars insured under a policy. At one time this was common practice as it was more economical to issue one policy than issuing a separate policy and keeping a separate record for each vehicle. The advent of computerisation reduced the value of this and multi-vehicle discounts are less common nowadays for personal lines business, except where there are a fairly large number of vehicles and a substantial premium, which justify discounted rating. These multi-vehicle risks must be distinguished from fleet rated risks, which are discussed later.

Where the group rating does not automatically take it into account, the after-fit security system, described above, might qualify for a discount.

C5 Other 'special' terms

Apart from loadings, compulsory own damage excesses and security requirements, there are other means by which the underwriter may limit risk.

**Convertible cars
are vulnerable
to theft**

Convertible cars are vulnerable to theft and there is a greater exposure to injury for the driver and passengers from the vehicle overturning in an accident. Some insurers, therefore, exclude the personal accident and personal effects sections of the policy for these vehicles.

Whilst driving limitation is nowadays common as a voluntary option, it is usually mandatory for high performance vehicles and the insurer will impose, and maintain, a restriction of driving to those drivers who meet the age and experience requirement for the particular risk.

We mentioned earlier that the driving other cars (DOC) benefit is usually limited or withheld for policyholders under 21 or 25 and for certain occupations, such as private customers employed in the motor trade. The exclusion of DOC is also a measure employed when the risk presents a poor driving hazard, when cover might also be limited to third party only or, in an extreme case, to RTA only.

**Motorists with
very chequered
driving records**

The motor insurance market is well placed to accommodate most risks for which the State deems a driver entitled to hold a valid driving licence and a number of insurers specialise in underwriting non-standard risks, including some motorists with very chequered driving records. Most insurers would, however, be reluctant to insure someone with a conviction for fraud, particularly where it involved an insurance claim, possibly against the very insurer being asked to provide cover.

There is a general acceptance, once enshrined in a formal market agreement, that where a risk is considered 'uninsurable' but the driver holds a valid licence the last insurer will accept the risk. This, however, is not binding and there is no prescription on the terms that the insurer may apply.

In such a case, cover might be limited to RTA, with driving other cars excluded and, if appropriate, a substantial third party excess applied, which the insurer might require to be deposited, given that it must meet the third party RTA claim in its entirety, irrespective of whether it might be able to obtain payment of the excess by the policyholder. The latter entails the policyholder depositing the excess amount with the insurer, from which a third party claim can be met, or partially met. The deposit is replenished when reduced, or exhausted, by a claim payment and is refundable upon cancellation of the policy. It is unlikely that instalment facilities would be offered for such a risk.

Activity

Access a quotation system and obtain a number of quotations. Study what loadings and discounts are shown in the premium calculation.



D Rating and underwriting – motor cycles and commercial vehicles

So far we have examined the underwriting factors and features relevant to motor car business. Many of these are relevant to most other motor classes and we will now consider the variations for those other classes, not already covered in the main risk descriptions for district rating and class of use above.

D1 Variations for motor cycle

Motor cycles present a fundamentally different risk from motor cars, although driver characteristics in regard to age, experience and behaviour broadly follow the same trend.

The most prominent difference is the construction of the vehicle and the relatively greater vulnerability of passengers to death and bodily injury. This is inherent in all conventional motor cycles except those not equipped to carry passengers. The passenger risk is increased where a passenger carrying sidecar is attached, although the fitting of a sidecar actually gives the motor cycle greater stability and is, therefore, to some extent a compensating feature.

There is, of course, no obligation on the insurer to provide personal accident benefits to the driver or passengers and it has been customary for motor cycle policies to exclude this benefit, together with loss of personal effects; although at least one major insurer now offers these benefits as an option.

Motor cycles are particularly vulnerable to theft and some insurers require those in the higher rated districts to be garaged in a locked and secure building. Loss of or damage to accessories applies only if they are on the vehicle and, in the case of theft, if they are stolen with the vehicle itself. Policies usually exclude loss of or damage to helmets and protective clothing although cover is available for additional premium where the equipment is damaged at the same time as the vehicle or whilst stored in locked panniers.

D1A Vehicles

At one time the rating of motor cycles was by engine capacity and value but the advent of foreign manufactured high performance low capacity engines led to classification by groups in line with the method used for cars. Unlike cars, however, there is no industry assessment and those insurers who underwrite this business, of which there are far fewer than those who write cars, rely on their own grouping methods.

The RTA definition of a motor cycle is a mechanically propelled vehicle not being an invalid carriage with less than four wheels and the weight of which does not exceed 410 kilograms. Insurers are, however, free to underwrite vehicles which fall outside the RTA definition and the motor cycle policy is issued for light tricycles and quad bikes, together with low powered, included battery operated, vehicles used off road and for which RTA cover might not be required.



Activity

Look up the definition of 'motor cycle' in the RTA 1988 s.185.

D1B Drivers

Claims experience varies considerably with the age and experience of the rider and rates are geared accordingly, with acceptance limited appropriately according to power of the machine. The historic high incidence of death and serious injury resulting from accidents involving motor cycles prompted the government to tighten driver licensing entitlement for motorcyclists and there have been a number of changes to the law relating to qualification, including Compulsory Basic Training (CBT) and a theory test, which have been added to the standard licence requirements. There is also a minimum period for which driving is restricted to machines with a limited power to weight ratio after passing the tests, before riding of more powerful machines is permitted.

These regulations have become extremely complex and, whilst a thorough understanding of them is essential for those involved in the handling of claims and underwriting of motor cycle business, it is not essential for this course and the detailed licence regulations will not feature in examinations.

It is usual to limit driving for all motor cycles to named persons but some insurers permit open driving for small mopeds.

Like its car equivalent, the driving other motor cycles cover is restricted to mature policyholders and limited, or excluded, for certain occupations, such as those connected with the motor trade and is not usually granted for machines under 100cc or those policyholders with adverse accident or conviction history.

D1C Proficiency and advanced driver training

A discount may be available for riders who hold appropriate advanced driver qualifications. Those relevant to motorcycling include Advanced Police (Class 1), British Motorcycle Federation (Blue Riband), Driving Standards Agency Examiners Motorcycle test, Institute of Advanced Motorists and the National Motorcycle Training Silver or Gold Award.

Activity

Access DVLA website leaflets nos. INF31, IN557P and D100 for information on Driver licensing for motorcyclists.

**D1D Occupation**

The high risk occupations identified for motor car are relevant also for motor cycle but others are particularly relevant to this class. Couriers and messenger services using motor cycles for business present a high risk and are rated accordingly. Such policies would need to cover hire or reward but would exclude the carriage of passengers for hire or reward. Fast food delivery has similar considerations.

D1E Driving limitation

It is usual for driving to be restricted to named persons. Where driving is not restricted to the proposer, the traditional method is to rate the risk on the youngest rider and apply a premium loading for each additional rider. A discount may be available for female proposers where driving is limited to insured only. The discount is greater for younger females, in line with the motor car rating model.

The traditional method is to rate the risk on the youngest rider

D1F Security

Premium discounts may be available for tracking devices and combined alarm and immobiliser systems, in line with motor car. As motor cycles are vulnerable to being physically uplifted and removed, however, ground anchor lock and chain devices, padlock and chain/disc lock and chain systems are available and, where used, can also qualify for discounts.

D2 Variations for goods vehicles

Goods vehicles present a very different proposition to private cars, ranging from light vehicles used for local deliveries to large long-distance and foreign haulage risks. As we saw when examining the policy scope in chapter 3, there are the risks of loading and unloading to be considered, in addition to the driving risk, and the nature of the goods carried often presents a hazard not usually present with the motor car risk.

As noted earlier, the district rating and vehicle grouping for small goods vehicles nowadays tends to follow motor car but medium and long distance haulage vehicles are rated using a broader classification as the vehicles, by definition, will spend much of their time away from the area of their base and the gross vehicle weight (or plated weight) – the weight of the vehicle added to its carrying capacity – is the basis of vehicle rating.

As with most commercial insurance of large risks, a proposal form will be required, as information captured by telephone, whilst usually adequate for personal lines business, is unsuitable for many commercial risks.

D2A Name

If the proposer is a company or firm the insurer would need to know if it is a registered company and if so, the registered company number. The proposer's VAT status is also established because, if the insured is able to recover all or part of the VAT charged on the cost of repairs in connection with a claim, the insurer will ensure that it is deducted from the final repair account it settles.

D2B Occupation or business

The proposer's occupation and the type of business is clearly very important for establishing the type of use to which the commercial vehicle will be put and there will, in addition, be specific questions as to whether the vehicle will be used to carry flammable, toxic, corrosive, explosive or otherwise dangerous goods. Petrol tankers and toxic waste tankers are self-descriptive and the type of liability arising from fire or explosion or contamination is obvious to the underwriter. Haulage vehicle operators cannot always specify the precise nature of their cargo, however, and an unspecified haulage risk needs to be underwritten with care. A cargo including fireworks or matches, for example, would constitute a particularly hazardous fire risk.

D2C Use

Use classification is important, with rates structured in ascending value for local delivery of own goods (Table 1 use), local and medium carriage of the goods of others (haulage) up to a radius of, say, 75 miles from the depot where the vehicle is normally garaged (Table 2A use) and unlimited haulage (Table 2B use). There is no radius limit for own goods use but this is likely to be mainly local delivery. Specific questions would be asked as to whether the proposer operates as a haulage contractor, described as the carriage of goods, the property of others, for hire or reward and the proposer required to give full particulars of all purposes for which the vehicle(s) will be used, including nature of any goods carried. Furniture removal, whilst strictly constituting haulage, is often rated the same as use for the carriage of own goods, due to nature of the risk.

Use is limited to the policyholder's occupation or business, as described. If alternative use is required this must be disclosed and cover considered on its merits. Flatbed lorries are, for example, commonly used as carnival 'floats' and the insurer would require specified precautions to be in place and might require additional premium for such use.

D2D Drivers

The age, experience and driving records of drivers are of equal importance to other motor risks and in the case of large commercial vehicles the age and qualifications required by law provide a measure of control. Unlike private motor, however, it is impracticable to limit driving to named persons for many commercial risks as the frequency of turnover of drivers is endemic to the industry. Open driving policies are, therefore, common and risks are priced accordingly, with discounts allowed for age limitations and named driver restrictions, if suitable.

Open driving policies are, therefore, common

Many well established haulage businesses tend to adopt high standards of risk and driver management, with regular servicing and good driving incentives and monitoring. Those with large numbers of vehicles are fleet-rated, with their good housekeeping inevitably reflected in the rates charged. At the other end of the spectrum is the fringe operator, employing part-time drivers and paying less than the desired level of attention to risk management and servicing standards – a type of risk requiring discipline to be introduced if it is to be underwritten successfully.

In addition to the usual information sought for motor car, the insurer may enquire if drivers have completed 'On-Road Driver Safety Training' during the last two years in respect of the vehicle body type to be insured and if so the name(s) of the drivers, when the training was completed and the type of vehicle for which training was completed. The Driver Training certificate would be required.

In addition to the usual question enquiring about convictions and pending prosecutions, there would also be one enquiring if any driver has been prosecuted in the last three years in connection with any tachograph or driver hours offence. For commercial business, in particular, insurers will be interested in establishing if, in addition to motor-related convictions, there are non-motoring convictions attributable to drivers and proprietors, particularly of the type identified as in section C2I above.

D2E Vehicles

The **Transport Act 1968** and RTA classify goods-carrying vehicles as:

- small goods – plated weight* not exceeding 3.5 tonnes;
- medium goods – plated weight 3.5 tonnes to 7.5 tonnes and not adapted to carry more than eight passengers, including the driver;
- large goods – plated weight exceeding 7.5 tonnes.

*Vehicles having an unladen weight not exceeding 1,525 kg do not have a plated weight.

The plated weight is the sum of the weight of the vehicle and its carrying capacity, also known as the gross vehicle weight.

Anyone using a vehicle with plated weight over 3.5 tonnes requires an operator's licence for the vehicle. This is required irrespective of whether the vehicle is used for the carriage of own goods only or for hire and reward.

The proposer will be asked to indicate the type of Operator's Licence held; whether restricted, standard, standard national or if no operator's licence is held. If no operator's licence is held, the reason for not holding one or the exemption reason is required. If an operator's licence is not held and there is no exemption then cover is not available. If an operator's licence is held, the licence number is required, together with the date the licence was issued/renewed.

The following vehicle type information would typically be required:

- The make and model together with 'Body type', i.e. whether curtainside, bulk carrier, flatbed/dropside, Box/Luton, tipper, skip, tanker, removal/pantechnicon, concrete mixer, horsebox/livestock carrier, ice cream van, skeletal, vehicle transporter, mobile shop, hot food vehicle or other and whether, refrigerated or articulated.

- If it is articulated the insurer requires identification of the type of trailer most used. Refrigerated lorries are usually of high value and are rated accordingly. The food poisoning risk is usually excluded – see below.
- The value of the vehicle and trailers towed (excluding fixtures and fittings) is required.
- The insurer would enquire if the vehicle is fitted with a type-approved digital tachograph activated and calibrated by an approved digital tachograph centre.
- There will be a question to establish if the vehicle is fitted with lifting equipment (e.g. crane, grab) but tail lifts are not usually regarded as lifting equipment for this purpose. Large vehicles designed to cart away excavated soil and other material are often fitted with hydraulically operated shovels and scoops and would typically operate both off road (on sites) and on premises abutting roads, including domestic homes. Where the vehicle is on a road or other public place whilst carrying out this operation, the third party working risk must be insured by a motor policy.
- If the vehicle is a mobile shop, the proposal will enquire if cover is required for fixtures, fittings and utensils required and if so their value. These may be insured under a separate, non-motor, policy. The motor policy would typically exclude liability arising from goods sold and the food poisoning risk, for which separate insurance would similarly need to be arranged.

D2F Trailers

Unlike motor car policies, third party cover for attached trailers is not usually provided automatically by most commercial goods vehicle policies but must be declared and the appropriate premium applied. Cover may be required whilst any vehicle is towing one specified trailer or whilst any one vehicle is towing any trailer and a flat rate is charged on either each specified vehicle towing an unspecified trailer or each specified trailer which can be towed by unspecified vehicles.

For unspecified trailers cover applies only whilst the trailer is attached to the towing vehicle or temporarily detached during the course of a journey, at which time the towing vehicle must remain in the vicinity of the trailer.

Cover is available for detached specified trailers for additional premium but cannot usually be provided for unspecified trailers. As noted in chapter 3, detached trailers are not compulsorily insurable in the UK and insurance can, therefore, be provided by either the insurer's motor or general liability departments. It follows that a general liability insurer can provide cover for detached trailers even if it is not an authorised motor insurer, but for third party risks only within the UK. The UK motor policy must provide the minimum cover required by EU States for unattached trailers when in those countries.

Care must be taken when providing cover for detached trailers where indemnity is required for the 'working risk'. This is considered later in the context of 'special types' but could arise, for example, with mobile fairground vehicles. The motor insurer would not wish to cover the working risk associated with fairground rides operating from detached trailers, which would be the province of non-motor liability underwriters specialising in that type of risk.

Similar considerations apply to lifting gear attached to goods-carrying vehicles themselves but the working risk must be written in the motor account where it is undertaken when the vehicle is on a 'road', whereas it can be written in either the motor or non-motor accounts for a detached trailer in the UK.

Question 4

If a proposer is a company or firm, why might an insurer want to establish the proposer's VAT status?

**Activity**

Obtain a selection of commercial vehicle proposal forms or access a CV quotation site. Study the questions that they ask and identify any differences between them and private car proposal forms.

**D3 Variations for special types**

Insurers use various rating and underwriting classifications for those vehicles of special construction which fall under the generic heading of 'Special Types'.

The following are examples of those normally rated as goods vehicles:

- Breakdown vehicles (not owned by garage proprietors).
- Concrete mixers.
- Cranes forming part of goods vehicle equipment.
- Dump trucks (but see below).
- Electric milk floats.
- Ice cream vans.
- Livestock-carrying vehicles.
- Mobile shops and canteens.
- Mobile surgeries.
- Skip carriers.
- Tankers.
- X-ray vehicles.

The remainder fall into four broad groups:

1. Those vehicles whose use is similar to other vehicles in regard to the areas in which they will operate and their general mobility such as dust carts, fire brigade vehicles (not cars, vans and motor cycles) and hearses. The rates for these take into account the district in which the vehicle is usually based but the number of districts is not normally as great as those used for motor car and motor cycle.

Rates may vary between privately owned ambulances and others, including ambulance associations (such as Red Cross and St John's).

2. Those whose use is limited to a particular location during the normal working day and which, by virtue of the work they undertake, tend to operate at low speed.

The latter would include mechanical navvies and excavators, the rate for which will depend on whether cover is required for the third party working risk. Site-clearing and levelling plant are rated as mechanical navvies if they are capable of digging beneath the level of their own wheelbase. Some motor insurers insist that the third party working risk is covered under the public liability policy and, where this is so, care should be taken to ensure the policies dovetail. Small dump trucks are often classed as plant, along with diggers.

Attachments forming a unit with the machine (e.g. shovels, scoops and grabs) are regarded as part of the machine and their value must be included for rating purposes. These vehicles undertake the third party working risk discussed earlier. Extensions such as indemnity to owner, hirer or principal will typically be required.

Certain plant operates from self-propelled vehicles but can operate from a trailer whilst attached to a motor vehicle. Vehicles used for demolition require special consideration and the working risk would normally be underwritten in the general liability account, due to the usual need to assess and survey demolition risks on an individual contract basis.

**Cranes present
a particularly
high risk**

Cranes present a particularly high risk and insurance for them has historically been provided by engineering policies because periodic inspection and certification is required by law. Where, however, mobile cranes require RTA cover it must be provided by the motor insurer.

Road working vehicles, which include road rollers, self-propelled tar sprayers and road finishing machines, by definition operate on roads but these will often not be 'roads' for which RTA insurance is required. They are typically used for new road building, including motorways under construction, to which public access is prohibited. They are, however, also used for renovation of existing roads which, depending on the extent of public exclusion by cones or other barriers, may or may not constitute 'roads' for RTA purposes. Care must, therefore, be taken to ensure that RTA cover is in place where required and, where this is so, it must be provided by a motor policy.

Showmen's vehicles (excluding cars, vans and pick-up trucks under 3.5 tonne GVW) are rated as special types but self-propelled caravans are rated as motor cars, depending on the weight and engine size. Showmen's trailers whilst unattached are not underwritten in the motor account as they require independent assessment as general liability risks.

3. Steam traction engines operate at low speed but present a unique motor risk in that they are powered by steam boiler and cover is provided subject to the boiler being insured with an insurer transacting engineering insurance, for which insurers require evidence that the insurance is effected together with an annual boiler declaration.

The arrangement entails inspection of the boilers by competent inspectors. Agreements between the motor and engineering insurers provide for motor insurers to meet RTA liabilities in the first instance and receive an indemnity from the boiler insurers.

4. Trolleys not constructed for general road use may be covered under non-motor policies providing cover for the third party working risk whilst the vehicle is in use as a tool of trade. These may be powered by electric motors or internal combustion engines, examples of which would be factory trolleys and fork-lift trucks used in warehouses. Where the general public visit warehouses to collect purchases there will typically be a clearly marked barrier in situ warning that public access beyond it is prohibited.

Where, however, such a vehicle is likely to venture on to a road RTA cover is required and a motor policy would, therefore, need to be issued. The scope for this has increased with the extended description of road to 'other public place'.

D3A Proposal form

In addition to the questions featured in motor car and goods vehicle proposal forms, the Special Types proposal will typically enquire the following to enable evaluation and rating:

- Whether the vehicle is designed to dig below its own wheel base.
- If cover is required for the third party working risk.
- If the vehicle is a mobile crane and, if so, whether cover is required for damage by overturning.
- Whether detached trailer cover is required and, if so, a description of the trailer is required together with estimated value.

Mention was made in chapter 1 of the high risk of theft of valuable plant from building sites. Appropriate security systems including tracking devices are appropriate for high valued plant and might be made a compulsory requirement precedent to the provision of theft cover.

D4 Agricultural and forestry vehicles**D4A Use**

Agricultural vehicle policies are issued for vehicles used by farmers, market gardeners, smallholders and other businesses for agricultural or forestry work or hired to local authorities for that work or other purposes, including driving stone-crushing plant, snow clearance or hauling material for spreading on roads to deal with frost, ice or snow.

Policies provide for the option for hiring to local authorities as they sometimes need to supplement their own fleet of vehicles during periods of severe weather conditions to undertake, for example, snow clearance and certain agricultural vehicles are suitable for these purposes. Refer to chapter 3, section G3 for further details of use and the standard exclusions.

Cover is provided for forestry purposes as farmers often have trees on their land as a crop but cover is intended for the farmer's own land and perhaps that of a neighbouring farm. It is not intended for large scale timber operations and if the insured's main occupation is forestry rather than agriculture alternative rating under a commercial goods-carrying policy would be required.

Cover is intended for the farmer's own land

The standard policy excludes liability arising from the use of vehicles for crop spraying elsewhere than on the insured's farm(s), other than as required by the RTA, so that if wider cover is required (for example, by contractors spraying on other farmers' property) the policy has to be specially extended and rated accordingly.

D4B Vehicles

Cover is provided for tractors and other types of agricultural motor vehicles including self-propelled threshing and baling machines, drums, trusser and tiers, combine harvesters and grass driers, together with the implements and trailers used with them by farmers for cultivation of crops and care of animals.

Cover can be provided for other vehicles used solely for agricultural or forestry purposes for which a road fund licence is not required, or under a licence with exemption from duty under the Vehicles (Excise) Acts. This could typically include goods-carrying vehicles and trailers, quad bikes or 'special type' vehicles used on or about the premises.

Tractors designed primarily for agricultural use also tow implements used on golf courses, parks or sports fields and the like, including, for example, grass cutters and spikers, and these can be rated as agricultural vehicles. They may also be used to launch and retrieve boats and the agricultural policy may be used for such risks. Alternatively, a 'special types' wording might be used and some insurers issue a combined policy for agricultural and special types, adapted with appropriate endorsements.

D4C Area of use

Agricultural vehicles operating in rural areas with little other traffic in the vicinity produce a low incidence of claims and premiums consequently tend to be very low but where haulage on roads is a prominent feature a substantially higher premium would apply. The haulage of timber on a purpose built trailer would be insured under a commercial goods-carrying policy.

As agricultural vehicles, by their very nature, are mostly used in rural areas (and substantially off road) the rating district differential is of less importance than for other classes where use is less restricted. A typical approach would be to use just two districts; one for Northern Ireland and the other for the rest of the UK.

D5 Variations for hire cars

The various types of public and private hire risks and the differences in exposure were explained in chapter 3 and you should refresh your memory of these at this stage.

D5A Public hire

Public Hire vehicles are permitted to ply for hire and rating reflects their relatively high exposure in terms of frequency of use and their generally operating in areas of high traffic density.

Rates are dependent upon cover, rating district and car group and vary depending on driving limitation, voluntary excesses and NCD. Separate rating applies for London taxis licensed for use in the Metropolitan Police Districts.

D5B Private hire

You will recall there are two distinct types of private hire risk and each is rated differently. Those 'prestige' vehicles used for weddings and other pre-booked hirings are likely to involve relatively infrequent or low speed journeys and present a much lower risk than other private hire cars mentioned below and are rated accordingly. Lower rates can apply for funeral cars used solely for the conveyance of mourners than for other private hire vehicles.

By contrast, stretched limousines present an increased risk by virtue of the sometimes large and variable numbers of passengers carried and the non-use of seat belts, together with high vehicle repair costs. The vast majority of such limousines are imported into the UK and will often require significant modifications before becoming compliant with GB construction standards, which will also entail certification or pre-registration inspection before registration by the DVLA is granted. Evidence of such compliance may be required before cover is issued.

Activity

Refer to DVLA website <http://www.dft.gov.uk/pgr/regional/taxis/limousines?page=1#a1000> for more information on registration requirements for stretched limousines and UK Taxi and Private Hire vehicle legislation. A detailed knowledge of these, however, is not required for examination purposes.

**D5C Radio-controlled private hire**

Rates are considerably higher for the radio-controlled private hire cars which provide an on-call service for unscheduled journeys. These present a very different risk from the vehicles used for weddings and funerals and the exposure is closer to that of the public hire 'taxi'. The risk is indeed generally greater than the latter, due to shift work and the sometimes employment of casual employees and is rated accordingly.

It is not uncommon for driving to be restricted to named persons with use restricted to solely business purposes (i.e. excluding use for social, domestic and pleasure purposes) and this may be a requirement of the local licensing authorities. It is, however, usual for SDP use to be permitted for the proprietor/owner-driver.

D5D Self-drive hire

As described in chapter 3, these involve individual hirings by hire operators to customers who have exclusive use of the vehicles for the period of hire; i.e. they are not hired out with a driver. Motor cars, vans and caravans are the types of vehicles commonly in demand for such hirings.

The hirer is required to complete a short proposal form and any misrepresentation or non-disclosure could invalidate the contract between hirer and insurer. The operator is required to examine the hirer's driving licence to verify the information given in the proposal form, in regard to age, driving entitlement and conviction history.

Acceptance is usually subject to age limits, e.g. between 25 and 75, and the insurer might apply a list of unacceptable and 'refer' occupations as well as the types of convictions for which referral or declinature is necessary. The operator is, therefore, required to perform a delegated 'underwriting' function on behalf of the insurer.

Driving is restricted to the hirer in person. If someone else is required to drive the above underwriting process is repeated for the additional driver.

The wide variation in individual hirings makes this a difficult type of risk to rate. A main detriment is that the hirer is likely to take less care of a hire car than their own, both in regard to general driving and prudence in selecting a safe place to park the vehicle, which will often be at an event attended by large numbers of people or in a busy restaurant or hotel car park. A further consideration is that hire cars are often in constant use and the risk of slippage in maintaining a regular servicing schedule exists, particularly during the peak summer holiday period when demand for self-drive hire cars is usually at its peak.

The hirer is likely to take less care of a hire car than their own

It is usual for a compulsory accidental damage and theft excess to apply and hirers are normally required to inspect vehicles for pre-existing damage before it is driven away.

Rating methods include:

- **Turnover basis** – this basis is suitable for the full-scale self-drive hire operation which has a number of vehicles and expects a high volume of business. The premium is calculated as a percentage of the estimated turnover figure for the forthcoming year and is adjusted at the expiry when audited accounts are available and turnover has been calculated. The percentage selected would vary dependant upon type of cover, excess and claims experience. Rating would probably feature a minimum premium.
- **Flat rate per vehicle** – the policy is issued for a specified vehicle on an annual basis and there is no requirement for interim insurance documentation, although the completion and submission of hirers' application forms will take place. This is a suitable method for the operator with a small number of vehicles.
- **Day-by-day rates** – much less common than the above is the day-by-day rating basis. This might be used by an operator such as a garage owner who undertakes hiring on an occasional basis. Here the premium, calculated on a short period basis, is collected and submitted on an individual basis and individual cover notes issued.

D5E Driving instruction

The RTA requires that a professional driving instructor must be on the Register of Approved Driving Instructors and insurance proposals would normally require the instructor's Approved Driving Instructor's number (ADI number) to be declared, in addition to the standard information about the instructor's driving history, experience and health required for private car risks.

There is, of course, no prospect of requiring details of individual pupils, many of whom are expected to be young drivers. On the face of it the combination of a young and inexperienced driver presents a formidable risk but the fact that the car will be driven strictly within speed limits and that the instructor will carefully select the most appropriate routes and locations for practice, combined with the existence of dual controls, substantially negates the risk and tuition business can be underwritten successfully, particularly where the driving school is well established and a high standard of risk management controls are in place.

The underwriting terms for tuition risks are outlined in chapter 3. Rating might be based on the private car risk rate with a loading to cater for the extent of use, perhaps equivalent to something approximate to a Class B2 (Class 3) risk. For major driving schools, featuring large numbers of vehicles and instructors, the risk would be based on its own claims experience; i.e. it would be 'fleet-rated'. This method of rating is covered later.

D6 Variations for buses, coaches and minibuses

The underwriting and rating of buses and coaches varies considerably, depending on the radius and purpose of use and the size and seating capacity of the vehicle.

D6A Type and radius of use

The risk will vary considerably, depending upon the type of work undertaken and whether local or long distance journeys are undertaken. Insurers will have regard to whether a firm's activities include long distance charter work and, if so, will differentiate between use limited solely to the UK and continental journeys. Coaches used for motorway express travel would be treated differently from vehicles not subject to time critical journeys. These longer journeys contrast to risks where use is limited to, for example, regular contracts for schools and local authorities.

Coaches chartered by professional sporting clubs and overseas visitors present a particularly onerous passenger risk and special arrangements might be called for. These are discussed later when reinsurance is considered.

D6B Seating capacity and passenger risk

Some insurers might apply separate criteria to vehicles with say, more than 17 seats including the driver, with vehicles of lower capacity (12–16 seats) subject to alternative criteria. Practice can vary.

The larger buses and coaches, with seating capacity of typically 40, 50 or more presents a high risk both in terms of value of the vehicle and, most importantly, the passenger risk. The nature of the organisation, the period for which it has been established and the standards of its risk controls, particularly in respect of vetting and monitoring of drivers, are crucial in terms of insurance risk assessment for such a large exposure.

A large, well established operation with substantial garaging and servicing facilities, together with dedicated risk management and contingency for driver replacement and replacement vehicles is a very different proposition to a small operator with perhaps only one or two older vehicles who is under pressure to keep them on the road and working and perhaps relying to some extent on part-time drivers.

D6C Vehicle damage and replacement

Damage to the vehicle is another important consideration. The purchase price of a large coach can typically exceed £100,000 and a replacement windscreen for a conventional coach alone can cost in excess of £1,000.

Coaches carrying supporters of certain sports clubs can be vulnerable to targeted vandalism by rival club followers.

D6D Acceptance terms

An underwriter might restrict acceptance to risks established for a minimum of, say, three years and coaches no older than eight years, together with evidence of satisfactory maintenance facilities, with confirmation that all drivers hold the requisite PSV licence. Special terms might apply for those drivers with more than a specified number of previous accidents and convictions.

It is a prudent underwriting measure to restrict driving to regular employees, ensure there are sufficient drivers and reasonable work schedules, with more than one driver per vehicle on continental tours. The extent of foreign use would be established and the risk rated accordingly.

To restrict driving to regular employees

D6E Small buses and coaches

Small buses (those with between 12–16 seats) are popular with social clubs and charitable organisations, which often have limited funds. There is, therefore, a potential hazard associated with the risk of inadequate servicing, perhaps undertaken by volunteers, a risk reflected in the introduction of the **Minibus (Conditions of Fitness, Equipment and Use) Regulations 1978**, together with the possibility of young drivers being required and the risk of fatigue when the non-professional driver undertakes long journeys. A driving restriction to persons between 25 and 65 might, therefore, feature in an insurer's acceptance criteria.

Rating might be based on cover, rating district, value of vehicle and a premium per seat, with separate rates for coaches used for hire and reward and those not so used, together with those used in accordance with a minibus permit.



Activity

For more information on driving licence and other requirements for minibuses look up www.direct.gov.uk/en/Motoring/DriverLicensing/WhatCanYouDriveAndYourObligations/DG_4022498

A detailed knowledge of these requirements is not required for examination purposes.

You might also access the DVLA website and read 'Driving a minibus'.

E Motor trade

The scope of cover provided by the different types of motor trade risk, comprising road risk, internal and the combined policy were explained in chapter 3 and you should refer to that chapter as an aid in studying the following section on how the risks are assessed and rated.

E1 Road risks

There are three distinct methods of rating, appropriate to the type of risk, each taking account of the cover required and the geographical area in which the risk is based, in addition to rating factors specific to the type of risk.

E1A Named driver basis

This is suitable for businesses having a small number of drivers. Driving is restricted to named persons. However, for a business involved in vehicle sales, driving may be extended for demonstration purposes to customers who are accompanied by one of the named drivers. Rating is based on the drivers for whom cover is required.

E1B Trade plate basis

Trade plates are issued by the licensing authorities to facilitate movement of unlicensed vehicles for defined business purposes. For businesses involved with the collection and delivery of vehicles and requiring no pleasure use or any business use, other than that for which use under a trade plate is permissible, cover can be provided solely for vehicles displaying specified trade plates. Rating is based on the number of trade plates. The vehicles on which the plates are used are on the road for only a short time and are exempt from registration and road tax but the plates can only be used strictly for motor trade purposes and cannot, therefore, be used for social, domestic and pleasure purposes.

Rating is based on the number of trade plates

E1C Points basis

This is the most common form of rating, being particularly suitable for medium-sized and larger risks.

Rating is based on several factors with a particular number of points being allocated to each. Such factors will include numbers of drivers, vehicles and trade plates. Rating could be on a very simple basis or might differentiate between sizes and types of vehicle, between ages of drivers and also between forms of use, i.e. drawing a distinction between drivers for business and those requiring pleasure use. A minimum premium would apply, based on a rate for 100 points.

E1D Rating district

Rates vary according to the geographical area reflecting the likely accident frequency and cost. The number of rating areas will vary between insurers.

E1E Cover

Alternative rates apply depending on cover required, i.e. comprehensive, third party fire and theft or third party only.

Consideration may be given to extending cover for additional premium; for example, in respect of an additional occupation, use in respect of which might typically be restricted to specified vehicles and drivers.

E2 Garage risk

You will recall that the garage (or 'internal') risk policy complements road risks cover by providing indemnity for losses and liabilities arising out of accidents on the premises. This is a specialist class of business and is ordinarily underwritten as a non-motor risk, as there is no RTA cover.

As such, it is substantially outside the scope of this study but so that you are aware of the type of factors that would need to be taken into account in underwriting, the following are features which might typically be included in the proposal form in relation to the premises and liability to be insured.

E2A Examples of proposal form questions

1. The locations of the premises to be insured and others owned by the policyholder, together with their proximity to each other.
2. The type of construction, which could range from a domestic garage, small commercial premises to large purpose-built showrooms and workshops.
3. The showroom and garage forecourt areas and their capacity in terms of number of vehicles. This would enable the insurer to assess the overall loss/damage limit required for vehicles stored or kept on the premises and those in any neighbouring insured premises, in the context of the maximum policy limits and total exposure for reinsurance aggregation assessment (see section G3 below).

4. The workshop area and capacity in terms of number of vehicles, for which the above considerations would, to a lesser extent, similarly apply.
5. The insurer would wish to establish if the vehicles on the premises for sale or servicing (and including those owned by the proprietors and their associates) included high value, exotic or unusual vehicles; e.g. stock cars or rally cars, vintage or 'prestige' vehicles.
6. The type of work undertaken; e.g. whether solely servicing and maintenance or body repair and paint spraying or vehicle breaking.
7. If the premises are used for any purpose other than that of a showroom, garage or workshop, details of such other use would be requested. Some garages sell not only motor accessories and spares (including radio and audio accessories) but are typically involved in the sale and/or hire of boats, pedal cycles and accessories, caravans. Those retailing petrol typically undertake non-motor trade sales of food and other goods, ranging from the small kiosk to mini-market operations.

Shared premises/multiple occupancy is a particularly adverse feature, requiring careful underwriting.

8. A plan would be required, showing the situation and number of entrances and exits and trap doors and inspection pits (or other openings in the floor or pavement) should be identified, together with location of any plant, machinery or petrol pumps and oil installations.

The plan would also show the extent of public access to forecourts/buildings, whether or not the buildings abut a highway and if there are any signs overhanging the highway, together with perimeter walls and security chain fences and protective bollards. A survey report would usually be required for most garage risks, with the possible exception of very small operations with limited cover requirements.

From the nature of some of these questions and enquiries it is evident that, the 'internal' risk can involve the need for insurance for not only loss or damage to the stock of vehicles, but damage to the buildings themselves and other contents by fire or explosion, together with cover for public liability, employers' liability, products liability and defective workmanship, among others. Reference should be made to chapter 3, section J5 to refresh your memory of the cover typically provided by the policy.

E2B Other underwriting considerations

In forming an overall picture and 'feel' for the risk the underwriter would, in addition to the above, take into consideration the number of years for which the business and its proprietors have been trading and analyse the claims experience, looking for trends not only in motor vehicle and other property accidents and losses (including thefts from forecourts), but, for example, defective workmanship and carelessness in the workshop, together with public liability claims.

As with other commercial insurances the underwriter would be careful to establishing the history of not only motor-related, but other, convictions sustained by the proprietors, their associates and employees, particularly in regard to those involving fraud, theft, other forms of dishonesty and arson.

Activity

Collect several motor trade proposal forms or prospectuses and examine how different insurers explain the cover under their motor trade policies.



F Fleet rated risks, contingent liability and occasional business use

F1 Fleets

Earlier in this chapter we saw that individual risks with similar characteristics are grouped together and a 'book' rate established, based on the overall claims experience for that collection of homogeneous risks. The book rate would be varied, depending on the record of the individual policyholder by, for example, no claim discount or premium loading.

Risks featuring large numbers of vehicles (for example, those owned by an organisation or group of companies) can, however, be insured collectively and the premium assessed on the claims experience of that risk alone, rather than relying solely on the global experience of the insurer's wider motor account. Such collections of vehicles are commonly known as 'fleets' and the minimum number of vehicles required to rate on this basis is a matter for the individual insurer to decide. 'Fleet' rating is sometimes applied to less than ten vehicles if the premium is substantial (e.g. a group of coaches or heavy goods vehicles) but can cater for much larger numbers; there could be hundreds or thousands of vehicles owned or controlled by, for example, a haulage operator, bus company or a fleet of company cars.

F1A Rating and premium adjustments

For larger numbers the insurer will calculate a rate per vehicle, using a method similar to that described in section B4 above when arriving at a pure risk premium. The initial premium would be based on the number of vehicles (or vehicles of each type) present when the risk is inception or renewed, but would be adjusted at agreed intervals, so that the insurer receives the premium based on the total of 'vehicle years' covered during the insurance year. These premium adjustments would typically be made quarterly and the final adjustment made after the close of the year, at which stage it is possible to calculate the total exposure.

The initial premium would be based on the number of vehicles

F1B Confirmed claims experience

The premium calculation for a new risk is based on the confirmed claims experience for at least the previous three years. This is the minimum period for which it is customary for the existing (or 'holding') insurer to provide its experience, thereby enabling the policyholder to seek alternative quotations from other insurers. It is, of course, possible for a risk to move from one insurer to another at more frequent intervals than three years, in which case the identity of the earlier insurer would be shown, from whom their experience could be obtained.

A specimen of a Motor Fleet Experience Form is shown at appendix 1 to this chapter. From this it will be seen that the holding insurer will show for each of the previous three years the number of vehicle years exposed, together with the total number of claims reported and amount of claims paid (split by accidental damage, fire and theft and third party). A similar analysis for claims outstanding is shown (including estimates, where appropriate), together with the grand total. An analysis of the cover, including applicable excesses, is provided for the corresponding three years.

As the experience needs to be available in advance of renewal date, the date to which the experience is calculated is shown, together with occurrence date of the latest claim included. This enables the prospective new insurer to make the necessary allowance for the incomplete current year.

There are a relatively small number of insurers active in the fleet market and it is usual for many substantial sized fleets to be offered to several of these underwriters each year, to ensure the most competitive premium and terms are obtained. As a result, over time the major fleet insurers are able to assimilate claims experience for more than three years for a risk they have not acquired, but which is repeatedly offered to them for quotation. The holding insurer will, of course, have the benefit of at least three years experience, plus its own experience.



Question 5

What are trade plates used for?

F1C Premium calculation

Claims cost

Armed with this basic information the fleet underwriter is ready to undertake the process of projecting the expected accident/claim frequency and claims cost per vehicle year which, multiplied by the number of vehicles on risk, will produce the total claims cost, to which must be added the other elements of the premium. First though, it is necessary to adjust the historical claims experience (whether it be the three years or greater, if known) by applying appropriate inflation factors to bring the historical amounts in line with present day value. It may also be necessary to adjust previous claims costs to current excess levels.

Expenses and contribution

The other elements of the premium will include underwriting expenses (the cost of providing quotations and servicing changes, including the calculation of quarterly and year end adjustments), claims handling costs, intermediary's commission (if applicable), the cost of reinsurance and a percentage for contribution to the insurer's profit.

Large claims reserve

A further feature which might be present is what is known as a large claim reserve (LCR). This would depend upon the size and nature of the risk and if any large losses have featured in the previous experience. If there have been none, the insurer might decide to build in a LCR to cater for this eventuality but this will depend upon the judgment of the individual underwriter and their 'feel' for the risk, based on the actual experience and their own knowledge of the wider market for the risk at hand. Alternatively, if the risk features a very large claim which is out of keeping with the overall record it may be excluded for the purpose of the current year's calculation and allowance made in the rolling LCR. In this way the underwriter smoothes the overall claims experience without totally disregarding the very large loss, the cost of which ultimately has to be reflected in the insurer's total portfolio results.

Book less fleet discount rating

Where the fleet comprises a small number of vehicles (for example, less than ten) the premium per vehicle year basis is sometimes inappropriate, particularly where the mix of vehicles differs. For example, there could be a fleet comprising several motor cars, a van and some heavy goods vehicles. The addition of, say, another HGV would present an additional risk for which the average premium charged for the other vehicles would be insufficient. Conversely, the deletion of a high risk vehicle would justify a reduction in premium rating in line with its own rating, or cover might differ for some vehicles. Where there is such a diverse collection of vehicles or type of cover for a fleet rated risk it can be appropriate for the insurer to apply its book rates for each vehicle and adjust the total premium by allowing a 'fleet discount' to produce a premium sufficient to cover the expected burning cost and other elements in the risk premium.

Thus, a fleet might be rated on a 'rate per vehicle' or on a 'book minus fleet discount' basis, depending on its size, mix of vehicle types and cover required.

F1D Other considerations

As with other individually underwritten risks, the underwriter will form a picture of the overall risk by looking for trends in the claims experience and other factors, such as whether the business is an expanding or contracting one.

A business which is flourishing in a time of expansion in demand for its services could be faced with taking on additional employees or acquiring other businesses to meet the increased demand and this could radically change the existing profile and performance of the risk. A merger or acquisition may, for example, result in a change in the mix of vehicles insured and alternative approaches to risk management in different parts of the organisation might result in a cut back in driver training and missed vehicle service intervals.

The different inflation factors used by insurers, their judgment as to whether a LCR is appropriate and their expectations in terms of contribution to expected profit, together with the underwriter's 'feel' for the risk all contribute to a required premium which is likely to vary as between insurers. The fleet market is, consequently, a very competitive one, particularly in times of high interest rates, when the income derived from very large premiums can be put to good use in generating investment income. Conversely, the market can become 'hard' after a period of competitive pricing has taken its toll and rates have fallen to a level where insurers are faced with the prospect of sustained underwriting loss.

F1E Variation in cover and terms

The limited amount of detail available to the prospective fleet insurer can place constraints on its ability to quote for variations in cover and terms. If, for example, the insured (or more likely, the insured's broker or other intermediary) seeks an alternative quotation to that quoted by the holding insurer, based on a higher level of excess, the holding insurer would be in a relatively good position to recalculate the claims experience, based on the 'as if' position, by examining the relevant claims records, but its competitors, who have only the information disclosed on the standard experience form, would be less well-equipped to calculate an appropriate rate.

The holding insurer too can be at some disadvantage in this type of situation, however, because its experience will be based on claims over and above the existing excess and it will often be unaware of the number of claims which would have arisen, had there been a lower excess or none at all.

F2 Policy forms

As indicated in chapter 3, cover can be provided under a variety of policy forms, which follow those of the relevant types of vehicle and there is no 'fleet' policy as such. More it is a method of rating.

This is essentially a marketing device

It is, nevertheless, nowadays common practice to issue a 'Fleet' policy form covering all the different types of vehicles under one policy document. This is essentially a marketing device, as the wording would ordinarily incorporate the various cover requirements for the different types of vehicles on risk, including indemnity to principals where appropriate. The policyholder might also require contingent liability and occasional business use cover extensions, which might be provided by a 'fleet' wording or be the subject of separate policies.

F3 Fleet risk management and its benefits in underwriting fleet risks

The cost of running a vehicle can be considerable for the private individual and business alike but those businesses operating a large fleet of vehicles have an identifiable very large outlay, for which specialised management can be justified. Often there will be an appointed fleet manager or even a whole department of people dedicated to the task of managing the operation of the fleet. This will depend upon the extent to which the work is handled in-house or outsourced to specialist fleet management companies.

The employer has a duty to its employees

The risk to the employer goes beyond the pure 'motor' risk (i.e. damage to vehicles and third party liability, including contingent liabilities). The employer has a duty to its employees to ensure as far as possible their safety in the course of their employment and a corporate employee 'policy' will exist for those using vehicles on company business, whether their own or the employer's vehicles.

Another consideration is the risk of interruption to the company's operations (and consequent loss of trading and profits) due to the unavailability of vehicles and employees due to accident and injury or death.

The fleet premium itself is likely to be an expensive item in the business's budget and we have seen that the premium is based on actual claims experience under the fleet. To this end, fleet insurers and, where appropriate, intermediaries, are expected to support the policyholder's risk management by providing suitable information and claims data to enable appropriate measures to be implemented, thereby helping shape the business's risk management strategy. Typically, the insurer might provide an analysis of claims, showing 'fault' and 'no-fault' claims, frequency and cost of claims by cause (e.g. type of accident, fire and theft) and analysis by driver or, if large numbers are involved, by age band.

Claims frequency under fleet policies can be in the region of 50–60%, compared to a typical 13–20% under private car policies. Investment in risk prevention, whether by the use of security systems to prevent theft or driver training to prevent accidents can, therefore, be reflected in lower insurance premiums.

It has been demonstrated statistically that a meaningful improvement in claims experience will follow a structured employee driver training programme and that benefit will also be derived in terms of reduced fuel costs through less aggressive driving. Basic disciplines, such as leaving adequate braking distance, parking and manoeuvring and skid control are complemented by more subtle skills such as defensive driving (e.g. looking out for signs of emerging pedestrians and of other vehicles entering into the driver's path) and anti-theft precautions, such as concealing 'target' contents and accessories from the would-be thief's view and parking in the safer locations, avoiding areas known to feature high rates of theft and vandalism.

The main benefit of driver safety training is seen in the year immediately following the training and diminishes progressively as old bad habits return, necessitating the need for periodic 'top-up' training.

Apart from the benefits of such driver training programmes, for those businesses employing professional drivers, accident analysis might feature as a part of annual performance review and there might be other incentives such as self-imposed excesses, special awards and advertisements on vehicles, encouraging other road users to telephone the fleet operator with views on the conduct of its drivers (i.e. telephone 'hotlines').

Employers providing company cars to non-professional drivers (e.g. representatives, sales staff and technical professionals granted company cars) should, as a minimum, issue good practice guidance which would include the need for adhering to vehicle servicing schedules, warnings on the dangers of driving for long hours without breaks, night driving, driving in adverse weather conditions and leaving sufficient time to complete journeys without exceeding speed limits and taking unnecessary risks. Where communication during journeys is important suitable equipment should be provided, together with training in the use of hands-free phones and the use of mobile phones whilst driving (which is now a statutory offence) strictly prohibited as a condition of employment. Company drivers should also be warned of their duty to fellow employees, who are travelling as passengers in company vehicles and the driver's own vehicles, when in the course of their employment.

Activity

Collect the fleet prospectuses of the major fleet insurers and examine what they offer in the way of fleet management and risk improvement services.



F4 Contingent liability and occasional business use

F4A Contingent liability

The nature of the contingent liability risk is covered in chapter 3, to which reference should be made at this point.

Rating is usually based on a simple formula, related to the number of employees authorised to use vehicles on the employer's business (excluding those owned by or provided by the employer) and a rate per capita (i.e. per employee) is used. The calculation is not ordinarily subject to NCD or fleet discount but may be included in the overall premium for a large fleet. The premium may be adjusted at the end of each period of insurance according to the maximum number of employees at any one time during the period.

An alternative rating method is to base the rate per capita on the number of vehicles owned by employees which they are authorised to use on company business.

F4B Occasional business use

You will recall this cover is available to cover only the occasional business user. The policy is restricted strictly to the business of the employer and no social, domestic and pleasure use is permitted. It is not a contingent cover, but a primary cover that replaces the need for the employees to insure their cars for business use. Unlike the contingent liability policy, which indemnifies the policyholder (employer) but not the employee, the OBU policy indemnifies the policyholder or, at their request, their employee.

Rating is fairly basic, based per capita (on the number of employees) and the type of cover required; comprehensive or third party. Unlike with contingent cover, the insurer is providing primary cover for unspecified vehicles and it is usual to make enquiries as to the age range of the employee base and, where appropriate, seek details of adverse features such as serious convictions. Insurers may also seek to establish the annual mileage covered by the vehicles to be covered and exclude those which exceed a stated mileage limit (e.g. 1,000 miles per annum), on the basis such vehicles should be insured by the employee in their own name, with business use included, or insured by the employer under their own fleet policy, noting the interest of the employee as owner.

As with contingent liability, OBU is often included in fleet policies but can be provided separately.

G Reinsurance applied to motor insurance

You will be aware of the purpose of reinsurance and how it is used to protect the insurer's portfolio from your study of IF1 and you should take a moment to refresh your understanding by referring back to the appropriate chapter in that study text.

*The reinsurer
will retrocede
part of its own
exposure*

Essentially, it is the means by which an insurer limits its ultimate direct exposure by 'ceding' part of it (i.e. its liability to indemnify policyholders and meet statutory third party liabilities under the policies it issues) in exchange for paying a portion of its premium income to the reinsurer. In turn, the reinsurer will retrocede part of its own exposure, thereby ensuring that very large losses are distributed over a broad range of risk carriers – the veritable 'ripple across the pond' compared to a huge splash in it!

The need for reinsurance may be summarised as:

1. The need to protect the portfolio from abnormal catastrophic loss which might seriously impact the insurer's reserves, thereby seriously undermining the business.
2. The need to reduce the impact of an abnormal incidence of large claims in a relatively short period.
3. The ability to set a limit on outstanding liabilities for large claims notified but not settled, to enable adequate reserves to be set aside without freezing too much of the insurer's long-term reserves.
4. To even out experience from year to year, thereby facilitating investment plans.
5. For a newly established and small portfolio, to reduce commitments to a level which it can bear without declining opportunities for growth.
6. To demonstrate good risk management to shareholders and the Regulator. Details of an insurer's reinsurance arrangements are a feature of its statutory returns to the FSA/HM Treasury.

You will be aware of the types of large exposures, which a motor insurer might face, from your study of chapter 1. A motorway accident involving a number of vehicles could involve not only considerable third party liability but the risk of accumulated accidental damage cost if several vehicles are insured with the same underwriter; or a widespread hurricane or flood might result in a cumulatively large accidental damage loss, involving hundreds, or thousands, of vehicles, for which appropriate catastrophe cover is arranged. In terms of high frequency, however, the main risk of individual large loss arises from the third party bodily injury and property damage exposure.

Motor insurers are, therefore, particularly concerned with reinsuring their liability arising from any one accident or series of accidents arising out of one occurrence.

There are two main types of reinsurance – treaty reinsurance and facultative reinsurance.

G1 Treaty reinsurance

This is an undertaking whereby the reinsurer accepts a defined responsibility for all the risks written by the insurer falling within the scope of the agreement. It is an obligatory contract, binding on both parties, by which the insurer must cede all the risks coming within the scope of the treaty and the reinsurer cannot decline them. The insurer is thereby guaranteed a definite level of reinsurance protection for every risk it accepts.

*A definite level
of reinsurance
protection*

There are two types of treaty reinsurance – proportional and non-proportional.

G1A Proportional

Under proportional treaties the insurer decides what part of the original insurance it wishes to retain (its retention) and reinsures (cedes) the balance to a reinsurer or reinsurers. The main type of proportional reinsurance is known as the quota share facility, whereby premiums and losses are shared in the same proportion as the ceding insurer's retention and the reinsurer's cession bear to the sum insured of the original insurance. This type of reinsurance is particularly suitable for a newly established small account but is otherwise not commonly used by motor insurers, due to the nature and frequency of large losses common to the motor risk.

G1B Non-proportional

Non-proportional treaties do not apply to specific risks but to losses, by limiting the amount of the ceding insurer's loss for any one event. The insurer does not cede individual risks; the reinsurer agrees to pay the amount of the loss over and above (or in excess of) a defined amount (the insurer's retention).

There are two types of non-proportional treaties – excess of loss and stop loss (or excess of loss ratio).

Excess of loss reinsurance

Under this arrangement the reinsurer does not become liable unless a loss occurs which exceeds the ceding insurer's retention. The insurer remains liable to meet the whole loss under its contract with its insured and will normally handle the claim but as the reinsurer will ultimately meet part of the outlay its agreement will be obtained and liaison maintained between insurer and reinsurer during the handling, as appropriate.

**The amount of
the retention
will vary**

The amount of the retention will vary, depending upon the size and type of the insurer's portfolio. A small to medium insurer's retention might be as low as £500,000 to £1m, whereas a large insurer might carry a retention as high as £5 m or greater. The treaty might provide that the reinsurer meets the whole of the loss above the retention or the excess of the retention might be arranged in layers, distributed as follows, by way of example:

Ceding insurer's retention	£1m
1st excess of loss treaty	excess of £1m rising to £2m
2nd excess of loss treaty	excess of £2m rising to £5m
3rd excess of loss treaty	excess of £5m rising to £10m
4th excess of loss treaty	excess of £10m rising to £25m
5th excess of loss treaty	excess of £25m rising to unlimited

A percentage of the insurer's gross written premium would be paid to the reinsurers of each treaty. The first treaty would be involved in all losses exceeding the retention and some losses would not reach the higher layers. The reinsurers of the first treaty (the working layer) would, consequently, receive a higher rate than those with higher limits, which would progressively be less likely to become involved in the loss.

Note that the 5th layer in this example provides for unlimited liability, to meet the requirements of the motor insurer who must provide for its unlimited liability under the RTA and its MIB obligations as Article 75 insurer. This is sometimes known as 'sleep-easy' cover. There will, however, usually be a physical damage limit, necessitating the insurer calculating its maximum probable loss arising from an accumulation risk. This may be insured under a separate catastrophe treaty which aggregates individual losses from the insurer's motor and other accounts. Such a treaty would, for example, typically come into play for a large number of household, commercial property and vehicle damage claims all arising from a serious flood, such as those experienced in the UK during 2007.

**Treaties are
worded as
continuous
contracts**

Treaties are worded as continuous contracts with the premium paid annually. The reinsurers are liable for claims arising from accidents occurring during the period the treaty is in force, regardless of when they are settled. Both parties have the right to give notice of cancellation.

Stop loss (excess of loss ratio) reinsurance

Here the reinsurer covers losses incurred by the ceding insurer on a particular class of business (e.g. the motor account) when its annual loss ratio (the ratio of claims to premium income) exceeds an agreed percentage of the relevant premium income. Minimum and maximum limits may be imposed. For example, the reinsurance might cover only 75% of all losses in excess of a loss ratio of between 90% and 110%, with a maximum loss to the reinsurer of a stipulated financial amount. In this example, losses over 110% would revert to the ceding insurer, which is also responsible for the remaining 25% of the losses in excess of the loss ratio, not covered by the reinsurer. These limits provide an incentive for the insurer to operate prudent underwriting practices.

G2 Index clauses

There will inevitably be a fairly substantial time lag between the date of accident and date of settlement for the major injury claims. A time lag of seven years is not untypical and may be shorter or much longer. The effect of inflation on the ceding insurer's retention for a particular year is that it will be worth less to the reinsurer by the time the claim is settled, when compared to its then present day value. Reinsurers protect themselves by a treaty condition known as the **stability clause** (or **index clause**), by which the value of the insurer's retention and the reinsurer's liability is adjusted in the proportion that, at the time of each settlement, the UK wages index bears to the index at the inception of the treaty. The clause thereby links the retention to wages, which tend to rise faster than the cost of living and are of greater importance in determining the level of injury awards. The index also applies to the upper limit of the reinsurer's retention and it will be seen that gaps in the protection naturally occur, for which the ceding insurer and reinsurer must make adjustments in their reserves for as long as the claim remains unsettled.

G3 Reinsurance underwriting

Reinsurers take great care in establishing the ceding insurer's acceptance parameters (or 'risk appetite') in terms of the type of business it will write and the underwriting standards applied.

A questionnaire may form the basis of the reinsurer's preliminary assessment, although the frequency with which these might be required could vary depending upon the size and volatility of the insurer's account and the length of relationship between insurer and reinsurer. The major motor reinsurers are mostly long established and as the experience and integrity of the ceding insurer's underwriters is generally well known to reinsurers, respectful relationships have been developed over time.

The questionnaire would typically seek to establish the number of vehicle years and premium income written over the preceding ten underwriting years, split comprehensive, third party fire and theft and third party only, showing driver age and gender profiles, with portfolio mix broken down as follows:

- Motor car.
- Motor cycle.
- Tankers/petrol tankers/hazardous goods-carrying vehicles (chemicals, explosives etc.).
- Other heavy goods vehicles.
- Coaches, buses and minibuses.
- Contractor's equipment.
- Self-drive hire, public and private hire.
- Fleet.
- Motor trade.
- All others.

Analysis by age of driver for appropriate classes of business might typically be required for age bands 17–20, 21–25, 26–30, 31–50 and 51 or over, showing the number of vehicle years and premium income for each band, together with the number of vehicle years and premium income for policies written on an 'any driver' basis. The insurer could also be interested in the insurer's acceptance and referral processes for high risk occupations.

In addition the reinsurer could require to know the maximum value of any one vehicle insured and, for those with a value greater than 75% of the insurer's proposed retention, an approximation of the number of vehicles in that category.

The reinsurer would also establish the insurer's third party property damage limit for commercial vehicles and alternative limits, if any, that are applied for vehicles carrying hazardous goods. If motor trade business is written, the limit granted under garage ('internal') risks policies might also be required. Details of known airside risks would be requested.

Enquiry might be made as to how the insurer monitors physical damage accumulations in known high risk flood areas and an appropriate post code profile required if this cover is included.

Claims information required would include the insurer's general philosophy towards claims involving structured settlements and future cost of care, the required reporting levels and injury criteria established for reporting losses to senior claims management (or head office claims department), together with a short summary of, say, the insurer's largest 20 individual event losses. This would give the reinsurer a feel for the controls the insurer has in place and, as with underwriting management, the reinsurer would seek to establish the length of experience and general integrity of the insurer's claims managers.

The reinsurance treaty would limit its scope to the types of business underwritten within agreed parameters, based on the profile established and it is important that the ceding insurer's policy wordings reflect those in its reinsurance treaty exclusions, where appropriate, to ensure that cover is not being provided beyond the scope of reinsurance protection. For example, the exclusions of war risks, nuclear contamination, pollution and terrorism typically appear in reinsurance exclusions and limitations, among others.

G4 Commission

In return for its involvement in the ceding insurer's business the reinsurer will normally pay the ceding insurer a commission intended to contribute to the insurer's expenses and a profit commission to encourage good underwriting practice. As an alternative fixed fees can be agreed prior to placement and this is tending to become more prevalent.

G5 Facultative reinsurance

We have seen that the treaty reinsurance will feature limits and exclusions, based on the established profile, and the insurer is consequently restricted in the risks it can underwrite within the limits of the reinsurance protection. The occasion can arise, however, when it wishes to accept a particular risk which is outside the scope of the treaty, perhaps due to the fact that the customer is a valued one by virtue of other held business.

Facultative is the method of reinsuring such risks on an individual basis. Unlike treaty reinsurance, the ceding insurer has no obligation to cede a risk and the reinsurer has the option of accepting or declining it. A particular benefit of this arrangement is that the insurer is likely to be unfamiliar with the risk and the referral to the reinsurer can allow the insurer to enjoy the benefit of sharing in the reinsurer's knowledge.

The ceding insurer has no obligation to cede a risk

The facultative cover is arranged before the insurer quotes for the risk to ensure it is available at a premium and terms which the insurer can accommodate within those it will in turn offer to its proposer.

Question 6

Consider the categories of motor risk listed in section G3 which an insurer might underwrite and give two examples of risks which an insurer might wish to cede facultatively.



Activity

Refer to the CII Knowledge Services website and access the paper on recent developments in reinsurance law for more information on the nature of reinsurance, reinsurance contract terms and losses (CII members only).



H Underwriting mid-term changes

Mid-term changes (or adjustments) are a common feature in motor insurance and we examined a number of these in chapter 4, in the context of processes.

H1 General practice

The method of underwriting mid-term changes generally follows that for new proposals. The changed risk is reassessed and the premium and terms adjusted accordingly. This might be performed by way of an automated process (driven by an 'expert' system) or undertaken manually, depending upon the nature and complexity of the policy and the change.

A risk acceptable at the point of first proposal might, however, become unacceptable during the term of insurance if there is a change which takes it outside the insurer's scope for acceptance. If, for example, a motor car policyholder changes occupation to that of a taxi driver and requires to use their vehicle as a hire car, the standard Class 1 (or Class A) policy would not suffice and cover permitting use for hire or reward would be necessary. Whilst cover might be extended under the car policy (or even provided under a separate commercial policy) and additional premium charged, it could be that the holding insurer does not underwrite this class of business and might be precluded from doing so by virtue of its reinsurance arrangements. In this situation the insurer would be obliged to cancel the policy and the policyholder would have to effect a policy with an alternative insurer.

Sometimes a normally unacceptable risk might be accommodated to avoid the disruption to the customer. For example, a policyholder whose NCD is in the process of accruing an additional year would be disadvantaged by having to effect a new twelve months policy mid-term and finding that a further full twelve months would have to elapse without claim for the next level of NCD to be reached. It is usual, therefore, for insurers to extend their usual acceptance limits, where this is possible within the constraints of their reinsurance protection, and apply suitable additional terms with a view to carrying the risk, at least until renewal date. In some cases the risk might well qualify for acceptance at the renewal stage by virtue of the driver's age advancing to the required acceptance limit. An element of flexibility is, therefore, used, where possible.

H2 Temporary changes

Insurers will also sometimes accommodate temporary changes which are strictly outside their acceptance terms for new business. A customer with an insured only driving policy might, for example, request the temporary inclusion for one week of an additional driver (whose occupation is normally unacceptable) to share driving over a long distance during an annual holiday. The nature of the intended (holiday) use might present a lower risk than that envisaged for the additional driver in other circumstances and the added benefit of shared driving during the long journey could actually reduce the otherwise 'insured only driving' risk for the requested purpose only.

H3 Foreign use

As we found in chapter 3, whilst the UK motor policy must provide minimum cover required in other EU states, it is usually necessary to extend the policy, often upon payment of additional premium, to obtain the wider cover provided by the standard territorial limits. Where this is so, the wider cover can usually be provided for most EU countries (and others which subscribe to the EU Motor Directives).

*Difficulties
might exist for
repair*

Special consideration might be necessary, however, if the policyholder wishes to travel to a country within the Green Card system which is outside the 'EU' states. In certain countries difficulties might exist for repair in the event of an accident and other claims handling difficulties might arise, particularly for those countries neighbouring others where there is political unrest. Insurers could also be constrained by the territorial limits specified in their reinsurance treaty. Such cases require careful assessment and, where necessary, cover might have to be declined, albeit the insurer or the policyholder's intermediary might be able to suggest an alternative provider. This is a type of situation where the experienced intermediary really comes into its own, by calling upon its knowledge of the motor market, in which the vast majority of risks can usually be accommodated with the required degree of knowledge, initiative and flexibility.

H4 Constructive total losses

*Once more
suitable for own
damage cover*

Another situation requiring flexible handling is that where the insured vehicle has been substantially damaged in an accident and, whilst repairable, it is beyond economical repair and declared a 'total loss' (i.e. the cost of replacement exceeds the cost of repair, less the value of the salvage). The vehicle might be of sentimental value to the policyholder and in these circumstances the insurer might agree to allow them to retain the vehicle in consideration of a reduced 'total loss' settlement figure, on the basis they prepared to make up the shortfall themselves or accept a repair utilising second-hand parts. The insurer is then faced with the matter of providing further cover on a vehicle which it knows to be substantially damaged and for which own damage cover (or indeed any cover at all) could not be granted until satisfactory repair is undertaken. In such cases, once repair is complete, the insurer might require a sight of the receipted repair accounts and check these against the original repair estimate and engineer's report in order to satisfy itself that the vehicle is once more suitable for own damage cover. Depending upon the nature of the damage, a further engineer's inspection might be necessary after the repairs have been completed and, in appropriate cases, a fresh MOT test might be a requirement.

Other cases requiring careful underwriting are those where cover is required on an additional or replacement vehicle following a serious accident, involving perhaps prosecution of the driver. Consider the following situation:

A policyholder's car collides with a tree due to the driver's negligence. The car is a 'write-off' but there is no claim under the policy due to there being no damage to the tree and the car is insured for TPO risks. The policyholder obtains a replacement car for which they request a substitution and increase to comprehensive cover.

What options are open to the insurer and what action, if any, do you think the underwriter might take? Ordinarily the insurer would defer consideration of special terms until the policy falls due for renewal. In this case, however, cover is being increased to comprehensive following a blameworthy accident which would have resulted in a total loss payment, had cover been comprehensive at that time. In this case, depending upon the driver's previous record, the underwriter might take the precaution of imposing a substantial compulsory excess and possibly a premium loading, having first satisfied itself that no prosecution has arisen, or is pending, following the accident and there has been no other material change during the period since inception/last renewal of the policy which might influence the decision to grant future cover.

I Renewal underwriting

You will recall from our examination of the motor renewal process in chapter 4 that certain risks will require special attention before renewal is invited. A risk featuring a particularly poor claims history would, for example, be 'flagged' for review and the possible imposition of special terms.

The importance of prudent renewal underwriting, whether of personal lines, commercial or fleet, cannot be overstated. If adverse risks manage to 'slip the net' the account will suffer. Conversely, if renewal underwriting is unduly harsh or cases declined unnecessarily, profitable business will be lost. It is equally important to get the premiums and terms right at renewal as at the new quotation stage, in order to maximise retention of business.

II Review of claims history

The underwriter is in a stronger position to evaluate the risk at renewal than at the proposal stage as it has access to the verified claims history and can, if desired, examine the full claims papers, complete with witness statements and other substantiating documentation, including any applicable police reports and photographs of the accident locus. By contrast, at proposal stage the underwriter usually has to rely on surface information about an accident with perhaps verification of the amount paid from a check of the CUE database. As a consequence, a risk which might have been declined as a new proposal by virtue of presenting an ostensibly unacceptable risk might be offered renewal by the holding insurer, having had the benefit of full evaluation by the underwriter of the background details, albeit special terms might be required.

A single accident or loss of a fairly minor nature is unlikely to be flagged for individual review unless there are other ancillary features, such as a conviction or evidence of medical problem. A series of small claims or losses can, however, be an indicator of a significant change in the risk which requires attention and the application of remedial terms, such as an excess to encourage greater risk prevention measures by the policyholder and to deter further small claims.

11A Other sources of information

Similar to new business underwriting, a number of tools are available to enable the renewal underwriter to assemble a better picture of the risk. The CUE database, commonly searched at the new business and claims stages, can also be accessed when evaluating renewal and might unearth an accident or loss attributable to the insured driver, which has occurred under a policy issued by another insurer. Where there is doubt about the driver's record the underwriter might require a sight of the driving licence to validate licence entitlement, age and conviction history and, if there is concern about the maintenance of the vehicle, a copy of the current MOT certificate. Replacement tyre receipts or other evidence of repair or maintenance might also be required.

Let us take the case of a long standing customer with an exemplary claim free record of many years, who has had a spate of minor accidents untypical of an experienced driver with a previously unblemished record. The accidents involve a collision with a post following misjudgment of a private garage entrance and reversing into a lamp post at dusk. This driver, with a previously conviction-free record, has recently been convicted of driving through traffic lights at red. The underwriter is placed on enquiry and, having called for medical evidence of the policyholder's fitness to drive, it is established the driver's eyesight unfortunately no longer satisfies legal requirements.

What steps should the underwriter take? As the driver is no longer entitled to hold a driving licence the insurer would need to exclude them from driving under the policy unless and until the defective vision has been corrected (if this is possible) and the driver's eyesight once more satisfies the required standard. If there are no other drivers and the vehicle is to be taken off the road pending the driver's recovery (or disposal of the vehicle) the insurer could offer to provide accidental damage, fire and theft cover. To comply with the RTA s.95 the insurer must notify DVLA of its decision to withdraw RTA cover on medical grounds.

Drivers suffering from relevant disabilities might be required to make periodic declarations of the treatment they are receiving and, where appropriate, an optician's report or other medical report might be required. Where the report is satisfactory and the driver continues to satisfy licensing requirements, cover will usually be maintained and the insurer will have particular regard to the requirements of the Disability Discrimination Act, discussed previously. Occasionally, the medical report reveals, as in the case study above, that driving must be discontinued. This may only be temporary until the condition is treated and corrected or stabilised.

12 Existing special terms

Those risks already subject to special terms from previous years underwriting will come up for review with a view to improving those terms, once a suitable period has elapsed without further blemish. This might be two or three years after the imposition of the terms, depending upon their nature, the reason for their imposition and the individual insurer's practice.

I2A Accident/loss record

It cannot be assumed that the absence of interim claims is evidence of an accident/loss free record since the special terms were imposed. If a substantial compulsory excess was applied, or cover reduced to third party only, the absence of claim might simply be due to the fact that some interim incidents resulted in own damage which fell within the excess (or was not covered by virtue of the limited cover) and were consequently not reported. To remove the restrictions in this situation would simply reopen the way for further claims which the special terms had curtailed. The insurer should therefore check to establish if there were unreported interim accidents and, if considered appropriate, search the CUE, MIAFTR, or other, databases to identify any losses under other policies.

*Unreported
interim
accidents*

I2B Convictions

Cases featuring terms for convictions must be reviewed at renewal and any terms imposed because of the convictions removed, once the convictions become 'spent' by virtue of the Rehabilitation of Offenders Act. Remember that terms imposed due to a 'circumstance ancillary' to a spent conviction (e.g. an accident giving rise to a now spent conviction) must also be removed.

It should not be assumed that a conviction has become spent simply because the requisite period has elapsed since the date of conviction, as an interim conviction for an offence triable on indictment might have occurred. Refer to section C2J above. The terms might, nevertheless, be removed without seeking verification of the absence of relevant interim conviction if the elapsed period satisfies the insurer's standard requirements for normal acceptance, irrespective of whether the conviction is spent. An interim conviction relevant to the motor risk would of course be disclosable in accordance with the insured's duty of disclosure at renewal and insurers would, therefore, be entitled to knowledge of any further convictions, including those triable on indictment, albeit not necessarily those unconnected with the motor insurance risk and for which the insurer had not made specific reference.

I3 Fleet renewals

Fleet renewals are assessed using the methods described earlier in this chapter for new business quotations. As with other renewals, the fleet renewal underwriter is in a stronger position than the underwriter evaluating the risk for new quotation purposes by virtue of having a detailed analysis of claims, which goes beyond that revealed on the standard market experience form. The holding underwriter could, for example, analyse every relevant claim to establish an 'as-if' position for the purpose of quoting with alternative excess levels – a facility not available to the prospective new insurer.

J Liaison between underwriting and claims functions

It is important that the various divisions within any organisation work together in order to achieve corporate objectives. In an insurance company or syndicate, it is essential that the underwriting and claims functions, in particular, liaise effectively if the organisation is to be in a strong position to succeed in what is often an extremely competitive market.

J1 Adequacy of cover

As we saw in chapter 3, the underwriters will scope the policy wording with the intention of providing a certain level of cover while excluding those risks that they either do not wish to cover or for which the policyholder does not require cover. The claims handlers will see the outcome of those intentions at the point that a claim is reported, and the adequacy of the cover tested, and feedback from claims to underwriters is a valuable asset.

When underwriters decide to make changes to policy wordings, whether to introduce new benefits or restrictions, there should be discussion with claims to establish the practicability of the new cover and any changes. This should take place before the changes are introduced and training of both underwriting and claims personnel will be necessary to ensure a smooth introduction of the new terms.

J2 Policy interpretation

Correct interpretation of the policy is, of course, essential and thorough training of claims and underwriting staff will ensure consistency and accuracy in this crucial area. Some causes of loss are, however, borderline and it is possible the intention of the underwriter might not always be apparent to the claims handler. This is most likely to occur for those types of loss situations which arise only very rarely and where it might be the first time the claims handler has been faced with the particular scenario. In this situation it is crucial that there is effective liaison between the departments to ensure a correct decision is reached on indemnity.

J3 Training

It can be helpful for staff to be seconded between the areas

At the heart of effective liaison is knowledge, understanding and appreciation of not only the practical issues that arise at individual case level but the corporate objective and just how much the success of the organisation depends on the insurer maximising the use of the information at its disposal. Awareness of the general operation, activities and responsibilities of the respective claims and underwriting functions should feature in the training of staff in both areas. Where possible, it can be helpful for staff to be seconded between the areas, not only as an aid to improving awareness of the respective areas, but to enhance career development. This is true for all levels, as evidenced by some recent senior appointments in the industry.

J4 Analysis of repudiations

Analysis of repudiated claims is an acid test of the suitability of cover and insurers will examine this data with a view to ensuring cover is brought into line with customer requirements and expectations.

Such analyses can also reveal any deficiencies in the sales, claims and underwriting processes. For example, an analysis of avoided policies, or those requiring the application of retroactive terms or proportionality settlement as a result of misrepresentation or non-disclosure, could reveal a common misunderstanding by customers, which might be remedied by something as simple as clarifying the questions asked at proposal stage or rearranging the order of the questions to improve understanding and accuracy of disclosure.

The decision to avoid, together with communication of the avoidance, initially rests with the underwriter but the claims handler has the task of negotiating any proportionate settlement and dealing with any RTA liability, for which it might become necessary to seek reimbursement from the policyholder or driver. The policyholder is not interested in the insurer's internal arrangements and it is desirable that a seamless process is in place and a single communication to the policyholder is made if an adverse reaction from them is to be avoided.

J5 Analysis and recording of statistical data

We have seen from the section on pricing and analysis that the underwriter relies upon claims data to project frequency and average cost, and ultimately pricing, for the various risk classifications. The claims handler is charged with allocating codes for each new claim recorded on the claims database to enable the extraction of data for such analysis and the accuracy of the coding is paramount. Codes would typically be required to identify the cause of loss; e.g. whether accidental damage, fire, theft, vandalism, windscreen, personal accident, personal effects or third party liability. This will enable payments and estimates to be allocated the various codes and these will ultimately be matched to the risk profile for the individual risk held on the insurer's system. Payments would also be split by, for example, third party property damage and bodily injury.

The type of accident should also be classified and coded – for example, an insured driver drove into the rear of third party vehicle, third party emerging from side road, roundabout etc. These causes of accident can be used for renewal and mid-term underwriting at case level and, when used with other factors already present on the system (such as driver age), work together to produce the filter which processes the flagging of cases requiring underwriting review.

J6 Reserving

Any changes to claims reserving practice requires prior liaison between claims and underwriting management as the impact on underwriting results must be evaluated and explained to those relying on the reports. This would involve not only the insurer's own underwriting and pricing analysts and management accounting but external organisations, such as reinsurers and, where appropriate, those responsible for analysing statutory returns.

J7 Individual claims

Information will come to the attention of the claims handler which might place a new perspective on the risk. If the information was misrepresented or non-disclosed at a relevant point of disclosure, the process identified in chapter 4, section C2 would apply and a decision would ultimately be reached on whether the claim should proceed as normal, whether retroactive terms or proportionality should apply, or the policy should be avoided and the claim declined.

In other cases there might still be a need for interim underwriting action. If, for example, the nature of the accident (or evidence received in connection with the claim) revealed a serious defect in the vehicle, there might not only be a doubt over whether the claim should be met but it might be appropriate to withdraw cover, at least until such time that the irregularity were resolved and the efficiency of the vehicle established. Similarly, if the accident resulted from the driver losing consciousness at the wheel, there could be a question over a previously undiagnosed medical condition and a consequent need to possibly suspend cover pending completion of medical enquiries and confirmation that notification has been made to DVLA and clearance received to resume driving.

When considering a claim under a commercial risk, such as a motor trade policy or a fleet, the handler might become aware of a serious shortfall in risk management, such as failure to implement agreed security measures or an unexplained sudden increase in claims frequency which requires investigation.

Prompt notification to underwriters of such developments is clearly essential if future unnecessary liabilities are to be averted, arising from what would now be a known, or suspected, deficiency.

J8 Workloads and backlogs

Workloads necessarily fluctuate

Workloads necessarily fluctuate in many areas of the insurance sector and the claims department is particularly vulnerable to these during periods of severe weather conditions and major incidents, which might necessitate the transfer of staff between claims departments to meet the demands. In such conditions, even with the best contingency plans in place, there will be pressures and strains on resources and backlogs can build up in what are seen as the less important tasks. As a result, the capture of statistical data and updating of estimates might be delayed and underwriting results distorted as a consequence of the data supply being temporarily suspended and then subsequently reinstated following a concerted effort to clear the backlog. Those responsible for analysing and interpreting the underwriting data, whether on a portfolio or case-by-case basis, could easily react incorrectly if they are unaware of such deficiencies and close liaison between claims and the analysts is, therefore, very important if errors are to be averted.

J9 Emerging trends

In section B1E above we identified how new legislation and other changes in industry practice can have an influence on the cost and frequency of claims. Examples considered were the introduction of compulsory insurance of third party property damage in 1989 and Periodic Payment Orders. These types of changes normally follow a fairly lengthy period of public consultation and insurers will, therefore, often be in a position to project, to some extent, the likely impact of forthcoming changes and adjust rating and pricing accordingly. It should be appreciated, however, that changes to pricing need to be implemented well in advance of changes in claims cost, as many existing risks will have been exposed at current premium rates for as long as twelve months or more by the time claims become subject to the new rules.

Other changes are less predictable and the underwriter is reliant upon the claims handler to be alert to more localised trends. These might include a sudden influx of fraudulent claims or a spate of thefts or vandalism, from a particular geographical area. This may be identified by the handler or might be from feedback from solicitors, loss adjusters, approved repairers and the like.

J10 Effective liaison

A way of ensuring effective liaison is to hold regular review meetings between respective claims and underwriting staff at all levels, so that information is exchanged in a timely fashion. Periodic liaison meetings between claims and underwriting management, arranged for the specific purpose of ensuring liaison is effective at other levels and to discuss wider issues, including legal and industry developments, is a further aid to ensuring the corporate objective is achieved.

Think

Consider how the claims and underwriting areas of your organisation communicate and how claims information is recorded and used in underwriting and pricing.



Appendix 1: Motor fleet experience form

Note: The data is shown purely for illustrative purposes and no attempt should be made to reconcile or interpret it.

MOTOR FLEET EXPERIENCE FORM

Insured's Name: Evers & Green

Occupation: Surveyors

Renewal Date: 1 January 2010

Address: Sheen Way, Anywhere, Anytown, AN3 4RT

Policy Number FMP 1234567

Period	Vehicle Years (not number of vehicles)	Total Number of Claims Reported (including outstanding claims)	Claims Paid Including payments on outstanding claims			Claims Outstanding				Total Paid and outstanding	Total Position at Last Year		
			A.D. £	F. & T. £	T.P. £	No.	A.D. £	F. & T. £	T.P. £		Vehicle Years	No. of Claims	Paid and Outstanding
1/1/07-31/12/07	1600	500	6700	250	250,500	15	NIL	NIL	31,500	288,950	1600	445	358,300
1/1/08-31/12/08	3165	660	NIL	NIL	285,900	75	NIL	NIL	550,500	836,400	2330	475	714,500
1/1/09-30/9/09	2350	350	NIL	NIL	145,600	125	NIL	NIL	314,500	460,100			

Period	Cover in Period (including excesses, amount and type, if applicable)	
1/1/07-31/12/07	Comprehensive £500 Excess (ADF&T)	*Calculated to: <u>30th September 2009</u>
1/1/08-31/12/08	Third Party only	Event Date of Last Claim included <u>5th September 2009</u>
1/1/09-30/9/09	Third Party only	

NOTE: The experience shown is that of Indemnity Insurance Plc with whom contact may be made if clarification is necessary.

Signature: An Underwriter

Date: 24th November 2009

Question answers

1. Lump sums have the disadvantages that projected life expectancy might prove inaccurate and that any investment made could provide poor results.
2.
 - The reaction of the customer.
 - Market competition.
3. Identical damage to modestly valued vehicles and those of a high value may produce claims of significantly different amounts and would not, thus, provide any indication of the severity of an accident or the degree of a driver's negligence.
4. If the proposer is able to recover all or part of the VAT charged on the cost of repairs connected to a claim, the insurer will deduct that amount from the final repair account it settles.
5. Trade plates are issued by the licensing authorities to enable the movement of unlicensed vehicles for defined business purposes. They are used strictly for motor trade purposes and cannot be used for social, domestic or pleasure purposes.
6. Petrol tankers – these are usually excluded from treaties.
Coaches all being kept in one location – say a big sports event.

Self-test questions

1. List four features under each of the following headings that contribute to the cost of claims:
a) Own damage claims.
b) Third party claims.

2. List five rating factors common to most classes of motor insurance.

3. Explain the difference between protected NCD and guaranteed NCD.

4. What options are available to a driver who has never owned a car and, therefore, has never accumulated any NCD when he wishes to insure a new car?

5. Explain the difference between:
a) Written premium and earned premium.
b) Vehicle numbers and vehicle years.

6. **What factors are likely to affect a motorist's decision whether to change insurer when faced with a lower quotation than his current premium?**
7. **What is the status of a six year old conviction dealt with by a fine and endorsement under the Rehabilitation of Offenders Act 1974?**
8. **Describe 'fronting' and the likely consequences for a policyholder who effects a fronted policy.**
9. **What are the main differences in the standard of security on cars manufactured now compared with cars manufactured 20 years ago?**
10. **List the main reasons why insurers request details of the area where the vehicle is used and kept.**

11. **Explain the term 'third party working risk' and how underwriters deal with it.**
12. **Describe the requirements for vehicles to be eligible for insurance as agricultural and forestry vehicles.**
13. **What are the main differences between private hire and public hire?**
14. **List the circumstances where you would expect a motor trade road risks policy to be rated on:**
a) A named driver basis.
b) A points basis.
15. **List eight pieces of information found on a typical motor fleet experience form.**

16.

A client has five cars and three vans. How would you expect a fleet underwriter to calculate the premium and what would his reasons be for doing it that way?

You will find the answers at the back of the book

6: Motor claims I

Chapter section	Syllabus learning outcomes
A Claims management objectives and philosophy	5.1, 5.2, 5.3
B General claims handling principles applied to motor	5.4
C General claims handling procedures applicable to private motor, commercial motor and motor trade insurance	5.5, 5.9
D Motor engineers and recommended repairers	5.8
E Market agreements and their effect	5.7

Learning objectives

After studying this chapter, you should be able to:

- ☐ describe claims handling principles and the procedures specific to private motor, commercial motor and motor trade insurance;
- ☐ describe the role of motor engineers;
- ☐ discuss the purpose of recommended repairers and the manner in which they fulfil their role;
- ☐ outline the main market agreements which impact on the handling of claims.

A Claims management objectives and philosophy

What is a corporate claims philosophy, and why have one? A corporate claims philosophy is effectively a vision and values, plus a relationship with overall business objectives. A **vision statement** could be described as a vivid idealized description of a desired outcome that inspires (and possibly energizes) the staff within the claims department and helps to create a mental picture of a goal or target. That target may not necessarily be a tangible one.

For example: an insurance company may have a claims 'vision statement' whereby it states that:

we will handle all claims promptly, and be fair and courteous to all in our approach.

There may also be reference to assessing the claim:

at the earliest opportunity, and taking into account the policyholder's rights, whilst handling valid claims swiftly.

This may cause a little difficulty when considering a large personal injury claim, for example. 'Swiftly' then becomes subjective.

Any vision statement that includes reference to 'valid' claims being handled in a certain manner reflects the tension that exists. Claims are there to be handled and handled promptly, provided they are valid. This message can be more confusing, if an insurer indicates that claims will be handled 'sensitively'.

A1 Origins of a claims handling philosophy

The concept of a written claims philosophy emanates from the Association of British Insurers, via the ABI Statement of General Insurance Practice, but this was replaced in 2005 by rules in the FSA: Insurance: Conduct of Business, located on the FSA website (www.fsa.gov.uk).

The concept of a corporate claims philosophy was given formal status at Lloyd's and rolled out to the Lloyd's market by The Lloyd's Claims Management Principles and Minimum Standards, issued on 1 July 2005 and 1 May 2006 respectively. This comprises eight claims management principles, and compliance with these is mandatory within the Lloyd's market.

The corporate claims philosophy is the first minimum standard. The principle is defined as:

The Claims Philosophy should be clearly documented and communicated within the Syndicate, and reflected in the management and organization.

A1A The benefits of a corporate claims philosophy

There are a number of benefits of a corporate claims philosophy:

- One of the major advantages is the strategic perspective. As the claims department is the 'shop window' of an insurer, then a professional efficient, friendly claims service will enhance an insurer's marketing strategy, and assist with renewal retention business, and even enhance the profile of the company, as the reputation of the company spreads.
- Aside from the above, there is the obvious cost benefit. By offering to deal with claims promptly, fairly etc., the claims handlers will work towards a general goal. Reinsurers' anxieties will also be somewhat alleviated by the corporate approach to claims handling, and whilst there may be the occasional slip, there will generally be a unified approach.
- The standard of service will form part of the overall marketing strategy, and the wording of any claims philosophy must take into account its key users, which will include the general public. It is, therefore, necessary to ensure that the wording of the document is easily understandable. Whereas an internal claims handling document may set out the specifics of, say, service targets (e.g. targets measured by number of days), the external claims philosophy will usually be phrased in general terms with use of such words as, perhaps, 'swift', 'prompt' and 'reliable' to outline the general type of service expected.
- As a result, the claims personnel will be aware of what is expected of them and will work towards achieving the targets set. Clearly, they will work towards a more specifically defined quality of service, which can be applied to a specific department, or perhaps across a business area. As a consequence, the staff will be able to take pride department-wide. This will aid staff identity within the corporation.
- The staff will be able to take pride in the provision of an efficient service. This will increase staff motivation, as will staff being trained to a higher standard than before in order to reach the new service standards.

Provision of an efficient service

A2 Quality Management and ISO 9001

When one refers to a corporate claims philosophy, then it is necessary to incorporate reference to the International Organisation for Standardisation (ISO) standard. The original specification relevant to the insurance industry (and claims management in particular) was the ISO 9000, but is now ISO 9001.

ISO 9001 is the internationally recognised standard for an organisation's internal quality management. The term 'quality' refers to all those features of a product or service which are required by the customer. An organisation's 'quality management' refers to an organisation's actions to ensure that its products or services satisfy its customers' quality requirements and complies with any regulations applicable to those products or services. This does not, for example, apply to an organisation's policy towards training its own staff in the areas of leadership and management. A company or organization that has been independently audited and certified to be in compliance with ISO 9001 may publicly state that it is 'ISO 9001 certified' or 'ISO 9001 registered'.

The ISO 9000 certification standard has evolved over several revisions, its origins having started at the Ministry of Defence in the 1970s.

The 2000 version of the standard has changed the ISO number from 9000 to 9001. It also endeavoured to make a radical change in thinking as it placed the concept of process management at the centre of the standard, emphasising the essential goals of the standard this being a 'documented system' (rather than a system of documents).

This 2000 version reduced the emphasis on documented procedures, provided clear evidence could be presented to show that the process was effective. Another requirement was that the process could be subject to process improvement and tracking customer satisfaction were also made explicit in this revision. There are now a set of eight core quality management principles, designed to act as a common foundation for all standards relating to quality management:

1. Improved consistency with traceability.
2. Focused leadership.
3. Enhanced customer focus.
4. A system approach to management.
5. The involvement of people.
6. Continual improvement.
7. A factual approach to decision-making.
8. Mutually beneficial supplier relationships.

The fourth and latest edition of the standard (ISO 9001:2008) was published on 14 November 2008. This revision contains minor amendments only.

A2A What are the advantages and disadvantages of certification?

The advantages are that:

- It creates documentary evidence of the procedures which should be followed.
- It lays down standards to be achieved, and may outline training requirements as well, with measurable outcomes.
- The intention is that it promotes greater consistency in the level of service provided by different staff members and by staff at different company locations.
- If this leads to greater customer retention then this will indirectly save costs. Retained business is relatively low cost.

Conversely, the disadvantages are:

- If the system introduced is procedurally burdensome (and over-documented), then the process becomes self-defeating, as it becomes slower, with administration effectively delaying matters.
- This, in turn, increases the running costs.
- The initial cost of introducing the system may be high.



How it works

How does this work in practice? Working on the basis that the claims department do not have a data image process system then the initial claims advice will be used to create a claim file. That advice may comprise an accident report form or a statement of facts. Whilst a physical claim file will be established, it will also be necessary to secure, say, a print-out of relevant policy information. Invariably this will be duplicated on the computer system, to facilitate the logging of claim advices.

- Upon receipt, claim advices are date-stamped and logged in the computer system. This will require recording details of the claim, which may include the entering of various claims data on the system, against the unique claim number. This begins the monitoring process. From an ISO perspective, the relevant slip/policy/certificate is obtained for insertion in the paper or electronic claim file.

The screen information will usually include the following:

- Accident date, plus the accident circumstances. Some insurers have a coding representing some of the more common accident scenarios.
- A reiteration of basic policyholder information, including possibly the name and address of the policyholder, address, business and VAT status.
- With a motor claim, the registration number of the policyholder's vehicle.
- The driver at the time of the accident, including their name, date of birth, convictions, home address.
- The use/nature of the journey of the vehicle by the policyholder's driver.
- Whether any goods were being carried.
- Details of any third parties, including names, addresses.
- Various 'indicators', including reinsurance, fraud etc.

The above list is not intended to be exhaustive, but shows the type of information that may have to be input on a system once a claim file is created.

Having established a claim file, the validity of the loss is checked as per departmental procedures. There will be a policy in place which will require that claim queries are referred to the appropriate manager.

As indicated above, the claim details are entered onto the computer system including claim estimates. The latter will often be broken down into various sub-sections, including:

- Accidental damage reserve, although there may be separate column entries for 'fire' or 'theft' losses. There may also be facilities to enter reserves for 'personal effects', and 'personal accident benefits', although it is rare that such a claim is pursued under a motor policy. There may also be a column for 'own costs', this to facilitate an estimate against solicitor costs.
- For 'third party' reserves, the options may be more extensive. For example, there may be different potential reserve entries for third party property damage, third party injury, loss of earnings, care, medical treatment costs, third party solicitors costs, and perhaps many other column entries. It should be borne in mind that these options will need to be available for each (potential) third party who may be involved in an incident also involving the policyholder.

Obviously, the claim advice from the insured/reinsured is placed in the claim file, and as indicated, the computer system file copies are placed in the file as well.

As part of the process of gaining registration for ISO 9001 and the pre-planning involved in the co-ordination of all of the company's claims management procedures and strategies, consideration should be given to developing or redesigning the corporate claims philosophy. Clearly, both the company's quality policy and its corporate claims philosophy must work in tandem, with the corporate claims philosophy reflecting the stated quality policy.

It should be remembered that the requirements of quality management for ISO purposes may have an impact on the following areas:

- **Use of outsourcing:** it should be remembered that, an insurer cannot divest itself of responsibility with regard to quality assurance standards.
- **Use of intermediaries:** whilst there is no obligation on an insurer to deal with intermediaries who may be similarly ISO registered, the insurer may state that such companies are their 'preferred' business partners.
- **Use of information technology:** IT provides an ideal way to provide a documented audit trail of the procedures utilized to handle a particular claim.
- **Marketing:** any company or department with ISO will be seen to have a definite advantage over other companies offering a similar service (or product). This is seen as a useful guide to how a company performs.
- **Customer retention:** where there is a specific level of service to be expected from a company and with measurable targets, then this will aid in the handling of complaints, and, therefore, assist with customer retention.

A3 Claims handling and Insurance: New Conduct of Business

The ICOBS is binding on all classes of insurance

As you will know from your IF1 study text, ICOBS is a sourcebook which is published by the Financial Services Authority. The ICOBS is binding on all classes of insurance and is to be read in conjunction with other FSA rules that affect insurance and, in particular, the rest of the FSA Handbook, plus the Principles contained therein.

The original chapter in the 'first' edition of what was then known only as ICOB was chapter 7, but a new version of the sourcebook was published towards the end of 2007. Chapter 8 is now the pertinent chapter to claims handling.

An insurer must handle claims promptly and fairly (8.1). Additionally, they should provide reasonable guidance to help a policyholder make a claim and appropriate information on its progress. Moreover, an insurer should not unreasonably reject a claim (including by terminating or avoiding a policy); and thereafter settle claims promptly once settlement terms are agreed.

Specifically, under 8.1.2, a rejection of a consumer policyholder's claim is unreasonable, except where there is evidence of fraud, if it is for:

- (1) non-disclosure of a fact material to the risk which the policyholder could not reasonably be expected to have disclosed; or
- (2) non-negligent misrepresentation of a fact material to the risk; or
- (3) breach of warranty or condition unless the circumstances of the claim are connected to the breach.

There now appears to be further interaction with the requirements of the Civil Procedure Rules (and to reinforce the requirements of the Fourth and Fifth EC Motor Directives), as Section 8.2.6 requires that:

Within three months of the injured party presenting his claim for compensation:

- (1) the firm of the person who caused the accident or its claims representative must make a reasoned offer of compensation in cases where liability is not contested and the damages have been quantified; or
- (2) the firm to whom the claim for compensation has been addressed or its claims representative must provide a reasoned reply to the points made in the claim in cases where liability is denied or has not been clearly determined or the damages have not been fully quantified.

A4 Validation and evaluation (including counter fraud measures)

Validation and evaluation of a claim, whether the policyholder's own claims or that of a third party is affected by two factors, one being the external tools to assist with validation and evaluation, and the other being the internal policies and processes deployed by each insurer, in order to satisfy themselves that the claim or claims fall to be met under the terms of the insurance policy, and the amount to be paid.

It should, of course, be borne in mind that a number of the larger commercial insurance brokers may undertake either an evaluation and/or validation exercise for their larger clients, not only to avoid the relevant insurer being burdened with invalid matters, but also to provide a 'value added service' to enhance the relationship.

Firstly, we'll look at the external tools which are used by insurers to assist with the basic requirement that a claim should be validated and evaluated. Generally, this comprises different types of databases, plus software products, amongst which are the following:

Question 1

What is ISO 9001?



A4A Motor Insurance Anti-Fraud and Theft Register (MIAFTR)

Due to the alarming rise in fraudulent motor claims, UK insurers, through the medium of the Association of British Insurers (ABI), established MIAFTR in 1987. It was created to record all motor vehicles that had been the subject of a total loss claim or had been stolen and not recovered. Third party as well as insured losses are recorded and it is available to all companies as well as to Lloyd's.

The register was subsequently updated in 2004 (now known as MIAFTR2) to enable registrations and searches to be undertaken online, providing real-time information, which helps to shorten the window of opportunity for potential frauds and accelerates any investigation. Insurers placing information on the register relating to a new claim will be advised if the vehicle, claimant or the claimant's address have been recorded previously. Investigation is then undertaken with the previous insurer to ensure that no fraud is being perpetrated. As a by-product, previous claims, although not leading to fraud, may not have been disclosed at inception, thus leading to the possibility of avoidance of the policy.



How it works

One of the earliest and biggest frauds detected through MIAFTR occurred during its first year of operation when it was found that an individual purchased a piece of salvage before insuring it with a number of different insurers. Having fabricated claims details and lodged numerous claims, a number of insurance engineers each declared the vehicle beyond repair. Had MIAFTR not alerted the companies of the link then the individual would have successfully made several total loss claims. It is also likely at that time that he would have been able to settle with him retaining the salvage, leaving him to introduce many more claims.

Like the original register, MIAFTR2 has a link established with the Police National Computer (PNC). When a theft is registered, a 'match' should occur showing the fact that the theft has been recorded with the police along with the police reference.

MIAFTR2 is also linked to the database of HPI. Upon registering new information, this has several effects:

- Firstly, an automatic check is made to establish whether or not a finance arrangement is current on the vehicle.
- Secondly, the vehicle will be held on HPI's 'Condition Alert' register, which can be accessed by members of the motor trade or public if the vehicle is later offered to them for sale.
- Additionally, new registrations are also validated against the statutory vehicle record maintained by the Driver and Vehicle Licensing Agency (DVLA). This means that any discrepancy in a vehicle's description or identity can be revealed at an early stage.
- MIAFTR also now provides registering insurers with valuable audit trail and management information, which assists them in refining and improving their claims processes.

A4B Hire Purchase Information Ltd

Originally established in 1938, HPI is an independent provider of vehicle information, and is used by the UK motor industry and the motoring consumer. At the time, there was considerable growth in the availability of vehicles, and the six big financial lenders pooled their information and the HPI was born. The original idea was to prevent a creditor using the same security for multiple loans.

In the 1990s, the original six founders sold HPI, firstly to Infolink, and then it was sold to Equifax.

With regard to the motor trade, it supplies both used vehicle retailers with access to information on the outstanding finance on any UK registered vehicle. Additionally, it will also indicate whether the vehicle has previously been rendered a total loss by a motor insurer, or whether the vehicle has been recorded as stolen.

The information can include particulars of the vehicle, including the make, model, the cc of the engine, plus the door plan together with the fuel and transmission type. This information can then be compared to that recorded against the vehicle when it was first manufactured. By securing this information, dealers have then met their legal obligations.

In 1997, HPI launched the National Mileage Register, which is the largest register of mileages in the UK. This register enables dealers (and their potential customers) to secure protection against 'clocking'.

For consumers, there is the HPI Check, which performs basically the same task as that for the trade.

A4C CUE (Claims and Underwriting Exchange)

Although MIAFTR went a long way towards defeating fraud, it only dealt with written-off or stolen vehicles. Later, it was decided to establish a series of registers known as CUE, which is managed by the industry through Insurance Database Services Ltd (IDSL). It was intended that the database would contain information on all claims from different classes of insurance. Think of the MIAFTR register, add in all motor claims (excluding windscreens), then add all household claims and, potentially, all travel claims.

Home cover started in 1994 and motor followed in 1995. A number of years of historical data were input in both cases. When new claims are added, a match report is issued if a previous claim is detected for the individual or the risk address. This leads to a much greater chance of detecting both fraud and non-disclosure than relying simply on MIAFTR. As previously advised, a number of insurers will utilise CUE at the underwriting stage (i.e. inception), in order to defeat non-disclosures and the possibility of fraud.

A significant number of insurers representing a very large portion of policies have declined to join CUE. Add to this the fact that a number of brokers who underwrite and administer whole accounts on behalf of insurers cannot join, then it can be seen that the benefits are reduced. Very recently an ad hoc system has been introduced which will enhance point-of-sale checks as well as facilitate general fraud enquiries. At present, MIAFTR and CUE are not linked.

More recently, CUE has added another facility (CUE PI: the PI stands for 'personal injury'), which includes compensation claims made against individuals and businesses arising from injury or individual illness. The database is updated by insurers and other compensators who add the details of every person claiming compensation for personal injury. When a claimant's details are added, the database is automatically searched for matches which allows insurers to see if the person claiming for injury has made any previous compensation claims.

The database is updated by insurers

A4D CIFAS

Although not an organisation created by the insurance industry, it is one of which a number of insurers are members. CIFAS (Credit Industry Fraud Avoidance System) was established in 1988 by major lenders in the UK consumer credit industry. Its creation was precipitated by a number of large fraud losses sustained in the 1980s, which principally affected the retail sector, coupled with the escalating problem of credit card fraud.

Basically, it is a not-for-profit membership association, solely dedicated to the prevention of financial crime. Founder retail credit members of CIFAS agreed to exchange information to prevent fraud and CIFAS was initially established as an Association under the auspices of the Consumer Credit Trade Association. It was incorporated as an independent company limited by guarantee in 1991.

CIFAS provides a range of fraud prevention services to its members, including a fraud avoidance system used by the majority of the UK's financial services companies. It will also lobby to government, the media and the business community, and provides best practice guidance, training and networking opportunities for its members.

In practice, CIFAS members are required to operate effective in-house procedures in order for fraud or attempted fraud to be identified. The cases are placed into classifications known as the CIFAS categories. Basic information on each case is filed on the CIFAS database. The information is then transferred electronically to all the agencies.

When an address against which a fraud has been filed is searched by any other member through any participating agency, the searching member is made aware of the need to investigate through a warning, followed by the CIFAS category, and the identity of the member filing the data. The member is then required to conduct a full investigation into the case.

CIFAS currently uses four different fraud prevention agencies, namely Experian Ltd, Equifax plc, MCL Software Ltd and Callcredit plc. They process the CIFAS information and separately provide credit referencing services to their clients.

When a fraud is identified by a CIFAS member organisation, a warning is placed against the address or addresses linked to the application or account. The text of the warning says 'CIFAS – Do Not Reject – Refer for Validation'. This warning records the name used on the application or account, but may not be the name of the potential fraudster, bearing in mind that they may have aliases.

*The CIFAS
warning is then
displayed*

The CIFAS warning is then displayed on the fraud prevention agency record of any person who has a link with the address. Any CIFAS member organisation subsequently checking that address sees the CIFAS warning. The warning does not mean the address has been blacklisted, but means that extra precautions should be taken to ensure the application or account that has prompted the check of the address is genuine, and this protects the address from further misuse.

The CIFAS website address is www.cifas.org.uk.

A4E Northern Ireland Personal Accident Register

It has been perceived that personal injury claims in Northern Ireland have been the source of Social Security fraud as well as a method of funding crime. For those reasons, the Northern Ireland Personal Accident Register (NIPAR) was established.

Insurers are encouraged to register details of persons claiming personal injury from motor accidents or otherwise and, like MIAFTR and CUE, NIPAR will issue a match report if the claimant has been registered previously. The equivalent for the Republic of Ireland – **The Insurance Link Anti-Fraud Register** – has also been set up. It can be seen that there are now a number of useful databases that will enable insurers to defeat non-disclosure and fraud.

However, the greatest effect will not be obtained until all the various registers are linked. Indeed, it remains a hope that one day the DVLA records will be available for searching along with all of the other registers just from one input at either inception and/or claims time.

A4F Credit reports

As there are a number of databases and software companies utilised by financial institutions generally to check creditworthiness before, say, providing loans or offering credit, aside from selling insurance policies, this increases the opportunity for individuals to validate their own credit status, and ensure that there are no spurious entries against their names and addresses, otherwise this could adversely affect their right to credit. This aspect has already been mentioned in chapter 5.

Ensure that there are no spurious entries

Companies like Experian and Equifax are used by both insurers (and the larger intermediaries) and members of the public for various reasons, including, for example:

- Voters roll checks: clearly this will assist with tracing errant third party debtors, from whom a recovery is being pursued. The 'history' recorded may indicate the movements of an individual, and even if the debtor may not be traced, there may be records of relations who may be able to assist.
- Credit checks: this information may be recorded on the voters roll database, but can also be sought as a separate check, especially by individuals, in order to establish what firms etc. have undertaken credit checks against them.
- It may also be suitable for businesses, especially insurers, to undertake business credit reports. This may include the information under the following headings:
 - company accounts;
 - credit check;
 - credit rating;
 - company profile;
 - credit reference;
 - credit limit;
 - company directors; and
 - County Court judgments.

This will enable identification of the trading address

A more detailed profile on a company could feature information in the following areas:

- **Statutory Information on a particular company**, including, for example, the official registered office address. This will enable identification of the trading address and, phone number, plus previous company names. The Standard Industry Classification (SIC) codes can be used to classify business establishments and other statistical units by the type of economic activities the company is engaged in. An overview of a company's financial status may be required based on the latest years accounts filed at Companies House. This could be over a three, four or even a five year period, for example.
- **A summary of the issued capital, and how that is distributed amongst the shareholders** may be sought together with information on the company ownership and group subsidiaries. This could extend to a share breakdown to demonstrate how much capital has been put into the business. The amount of share capital indicates the shareholders' (financial) faith in the company. It also highlights who is funding the company. In addition, it may be worthwhile to ascertain the auditor name, and the comment that was made by the auditor on the latest/last company accounts.
- **Comparative data may be required, in order to determine if the company is moving in the right direction**, and perhaps to establish whether the assets out-number the short-term liabilities. Balance sheets may be checked to determine the company's solvency.
- **A report may be required on the officers of the company, reviewing their individual track record.** This could include the following:
 - director/company officers' full name, address and date of birth;
 - date they were appointed as a director;
 - position in the company;
 - indication of any other directorships.

Additionally, particulars of High Court claim forms, winding up petitions, receiverships, meetings of creditors, administration orders and liquidations may also be acquired. This gives an insight into the legal status of the company, the likelihood of failure, plus the history of the officers of the company.

Credit profile

This section brings together vital credit profile information such as:

- Full CCJ (County Court judgment) data including date, amount, court and status, allows assessment of the company's ability and willingness to pay its suppliers.
- Payment profile allows comparison of payment trends and liquidity with companies in the same industry.
- Vital signs may be revealed by scrutinising the last two years' Companies House filings.
- Credit score, rating and limit.

With non-limited companies, it is notoriously difficult to secure business information as there is no requirement for these businesses to file accounts or other documents with Companies House. However, extraneous particulars may be collected, but the source of the material may have to be verified. Perhaps the best evidence may be HMRC tax returns.

How it works**Credit referencing on claims: an example**

A motor insurer (A) receives a claim from a policyholder (B), who has been insured with that particular insurer for, say, four months. B indicates that both of his 4 x 4 vehicles were stolen from his drive. Both vehicles are each worth in excess of £20,000.

Whilst there is nothing to indicate that the theft circumstances are dubious, enquiries with the hire purchase companies, who each have an interest in the vehicle, reveal that there is considerable outstanding finance on each of the vehicles, and also that the policyholder has defaulted on the payments over the last couple of months.

The policyholder has his own business, a limited company and, therefore, the insurers undertake credit reference checks, in order to establish the precise financial position. It may, for example, reveal that the company has experienced severe financial difficulties, and that it has not made a profit for a number of years. In fact, it is entirely possible that the company has been running at a loss for a considerable period.

Whilst the financial information that is accumulated may not automatically indicate fraud, it may be circumstantial, and sufficient to generate further enquiries. For example, interviews of, say, former directors may prove to be illuminating. If, of course, there are CUE matches, then there will be opportunities to secure valuable information from other insurers.

It should be remembered that credit referencing may take place at the underwriting stage (usually at either inception or renewal) in order for the underwriter to establish that a commercial business is in a stable financial position. Invariably, it will be only commercial concerns that will be subject to credit scrutiny.

Question 2

Which database would be used by insurers to establish whether a vehicle has previously been rendered a total loss?

A4G Claims support software

A number of insurers now utilise software to assist with the calculation of low to mid-value injury claims. Basically, a claims handler is taken through an interactive questionnaire, entering documented medical details of the injury onto the software program. This will then produce a value range for the injury based on, say, its own database of information collected from previous user settlements which populates the database, although it can be based on previously created value parameters. This may be based on settlement figures based on all the company's personal injury claims, and perhaps adjusted by, say, factoring in the current claims values.

The result is that the handlers are bound by the figures entered on the program. However, whilst this may result in a consistent and disciplined approach, it may lead to inflexibility when negotiating with the claimant's solicitors. Alternatively, a claims department may wish to give their supervisory or managerial staff a discretionary right to override the range quoted on the software.



This may be based on settlement figures

It is also asserted in some quarters that the system is primarily designed to cut the cost of claims to industry by reducing the value of settlements to the injured victim. Few claimants are prepared to pursue what are relatively modest claims all the way through the litigation process to a court trial.

An example of a company which supplies such software would be Colossus (Computer Sciences Corporation (CSC)).

An alternative to this would be a database based on the company's own settlements, current court settlements and/or the JSB Guidelines on the Assessment of Personal Injury Valuations.

A4H Voice recognition software

*Essentially
a form of lie
detector*

This is a euphemistic phrase for what is essentially a form of lie detector. Basically, voice recognition technology picks up on changes in vocal tone to spot fibs. It is used by councils to potentially identify benefit cheats. Common indicators that a caller may be lying include hesitating or changing answers to original responses. Staff are alerted to this via an audio system.

Alongside the VRA (Voice Recognition Analysis) system, handlers may use a special script asking set questions. The open questions lead on from one another and help the team get the correct information as well as flagging up potentially fraudulent claims.

However, the process is not entirely fail-safe. Claimants may be genuinely nervous on the telephone, especially if they feel that they are being interrogated. In fact, there may be those who suffer with stammers or stutters, and their (natural) behaviour could easily be misconstrued.

B General claims handling principles applied to motor

It is only when an accident or loss occurs that the benefits of the insurance policy become readily apparent. Moreover, the extent of the cover and the level of service offered by the insurer are then put to the test.

Whilst certain classes of motor insurance, especially private motor, are sold largely by price, nonetheless, a poor perception of claims handling can and does affect policyholders' decisions whether or not to renew with their current insurers. The majority of insurers recognise the benefits of retaining good risks at renewal, the most obvious being the economic advantage of processing a renewal, rather than attempting to attract new business and create a new policy.

The role of the claims department is to:

- provide a swift, efficient and technically knowledgeable claims service;
- ensure that only valid claims are paid;
- indemnify the policyholder or whoever is entitled to indemnity in accordance with the cover available to that particular person;
- consider and, if appropriate, handle any third party claims whilst protecting the policyholder's interests; and
- protect the central pool of premiums against overpayment, fraud and expenses incurred as a result of inefficient claims-handling processes.

The claims department is the 'shop window' of the insurance company, and it is when the conditional promise of the insurance contract becomes a reality.

As with other types of insurance, there are a number of general principles that apply to claims. Most are the subject of specific parts of the policy wording which, in turn, support the underlying common law principles.

*A number
of general
principles*

B1 The insurance contract

As previously indicated, like all other types of contract, the following are essential for an insurance contract:

- An agreement, which is usually demonstrated by offer and acceptance.
- Consideration, which can include a promise to pay.
- An intention to create legal relations.
- The agreement must be in a form recognised by law.
- The parties must have the capacity to contract.

In the past, the offer would have occurred when the proposer submitted a proposal form to an insurer. This situation has become more complicated as both the telephone and the internet are frequently used to arrange inception of policies. If the risk as proposed is acceptable, and the premium paid, then the contract is complete.

If, however, the insurer suggests that any policy is to be subject to specific terms, and the payment of premium has either not been made or accepted, then the insurer has, effectively, made a counter offer.

B1A Insurance contracts and insurable interest

Perhaps the one principle that does not appear as such in the policy wording itself is that of insurable interest. In order that any person can benefit from an insurance policy, they must show that they have an insurable interest in the subject matter. In other words, they must be able to demonstrate that the subject matter exists and that they will benefit from its continued existence and will suffer financially by its loss. This is to avoid an insurance policy being used as a form of gambling.

There are, in fact, four basic elements to insurable interest, and they are:

- There must be a subject matter to the insurance policy (e.g. the vehicle insured).
- There must be an economic or financial interest in the subject matter of insurance.
- The interest must be current and not an expectancy.
- The interest must be a legal interest.

As indicated in other texts, it is the interest which is insured.

The comprehensive motor policy is something of a hybrid inasmuch as it covers both property and liability. However, it is generally accepted that the vehicle or vehicles covered by the policy form the subject matter of the insurance and anyone claiming indemnity must be able to demonstrate an interest. Those who potentially may be able to demonstrate an interest are as follows:

- Anyone who is driving or using a motor vehicle has an interest in any liabilities incurred due to their use of it.
- The owner of the motor vehicle in question has an interest in the vehicle itself. Insurers generally accept that members of the same family, particularly husband or wife, have a joint interest in the vehicle.
- Anyone who borrows a vehicle may have an interest as bailee. They may insure it under their existing policy and specifically arrange comprehensive cover, subject to the insurer being aware of all the facts. For occasional use it would normally be advisable for the existing policy held by the vehicle owner to be extended to cover the additional driver.
- A person renting a vehicle may, by the terms of the rental agreement, be liable for loss or damage sustained. The liability may be no greater than any excess or collision damage waiver imposed by the rental company and that element of loss is quite often insured under a special policy arranged by the rental company but paid for by the hirer.
- An employee may have an insurable interest in a vehicle supplied to them by the employer if the terms of its use impose some responsibility on the user, perhaps for social, domestic and pleasure use.
- A hire purchase or lease company may have an interest in a vehicle to the extent of their continued ownership under the terms of the contract or lease agreement. Their interest is normally specifically catered for in the policy by stating that any payments under the own damage section will be paid to the hire purchase or leasing company up to the amount of their outstanding interest. By stating this in the policy the principle of insurable interest is highlighted, the insurer is protected from becoming guilty of conversion if they take over the rights to any salvage and the agreement entered into between insurers and Hire Purchase Information Ltd is supported.
- It is also possible that the vendor of a vehicle may have an insurable interest, if they have retained the vehicle as security against payment of the price.



How it works

Insurable interest: an example

Difficulties could arise where the registered keeper of a vehicle agrees to 'permanently loan' a vehicle to a friend, and the latter is required to insure the vehicle, and pay the premiums. The registered keeper perhaps never drives the vehicle, and the person borrowing the vehicle is the 'sole user', and is insured on this basis. Such an arrangement should be disclosed at inception to the vehicle insurers, especially as any claims payment should be to the vehicle owner, where the vehicle in question is rendered beyond economical repair.

Similarly, if the registered keeper pays the premiums, then again the arrangement should be revealed from the outset to the insurers, as this is clearly a material fact, and failure to disclose the situation may result in the policy being avoided.

B2 Utmost good faith

Insurance contracts are entered into on the basis of utmost good faith (*uberrima fides*). While both parties to the contract are bound by such a principle, its application was felt to be important because the precise details of an individual insured risk are far more likely to be known by the prospective insured. Recognition of the unequal position of each party has resulted in the requirement of utmost good faith.

It effectively imposes two different duties on the parties to the contract.

- A duty to tell the truth. That is, there must be no misrepresentation any matter relating to the insurance.
- Additionally, there is a duty not to hide anything that is pertinent to the risk.

For the insurer, this could mean the following:

- not accept an insurance which is not enforceable at law;
- the underwriter must write business only for which they are authorised to do so;
- the underwriter must know that it has sufficient funds to pay any potential claims;
- to advise the policyholder of any changes to the terms of **cover** at **renewal**.

For the policyholder, the requirement is to disclose all material facts pertinent to the risk (which is those facts likely to influence an insurer in the acceptance and assessment of this application). Failure to do so could invalidate the policy. Usually, the proposal form will contain a warning that if the policyholder is in any doubt as to whether a fact is material, then they should disclose it.

In certain situations the Financial Ombudsman Service will apply a proportionality principle, when considering claims. What does this mean? From an insurer's perspective, it basically means that the insurer's liability for a loss, following a claim, will be reduced to reflect the premium paid by the policyholder, where the policyholder has misrepresented the true nature of the risk, or has failed to disclose material facts.

*Apply a
proportionality
principle*

For example, a proposer may fail to reveal a conviction at inception and had they done so, then the premium would have been 50% higher than that calculated. Let's say that the premium paid was £300, but the 'true' premium should have been £450. The policyholder's vehicle is then involved in an accident (say the driver loses control, and crashes into a wall). The vehicle is rendered beyond economical repair, and the pre accident value is £8,500. The insurers will then only pay £5,667 to the policyholder, by applying the principle of proportionality, this sum being commensurate with the premium paid. This sum is calculated as follows: $8,500 \times 300$ divided by 450, equals £5,667.

The application of proportionality may not always be an easy option. For private car business it may be possible to calculate the correct premium, as the premium software programs facilitate such an option, but this is not necessarily available for all classes of motor business. Additionally, and depending on the nature of the non-disclosure/misrepresentation, the insurers may be able to consider avoidance, on the basis that it would not have insured the risk.

B2A Reform of insurance contract law

Steps have now been taken towards revising the law relating to insurance contract law by the introduction of the Consumer Insurance (Disclosure and Representations) Bill. It was published by the Law Commission in December 2009. At the heart of the Bill is the abolition of the duty currently imposed on consumers to volunteer material facts, over and above what may have been requested in questions posed by the insurer, to fully assess the risk presented. Warnings in the proposal process like "if you are unsure whether a particular fact is material, then you should disclose it", will cease to have any significance once the Bill becomes law.

Once the Bill is law, the duty of disclosure will be replaced by a requirement on consumers to take reasonable care not to make a misrepresentation.

B2B Both parties are to be truthful during the negotiations of the contract

Require the proposer to sign a declaration

The common law doctrine of utmost good faith was, to an extent, modified by the contractual terms of the insurance policy. Most classes of business still require the proposer to sign a declaration at the bottom of the proposal form. This signed declaration warrants the truth of the answers given to the questions on the form, and it is accepted that the declaration (and the information supplied on the proposal form) is to be regarded as part of the contract, if not its core details.

However, the policyholder, by signing the declaration, verifies the veracity of all the information supplied and, as such, it all could be theoretically considered material. In reality, however, it is probable that not every answer will be used to judge the risk.

In 1994, the House of Lords delivered a judgment in the case of *Pan Atlantic v. Pine Top* (1995), which (for the time being at least) outlines the principle to be adopted, when considering whether a particular fact is to be deemed 'material'. By a majority decision, it was decided that a fact can be material even if the fact *per se* would not have a decisive influence on the prudent insurer (the objective test).

Provided the fact in some way affects the prudent insurer's assessment of the risk, then it is to be considered material. In addition to the above objective test, it was also held that it would be necessary to show that the particular fact or facts would have induced the actual underwriter (a subjective test) to enter the contract. In order to support such a contention, it would (if the particular matter ever proceeded to trial) be necessary to call that underwriter to give evidence. Lord Mustill did stress that once a court had decided that a fact was material, it would be extremely difficult for an insured to persuade the court that the non-disclosure had made no difference.



Reinforce

There are certain facts which do not need to be disclosed – it is suggested that you refer to study text P05 for details.

There have been one or two 'grey' areas, which have led to an element of confusion, and a referral to the courts has been required.

As advised in chapter 4, there may be matters which, at the time the policy was proposed, had yet to be resolved. For example, the proposer may be the subject of a pending RTA prosecution, to which they intend to plead not guilty. Such a possibility must be regarded as material, even if the proposer is subsequently found to be exonerated. Hence, it will be necessary to disclose the fact.

What if the fact that was not disclosed to the parties was due to events beyond the control of the parties at the time, deemed to be immaterial? In the case of *Drake Insurance PLC v. Provident Insurance PLC* (2004), a policy was issued to S, with his wife (K) as a named driver, who had been involved in an accident a year earlier, and this was disclosed to the proposed insurers. At the time of the proposal, the question of liability had yet to be resolved, but was treated by the 'new' insurers as a fault incident; but due to the points system in operation, this did not affect the premium.

The policy was renewed in February 1996, but prior to then the accident involving K was deemed not to be her fault. However, S was convicted of speeding, again prior to renewal, but this, too, was not disclosed (along with the accident being resolved in K's favour), and, again, would have attracted points on the insurer's scale.

Insurers endeavoured to avoid the policy, but it was held that the speeding conviction was a material fact. The accident would not have counted at the time of renewal, and the purported points total arising from the conviction would still not have made it material.

How it works

Utmost good faith: an example

Let's say that a policyholder, at the time of completing the proposal form, fails to answer the question relating to convictions correctly, and does not reveal a drink-drive conviction sustained three years previously (even though the relevant question on the proposal form asks for motoring convictions sustained within the previous five years).

This is a failure to disclose a material fact, and the policyholder has misrepresented the true position. If the misrepresentation is deliberate, then the insurers would be entitled to avoid the policy. The principle of utmost good faith has been fundamentally undermined.

Question 3

What are the four basic elements to insurable interest?



B3 Indemnity

As indicated in chapter 3, motor policies are essentially policies of indemnity. In other words, subject to policy limits, exclusions and any applicable excesses, the policyholder should be placed in the same position after a loss as they enjoyed immediately prior to the loss.

The principle of indemnity is usually mentioned in the operative clause of the policy and may, in addition, be the subject of a definition. The obvious exceptions to the indemnity principle usually found in a motor policy are those relating to personal accident benefits where fixed sums are paid to the policyholder and/or spouse in the event of death or serious disablement, such as the loss of an eye or limb.

The New Car benefit is triggered

The 'New Car Benefit', whereby the insurer will replace the policyholder's damaged/destroyed or stolen vehicle, subject to certain criteria being met, facilitates a situation where the policyholder receives a settlement greater than indemnity. For instance, a policyholder's vehicle, comprehensively insured, may be involved in a non-fault accident and the cost of repairs amounts to, say, £9,000. However, if this exceeds the percentage cost of repairs, in relation to the manufacturers list price, and the New Car benefit is triggered, then the insurers may buy the policyholder a new vehicle which may cost say £15,000.

However, in the example mentioned above, the insurers of that vehicle will only be entitled to recover the original cost of repairs (i.e. £9,000), and the insurers may then be obliged to allow the policyholder's no claims discount, even though they have not effected a full recovery.



How it works

Indemnity: an example

If the policyholder's vehicle is rendered beyond economical repair in an accident, and is comprehensively insured, then should the policyholder seek indemnity, the insurers (through a vehicle engineer) will calculate the pre-accident market value of the vehicle. This is based on the make, model, and date of the vehicle's registration. They will take account of the condition of the vehicle, the mileage covered, the bodywork and mechanical condition, any pre-accident damage etc. (tread depth of tyres removed as this would be considered under 'condition of the vehicle').

Invariably, reference will be made to one or more vehicle guides in order to calculate an accurate valuation, although it should be borne in mind that this is more an 'art' rather than a precise science. Insurance companies employ qualified engineers to assess the value of the vehicle and they will make reference to guides such as Glass's guide. The engineers will place an accurate pre-accident value on a vehicle which may be valued at retail or trade price depending upon the status of the policyholder. Where a policyholder is a motor trader whose business is in selling vehicles then the trade value would be appropriate. Private individuals would almost always be offered a figure close to or equivalent to the retail value, if the vehicle is in good condition throughout, and the mileage is similar to that given within the guide for the vehicle year etc.

B4 Contribution

As with some other types of insurance, the term **contribution** has two meanings in motor insurance, both of which stem from the principle of indemnity. The more obvious meaning relates to the way in which two or more insurances will contribute to the same loss in order that the policyholder does not gain more than an indemnity.

Again, as with other types of insurance, motor policies contain either contribution or non-contribution clauses and sometimes both; however, the combined effect of having such clauses in any two policies will invariably lead to the loss being shared equally. One exception to this is where the policyholder is driving someone else's car under the 'driving other cars' (DOC) section and there may also be cover available to them under the policy covering the car itself. Such situations are usually catered for under a market agreement under which it is agreed that where contribution would otherwise be called for, the insurer covering the vehicle will pay the whole claim.

Contribution can only follow indemnity

Contribution can only follow indemnity and, therefore, does not apply to any benefits such as the personal accident benefits mentioned above.

There may often be dual insurance where the policyholder is a commercial concern, and has a commercial fleet (or if appropriate a motor trade policy). As we have seen in Chapter 4 (Section A6B) the insurance certificate wording for a motor fleet policy may provide cover to any person driving with the policyholder's permission for '...any vehicle owned, hired, borrowed or leased by the policyholder.' This will invariably provide cover to contractors or sub-contractors who should have their own motor insurance cover.

The other usage of the term 'contribution' relates to **betterment**. This occurs where, for instance, the condition of the insured vehicle is better after the loss and repair than it was prior to it. Betterment is often applied to consumable parts of the car such as tyres, batteries, exhausts etc. and is sometimes applied to repaired or replaced body parts that might have suffered from corrosion.

Betterment contribution is not applied as often these days as it was at one time. The Financial Services Ombudsman has stated that proper interpretation of the law will call for betterment to apply only where the value of the vehicle as a whole has been enhanced by the repair.

B5 Subrogation

Subrogation is another consequence of indemnity. In common law, the right to subrogation does not attach until indemnity has been provided, but at that time the insurer can then stand in the shoes of the policyholder in exercising any rights that the policyholder has of recovery from a negligent party.

However, as with other types of insurance, the motor policy will contain a subrogation clause which will give the insurer the right to exercise subrogation as soon as a claim has been intimated. This gives control of the claim to the insurer and, in particular, enables the insurer to begin to pursue recovery before an actual outlay has been incurred.

Subrogation does not extend to what are policy benefits (i.e. personal accident benefits) that relate to the death of a spouse, loss of a limb etc. This is because these payments are a fixed sum, and are not made as a result of indemnity.

B6 Reasonable care

A term of the motor policy will call for the policyholder to take all reasonable steps to protect the vehicle from loss or damage and to keep it in a roadworthy condition. The law relating to **reasonable care** clauses continues to change and, with particular reference to motor insurance, the Financial Ombudsman has recently had a number of things to say. The common feature seems to be that insurers would have to prove a high level of 'reckless disregard' for the safety of the property before they can apply the policy condition in order to repudiate a claim. The obligation is not merely to avoid negligence, otherwise this would defeat the intention of the policy in relation to the third party liability section.

In addition, the Financial Services Authority's Insurance: New Conduct of Business (ICOBS) calls for there to be a connection between any breach of condition and the loss itself which, when applied to motor insurance, would, for example, deny an insurer the right to repudiate if 'bald' tyres did not contribute to an accident.

*A high level
of 'reckless
disregard'*

B7 Proximate cause

As has been explained in P05, there is no definitive definition of the phrase 'proximate cause', although the general consensus is that it is the main or dominant cause.

Perhaps an obvious example of the operation of the principle in relation to motor insurance is where two electrical wires chafe, and this causes a fire. The gradually operating cause (wear and tear on the two wires) will not be covered, but if the policyholder has comprehensive or third party fire and theft cover, then the 'fire' itself will be.

C General claims handling procedures applicable to private motor, commercial motor and motor trade insurance

C1 Claims handling

We shall look at the general claims handling philosophy adopted by insurers, in respect of each type of claim. It must be emphasised that the doctrine outlined will often be the basic approach, and there may be variations in philosophy, from insurer to insurer.

Generally speaking, the claims handling techniques are similar, irrespective of the class of business, whether it is private motor, commercial motor, motor trade (road risks) or fleet. There may be, however, a different psychology within insurers to the risks being handled and this can manifest itself in a different structure within the claims organisation. For example, if a particular insurer has a considerable amount of fleet business within its risk portfolio, then it may create teams of claims handlers to deal with any claims reported on such risks. In fact, certain huge risks may demand one dedicated claims handling team.

There are various reasons for this: if the risk is perceived as lucrative, then the insurer may decide that a dedicated claims handling team should be allocated to that risk's claims, as this enables expertise to be pooled and targeted. The larger risks may also have a greater diversity of the types of vehicles being insured, and even though different areas of the business may be handled by different companies owned by a parent company, it will perhaps suit the client to have all motor insurance policies in the hands of one insurer.

To ensure that the risk is accurately assessed

With fleet risks, the accuracy of claims reserves and costs becomes of paramount importance at renewal, the obvious reason being to ensure that the risk is accurately assessed, both for the premium charged, and any terms being imposed.

It is also possible that on the larger fleet risks, there will be say, no list of named drivers, and the policy information given on the claim file may be scant. This is indicative of a favourable risk, which may well pay a considerable premium. The claims approach will be that there is unlikely to be any reason to either delay handling of, or repudiate the claim.

Where the drivers are not listed on the policy, the claims handler will usually have access to the certificate wording which may state that any driver may drive the insured vehicles with the policyholder's permission. On large fleets, it may be the case that it is not practical to list all of the vehicles on the policy and again, the claims handler should check the wording on the certificate.

The introduction of the Motor Insurance Database for fleets means that, apart from temporary vehicles on cover for less than 14 days, vehicles have to be notified to the MID within 14 days of being placed on cover. Insurers may check the MID and/or its own records, but if there is any doubt as to whether a particular vehicle is on cover (following notification of a claim), then it may check the position with the broker.

The necessity to verify the position is because a number of fleet insurers will adjust the premium on an annual, quarterly, half yearly or even on an 'as and when' basis, sometimes relying on the declarations compiled by the broker on behalf of the insured. For example, a vehicle may be on cover with a particular insurer, but not recorded on the MID, due to the fact that it is on cover for less than 14 days. It is always possible that such a vehicle may be the subject of a claim.

Perhaps the one type of motor policy where the claims handling technique may be different is the motor trade (internal risks or combined) policies. The simple reason for this is due to the nature of the cover offered. The cover may include material damage, including vehicles in the policyholder's custody and control, plus liability to others, including damage to say, commercial loads held in trust by a customer of the policyholder. This liability cover will usually incorporate PL and EL cover, plus products liability, and, thus, different considerations (and handling techniques) will be applied.

The cover may include material damage

If, of course, the motor trade policy has a road risks section, then the claims handling here will generally follow the philosophy and techniques that apply to other motor policies.

As with large fleet policies, the claims file will not always hold details of the vehicles and drivers and claims handlers should check the wording on the certificate to establish the cover provided.

Irrespective of the class of motor risk insured, service for those claims that are valid, remains paramount.

C2 Total loss claims

The standard motor policy states that the most that the insurer will pay is the market value of the vehicle at the time of loss or damage. This figure then becomes a ceiling and if the cost of repairs equals or exceeds that amount then the vehicle is declared an insurance write-off. A vehicle repair estimate does not have to equal the market value to make it uneconomical to repair. An engineer may value the repairs at a lower percentage but note that further damage could be found upon stripping the vehicle to begin repairs.

Various terms are used for this situation but they amount to much the same – 'write-off', 'beyond economical repair', 'total loss'.

'Total loss', as defined, means the entire loss of the object insured, and is normally used with reference to items of transport (e.g. vessel, vehicle etc.), although it can be used in relation to any item. Total loss is then sub-divided between **actual** or **constructive**. An actual total loss is when the object is destroyed or so damaged that it is completely beyond repair. This term may also be used to describe the situation where the vehicle is stolen and not recovered. A constructive total loss is where the item is economically beyond repair, in that the cost of repair exceeds the value of the item.

C2A Market value

What constitutes **market value** has been the subject of much debate and even within the industry there is no total consensus. However, if we accept the premise that the object is to provide indemnity – i.e. to put the policyholder back in the same financial position that they enjoyed prior to the loss – then the true measure must surely be the amount that it would cost to replace the vehicle with one of the same make, model and age, in the same condition and with similar mileage. Some will argue that it is the amount for which the policyholder could sell the vehicle in a private sale.

In order to ascertain the cost of second-hand vehicles, reference is made to trade guides such as Glass's, CAP's etc. These guides will show the average prices for which vehicles are bought and sold within the motor trade – trade and retail prices respectively. Adjustments have to be made for condition below that for which a car would be sold from the garage forecourt and also for higher or lower than average mileage. Allowance has to be made for the fact that these prices may vary regionally and that the asking price on a forecourt can often be bettered for a cash purchase, i.e. one where no finance or part exchange is required.

The engineer may also need to see the Vehicle Registration Certificate, Service History, MOT Certificate and purchase receipt in order to assess the value of the vehicle, particularly in cases of a valuation dispute or in fire or theft cases, where it is not possible or not useful to inspect the vehicle.

The main guides are only available to the motor trade and to insurers. For this reason, further guidance may have to be sought from guides available to the public such as Parker's. In this way the value can be demonstrated more easily to the policyholder.

Where the vehicle is too old for the main guides or where it is unusual in some way then a research of actual vehicles for sale may have to be undertaken. The case of *Darbishire v. Warren* (1963) established the fact that the owner of an old car cannot expect to have it repaired at a cost greater than its market value unless it is unique or irreplaceable. The vehicle in this case was a 1951 Lea Francis. Where it is readily replaceable the measure of indemnity will be determined by the market value.

Following settlement on a total loss basis, the subject matter of the policy may cease to exist either because it has been disposed of (due to the fact that it has only salvage value), or, in the case of a theft, the vehicle has never been recovered, following its original misappropriation. However, this situation does not affect the operation of any 'driving other cars' section of the policy (see chapter 2, section A2 and chapter 3, section B4).

C2B Salvage

If a claim is being settled on a total loss basis, then the insurer will invariably retain the **salvage** and will sell it to defray costs. Due to the declining value of scrap metal, the market for salvage has contracted, and depending on the ABI Code of Practice for salvage classification, the vehicle will either be scrap only, broken for parts, or repaired and then returned to the road.

The ABI Code of Practice states that there are four different categories:

- Category A:** scrap only (i.e. with no economically salvageable parts and which is of value only for scrap metal), e.g. total burn outs.
- Category B:** break for spare parts if economically viable (excluding any residual scrap value).
- Category C:** repairable but repair costs exceed the vehicle's pre accident value (PAV).
- Category D:** all other repairable vehicles.

The ABI Code states that categories A and B must never reappear on the road.

Motor vehicle salvage has been an opportunist's source for fraud. The identity of broken or crushed vehicles were taken and used on stolen vehicles – 'ringing'. Vehicles could be cheaply and unsafely repaired before being sold on with the history hidden or salvage being re-used in insurance accident or theft claims.

The insurance industry, in conjunction with salvage buyers and Government departments, have sought to control the disposal of salvage. The first line of defence was to deny policyholders' requests for retention of salvage, although in most cases the policyholder would not wish to retain it. Exceptions are where the value of the vehicle is so low as to make even moderate cosmetic damage uneconomical to repair. Further insurance cover on the vehicle might depend upon proof of repair.

As indicated above, all salvage is categorised in accordance with guidelines issued by the ABI. All but the very lowest value category D vehicles are reported to the DVLA and they will enforce rules that will ensure either no further registration of a vehicle or various levels of compulsory inspection before a vehicle registration document is granted. The DVLA can and does arrange for a random inspection of vehicles that have previously been advised as being insurance write-offs. Any vehicle which is classed as Category C must have a Vehicle Identity Check (VIC) before it is allowed to return to the road.

All salvage is categorised in accordance with guidelines

As a further safeguard against fraud, insurers register through the ABI all total losses and thefts on an industry computer database. Subsequent insurers will then be alerted if a further total loss or theft claim arises on the same vehicle.

Under the terms of the standard motor policy, any cash (or, in reality, cheque) settlement will be made to any known finance company which has an outstanding hire purchase or lease agreement on the vehicle. In practice, this only occurs where the vehicle is being treated as a total loss and the insurer is retaining and selling the salvage. If this were not done then the finance company may be able to claim the value of the vehicle from the insurer under the common law doctrine of conversion.

Insurers will ask for details of any finance at inception and/or claim time, but to safeguard against missing such vital information a check can be made with HPI Ltd – now automatically done when a vehicle is registered on MIAFTR2 – who hold a computer database of the vast majority of finance agreements. Salvage companies buy vehicles based upon the probable profit margin from resale either as a whole repairable vehicle or as parts.

Most insurers have contracts with one or more major salvage dealers which work on a swings and roundabouts basis, with salvage bought at a fixed percentage of the vehicle's pre-loss market value, i.e. the amount for which the claim was settled with the policyholder.

C3 Accidental damage claims

With accidental damage claims, service is paramount, and once the insurer has completed the indemnity formalities then the process of claims service begins. As claims are often notified by telephone, the claims handler will normally be able to determine whether indemnity is to be granted there and then.

The policyholder may already have secured estimates

If the policyholder's vehicle is damaged, then the initial question is to determine whether the vehicle is capable of being repaired. At times, this may be obvious, hinging on the description of the damage. The policyholder may already have secured estimates or, as an alternative, will be directed towards an approved repairer, in order for the work to commence immediately.

Whilst the vehicle is undergoing repair, then the policyholder may be able to utilise a courtesy car, either one owned by the repairer, or a hire or leased vehicle supplied by another company, but provided under the terms of the policy.

Once the vehicle is repaired, then the policyholder will be required to undertake a cursory check and sign a settlement or collection note, indicating that the standard of repair is to their satisfaction, although such a statement will not normally be treated as binding, especially as any defects in workmanship may not be immediately noticeable.

At the time of collection of the vehicle, the policyholder will pay any liability for which they are responsible, e.g. excess, VAT element, contribution etc. If there are no problems with the level of repair, then the repairer will submit their invoice to the insurer.

Whilst the repair work is being completed, the insurer may in the meantime pursue recovery of their anticipated outlay, from any party that is deemed to be in some way responsible.

Insurers will invariably adhere to these steps, irrespective of the type of motor policy under which the claim is being pursued.

C4 Excess application

Generally speaking, all applicable excesses on an insurance policy have to be added together, where there is a claim under that policy. So there may be an accident where the driver of one of the vehicles is 22 years old (which will generate a young driver's excess of say £250), and in addition the same policy may also be subject to a policy excess of £250, producing a total of £500.

However, where at the time of the accident or loss, the vehicle was parked and unattended, it may be difficult to determine who was in charge for the purposes of determining the level of excess. A pragmatic approach is required and perhaps a few basic guidelines may be followed:

- If the policy is on an owner only driving basis, it would be assumed that the policyholder was in charge.
- The last person to drive the car would normally be assumed to be in charge, especially if that person was also going to be the next driver.
- Where a named or authorised driver has previously used the vehicle, but returned it and the vehicle keys to the policyholder, then it should be accepted that the policyholder was in charge.

All of the above should apply, unless there is clear evidence to the contrary.

C5 Fire and theft claims

The basic principles used to consider both fire and theft claims are fundamentally the same.

With both types of losses, the claims handler would wish to be satisfied that the original cause of the loss was genuine, that there has been no breach of policy condition, and that the consequences of the loss are covered.

With fire and theft claims, there is always the possibility of fraud, the most common (unacceptable) motives being:

*There is always
the possibility
of fraud*

- The policyholder's poor financial situation, the result of which they are driven to set light to the vehicle, and then concoct the loss circumstances, in order to seek compensation.
- The vehicle ceases to run and/or its general unroadworthiness leads the policyholder to again deliberately set fire to the vehicle, and then allege that they have been the subject of targeted vandalism.

Insurers will often scrutinize fire and theft claims closely, in view of the propensity to be the subject of fraud, and this may entail a thorough examination of the loss circumstance. Furthermore, sight of the police crime report, compiled following a theft, may be beneficial, and a form has been devised by ACPO to facilitate such access.

With a fire, a report will be created by the attending fire brigade, as they would wish to determine the actual seat of the fire. Insurers may seek such a document, especially if there is any doubt as to the precise cause.

Additionally, the insurers may conduct database enquiries to ascertain the policyholder's general financial status and to establish whether there is a history of pecuniary difficulties, perhaps evidenced by the fact that the policyholder has repeatedly moved house, and has a series of unsatisfied judgments recorded at one, if not more, of the addresses.

Of course, if there are any witnesses to the occurrence, then a statement should be sought, in order to validate the loss circumstances. This may be particularly important where the car keys that at some point were in the possession of the policyholder, have been used to abscond with the car. As explained in chapter 3, section B5, most motor policies now have a 'keys clause', whereby the loss or damage arising from theft will not be covered if the ignition keys have been left in or on the vehicle.

The position has been clarified to a certain extent at least with the recent Court of Appeal decision in *Hayward v. Norwich Union* (2001).

The claim arose as a result of the theft of Mr Hayward's Porsche from a garage forecourt. After filling with petrol, the above policyholder left the keys in the ignition and also failed to remove the control unit, located under the driver's seat. Moreover, the doors were also unlocked.

This was, in fact, the normal practice of Mr Hayward, but he had complete faith in the vehicle's immobiliser system. However, on one particular occasion Mr Hayward was paying at the kiosk for the petrol, having parked no more than 25 yards away, when a thief entered his car who was somehow able to disengage the immobiliser, possibly by means of a code grabbing device, although this particular aspect was never fully explained or clarified.

In an effort to prevent the theft of the Porsche, Mr Hayward ran round the front of the vehicle, but the vehicle was then revved very fast. As a consequence, the above policyholder took a few steps back, in order to avoid suffering personal injury, and the thief sped off.

The insurers appealed the original decision, the main focus of the appeal being the question of whether the ignition key had been left in the vehicle. It was held that the key had been left in the vehicle – the purpose of the clause was to encourage policyholders to take elementary precautions in relation to the keys, in order to reduce the chances of opportunist thefts.

Insurance policies are to be given their ordinary and natural meaning (i.e. what meaning would the reasonable person place on the words). The words used in the actual exclusion (which are the same as those used in the specimen clause provided) were deemed to be clear.

A number of insurers will operate strict criteria with regard to the investigation of fire and theft claims, and some will arrange an interview of the policyholder in every case, unless the vehicle suffers minor damage, as a result of the fire or theft.

The handling of **theft** claims differs from other own damage claims in important ways. This arises from the fact that there is a tendency for many vehicles, reported as stolen, to be recovered within a matter of days or weeks of the theft. If the vehicle is recovered in a damaged state the insurer will proceed with the settlement of the claim in the usual way. If the vehicle is not recovered there may be some doubt as to the pre-theft condition of the vehicle. It is always necessary for the theft to be reported to the police (by the terms of the policy).

Insurers will customarily wait for a period of around four to six weeks before treating the theft as 'permanent'. Once the claim is settled, a discharge form (or similar) is required from the insured stating that if the vehicle is subsequently recovered it will either be treated as salvage belonging to the insurers or the claims money will be re-paid and the vehicle revert to the insured's ownership. This latter option is hardly ever used in practice.

Negotiation of the sum to be paid for total loss theft claims may be greatly assisted by accurate mileage records being kept, and by reference to the various guides mentioned above. Photographic evidence may also help, though this is rarely available. Establishing a fair settlement figure may be a protracted process since there is no subject-matter to examine.

Generally speaking, for **fire** claims there has to be conflagration: smoking or scorching is not normally enough, although the precise interpretation of policy cover may vary from insurer to insurer, especially where there is an element of doubt.

C6 Theft claims

What constitutes theft under a motor policy? 'Theft', within the context of insurance policies, is generally given a wider interpretation than as defined within s.1 of the **Theft Act 1968**, within which it states that theft must include 'the intention of permanently depriving'. For the purposes of indemnity under the theft section of a policy, cover is given in respect of loss or damage caused by unauthorised use of the vehicle (e.g. joyriding).

Section 12 of the Theft Act (in Scotland, it would be s.178 of RTA 1988) makes it an offence to take a motor vehicle without lawful authority.

In chapter 1, section A12 we identified the risk of theft by deception and the interpretation of 'loss' in these circumstances. In the case of *Dobson v. General Accident Fire and Life Assurance Co. PLC (1989)*, a policyholder agreed to accept a building society cheque from a stranger for a watch and ring that had been placed on sale. It transpired that the cheque presented had previously been stolen, and, therefore, was of no value. The claim was repudiated on the basis that the loss did not constitute theft under the Theft Act 1968. It was held by the Court of Appeal (who upheld the decision of the lower court) that the value of the property was recoverable under the policy as theft – at the point when the building society cheque was dishonoured.

The implication of such a decision is that even when the cheque presented is a personal one, then the policy may operate. However, there are a number of insurers who have a policy exclusion relating to deception. A typical wording would be as follows:

You are not insured for...

Loss of Your Car by deception by someone who claims to be a buyer or a buying or selling agent.

Some insurers would not place too strict an interpretation on the above exclusion. The intention may be to avoid those claims where a policyholder fails to take reasonable steps to protect the property at the time of purchase.

Consider the following two examples:

- The supposed purchaser pays for the vehicle by a building society draft or cheque and the vendor releases the vehicle without ensuring that the draft or cheque is cleared first.
- A vendor leaves the keys in the vehicle, while demonstrating the car to a purchaser, and grants a thief an early opportunity to abscond with the vehicle.

In both instances, mere inadvertence on the part of the policyholder would not enable the insurer to succeed with the deception exclusion.

In *Webster v. General Accident (1953)*, a car dealer kept a vehicle, having falsely indicated that a private buyer had been found. A sale was made at a subsequent auction, but the 'loss' occurred when the dealer, without authority, sent the car to the second auction for his own purposes.

Good title does not normally arise where a vehicle is sold on by a thief. Even where subsequent purchasers acquire the car, there can never be good title, and the claimant can recover their stolen property. This was the decision reached in *NEM v. Jones (1988)*. Here the car had originally been sold by a thief and a number of transactions occurred before the property came into the possession of the defendant. It was held that as Mr Jones' title was derived from a thief, he could not claim good title. *Dobson* could also affect the passing of title.

Because of the proliferation of vehicle thefts, there has been a trend towards the application of a theft excess imposed by insurers on a motor policy of, say, £250 plus, although the more desirable and valuable vehicles may attract a larger excess. Damage to a vehicle that is stolen and subsequently recovered in a damaged state is covered under the 'theft' section as defined in the policy.

A trend towards the application of a theft excess

Insurers used to adopt what could be described as a 'wait and see' policy, and allow a period of 4–6 weeks before considering settlement.

It should be noted that insurers' approach to the 'last person in charge' situation will vary (chapter 3, section B14 refers). In other words, for example, the person who last uses or drives the vehicle, immediately prior to the theft is not covered to drive. Some insurers will decline indemnity on the basis that the person in question is not covered, whereas others will feel that the use/driving are not relevant to the loss.

The Financial Ombudsman Service tends to take the view that if the risk is not obviously increased, then the theft claim should be handled in accordance with policy conditions, where, of course, there is theft cover.

In the case of *Scott v. Copenhagen Reinsurance Co (UK) Ltd* (2003), a distinction was made between the situation where the vehicle is stolen and not recovered, and where the vehicle is recovered but it is not clear whether it will be destroyed or returned to the policyholder. In the latter situation, there has been no loss until the outcome is known, so that if the policy expires prior to any loss, then there is no cover. In circumstances where there has been a theft and the vehicle not recovered, then there is a valid claim, and the date of the vehicle's disappearance is the deemed date of the loss.

Clearly, the policyholder must take all reasonable steps to protect their property, where they are in a position to do so.

C7 Third party property damage claims

It is evident that where damage to two or more vehicles is involved, the question of liability for causing the accident is important, especially in the absence of an agreement.

When receiving notification of a claim of this type (one which involves potential liability to a third party), the first step the insurer will take will be to investigate the circumstances surrounding the accident in areas where there may be discrepancies between accounts of the accident. Some insurers will require their policyholder to complete an accident report form with a full accident description and sketch although other insurers are able to take accident reports over the telephone from the policyholder which cover all of the questions on the claim form.

The insurer will, wherever possible, seek statements from independent witnesses (persons other than the drivers involved or their passengers). Often reliable independent evidence is not available.

At this stage, the claims official should attempt to clarify any conflict of evidence that might exist. If liability is disputed then the insurer may wish to take a formal statement from the policyholder and also arrange an inspection of the scene of the accident. If the accident has been reported to the police and there is a third party claim it is important to obtain a copy of the police report if possible, in order to compare the statements given to the police with those given to the insurer. The police will usually only attend the accident scene and prepare a report where there is an injury involved.

Accidents tend to be of two different types

Accidents tend to be of two different types: those where one driver was wholly responsible and those where the negligence of two or more drivers probably contributed. In multi-vehicle accidents, insurers will usually encourage each policyholder insured comprehensively to claim under their own policy and then the insurers will settle the question of liability between themselves.

In doing that, they will be concerned to do two things:

- Not to prejudice any action which its own policyholder may be taking in respect of their own uninsured losses: i.e. their policy excess, the cost of hiring a vehicle whilst theirs is being repaired and any injury claim.
- To form an opinion on the effect of the claim on its own policyholder's NCD. If its policyholder successfully recovers their uninsured losses in full, some insurers will not allow the claim to prejudice NCD. Where an insurer has reimbursed the uninsured losses it would be unusual for them not to reimburse the insurer outlay as well.

Once liability has been established, the next stage is to translate this into a monetary amount for repair and for loss of use of the vehicle(s), if applicable.

The procedure for approaching repair estimates may follow a similar pattern to own damage claims.

For further information on the effect of contributory negligence, then please refer to chapter 1, section A7.

C8 Third party personal injury claims

Third party personal injury claims are less numerous than the other type of motor claims. However, since they are, on average, more complex and expensive to settle, they account for a substantial proportion of insurers' total claims outlay.

Once the degree of negligence has been established, the next stage is to ascertain the extent of the injury, the prognosis and the number of dependants (dependants only relevant to very serious injury claims). Minor injuries, with little likelihood of causing further problems, can be settled comparatively easily. However, more severe injuries might take a long time to settle, because of the natural reluctance of legal advisers of injured claimants to agree settlement until the full consequence of the injuries is well established: the respective awards for damages might be high.

Awards in excess of £1 million to a single person suffering severe injuries in a road accident are becoming more common.

The principle of 'indemnity' applies also to third party claims, in that they should be placed in the position that they occupied immediately prior to the accident. There are, however, various heads of damages, and these will now be examined in a little depth. It should be stressed that we are merely providing an outline of the situation, and if further detail is required, then other texts on the subject should be sought.

**The insurer may
well take the
initiative**

It should be emphasised that some insurers will take a proactive approach to third party claims, where it is clear that its policyholder is in some way responsible. Following notification of the accident, the insurer may well take the initiative, and contact the third party direct, especially where it is clear that any third party claim is likely to be confined to property damage. Even if the third party is intending to seek compensation for injuries sustained, then the insurer may still offer to arrange an engineer's examination of the vehicle and offer to deal with the injury claim directly, without the need for the claimant to instruct a solicitor. The benefit to the insurer is that it is able to settle the claims without paying solicitors' costs which can amount to as much as the injury claim itself. The insurer is able to control the claim and may arrange a medical examination and physiotherapy treatment at preferential rates with agreed suppliers. The insurer would have an obligation to treat the unrepresented claimant fairly and explain the claims process to them. The insurer should advise the claimant that they can seek independent legal advice at any time. Steps will be taken to establish whether the third party is seeking indemnity from their own insurers, and clearly any examination of their vehicle would be superfluous if such indemnity is sought.

C9 Low velocity impact claims

A couple of decided cases have highlighted the difficulties insurers face when confronted with an accident scenario, where the third party claim is disproportionate to the precise circumstances, and the extent of damage sustained.

In the Court of Appeal decision of *Kearsley v. Klarfeld* (2005), it was held that it was correct to allocate the case to the multi track, where an allegation of fraud was made. However, it was confirmed that the practice that had emerged in low velocity impact litigation of requiring the defence to include a substantive allegation of fraud or fabrication was not necessary. It would be sufficient to set out fully any facts from which the defence would then invite the judge to infer that the claim for injuries was fabricated or exaggerated: the case of *John Edward Cooper v. Peo Stena Line Ltd* (1999) was considered. Fraud did not have to be specifically pleaded: only that the rules in 16.5 of the Civil Procedure Rules be followed.

Further clarification of the position was given in another Court of Appeal decision, *Casey v. Cartwright*, decided in October 2006. This arose from an accident that occurred in September 2004, and the defendant contended at an early stage that it was a low velocity impact situation, and that such appropriate arguments existed. Whilst the case was allocated to the multi track, permission for joint orthopaedic evidence was refused, and this led to the appeal.

The Court of Appeal took the opportunity to clarify the procedure to be followed where a defendant in a low-velocity road traffic claim sought to adduce their own expert evidence on causation. In fact, it laid down specific formalities, where the causation issue was raised:

- To notify all other parties in writing within three months of receipt of the letter of claim that the matter is considered to be a low impact case and that the issue of causation will be raised.
- That the issue of causation will be the issue should be expressly identified in the defence, supported in the usual way by a statement of truth.
- Within 21 days of the defence, to serve on the court and the other parties a witness statement which clearly identifies the grounds on which the issue was raised.
- Upon receipt of the witness statement, the court would, if satisfied that the issue had been properly identified and raised, generally give permission for the claimant to be examined by a medical expert nominated by the defendant.

It should be noted that the above requirements are not incorporated in the Civil Procedure Rules.

If the defendant fails to comply with the above, then they may well be unable to rely on expert evidence, used to refute, or at the very least undermine the third party claims.

Question 4

'Theft' under a motor insurance policy generally is given a wider meaning than that given within the Theft Act 1968. True or false?



C10 Contributory negligence

The number of cases where in a motor claim the issue of liability is clear cut is comparatively small. Very often the speed of both vehicles will have to be considered, as will be the state of alertness of the drivers and the manner of driving having regard to road conditions and the state of the weather. It does not necessarily follow that the driver of a vehicle on the main road is blameless when a third party emerges from a minor road. It follows that where a collision occurs at an entirely uncontrolled crossroads that *prima facie* each driver is equally to blame.

Reinforce

The basic principles of negligence should be remembered here, and in particular the 'four point test' applied.

Refer to chapter 1, sections A4 – A7 and the relevant chapters in P05 for a more detailed explanation of the tort of negligence, and the principles that are applied.



The question of the contributory negligence of passengers can be of importance. In *Darwent v. Nutt* (1961) husband/wife together were travelling in an unlighted vehicle. It was held that both were to blame for the accident but as the wife was not driving her share of blame must be less than that of her husband and was placed at 25%.

It would, however, be very rare to blame a passenger for an accident.

The contributory negligence of a passenger not wearing a seat belt was first raised in *Geier v. Kujawa* (1970) where it was held that for a passenger not to wear a seat belt did not constitute contributory negligence.

However, the case of *Froom v. Butcher* (1975) settled the question by holding that even a third party who failed to wear a seat belt was guilty of contributory negligence and his damages were reduced. It is necessary for the defendant to show not only the failure to wear but also that the failure to do so contributed towards the injury. The issue of contributory negligence in motor cases is one of great importance.

Froom v. Butcher set out the guidelines that where the injury would not have occurred at all if the person had been wearing a seatbelt then 25% contributory negligence would apply. If the person would still have sustained an injury, but that injury would have been less severe if they had worn a seatbelt then 15% contributory negligence would apply.

The concept of contributory negligence has been extended by the case of **Smith v Finch (2009)** All ER(D)158(Jan) and relates to cyclists who do not wear protective helmets.

On a summer's evening in 2005 Smith was travelling from his home in Essex to another house a short distance away when he had a cycling accident. As he was reaching the end of his journey he positioned himself towards the centre of the road in order to turn right into the driveway of his destination.

As he did so, Finch, who was riding a motorcycle at excessive speed in the same direction, attempted to overtake Smith on his offside. A collision occurred and Smith, the cyclist, sustained a significant brain injury.

The argument advanced by Finch that Smith had emerged from a side street without giving way straight into his path was rejected. The judge found in favour of Smith.

However, Smith had not been wearing a cycle helmet and Finch's lawyers argued that as a result Smith was partly to blame for his own brain injury.

The judge agreed with part of this argument saying that there can be no doubt that the failure to wear a helmet may expose a cyclist to a greater risk of injury. However, in this case there was to be no reduction in the damages to be awarded for contributory negligence on the part of Smith because Finch's lawyers could not demonstrate that wearing a helmet would have made a difference to the injuries sustained.

However, the case leaves open the possibility that defendants will be able to reduce damages awarded to cyclists in the future in cases where cyclists have failed to wear a helmet. This may well be so even though there is currently no statutory requirement for a cyclist to wear a helmet.

It should also be borne in mind that if the claimant has been negligent or reckless and, as a result, has exposed themselves to loss or injury, then the claimant's compensation will be correspondingly reduced. If, of course, the claimant is wholly to blame, then they will not receive any damages. There cannot be 100% contributory negligence, however: in the case of **Anderson v. Newham College of Further Education (2002)**, it was stated that either the claimant was wholly to blame for his injuries and there was no liability on the defendant or the defendant was to blame subject to a degree of contributory negligence on behalf of the claimant.

In the case of **Pitts v. Hunt (1991)**, a pillion passenger was encouraging the motorcyclist to ride recklessly. Both the claimant (the pillion passenger) and the rider had been drinking prior to the accident and the claimant knew that the rider did not hold a driving licence and was uninsured. On appeal, the judge dismissed the claim against the first defendant on the ground that, on the application of the principle *ex turpi causa non oritur actio* (from a dishonourable cause an action does not rise), the motor cycle rider owed no duty of care to the claimant since the two were jointly engaged in the commission of a criminal offence. It was also held that, by reason of s.148(3) of the **Road Traffic Act 1972**, the defence of *volenti non fit injuria* (to a willing person no injury is done) was not available to the first defendant, and that the claimant had been contributory negligent to the extent of 100%.

D Motor engineers and recommended repairers

It is in the area of accidental damage claims where the service of the insurer is at its most critical. Vehicles, some of which may be used for business, may be out of commission, and for a number of policyholders, the use of their vehicle is essential to their way of life. In any event, policyholders are not generally content with an expensive vehicle being unsightly due to body damage and will expect prompt repair or vehicle replacement.

Use of their vehicle is essential to their way of life

The repair process starts with one or more repair estimates from the body shops of local repairers. Policyholders are free to choose their own repairer and if they have a very strong desire in this direction it is seldom wise to try to make them change their mind. However, most insurers have now formed panels of repairers and they will endeavour to direct work to them.

D1 Role of the engineer

On a day-to-day, case-by-case basis, the cost of repairs is controlled by **insurance engineers**. Engineers are usually recruited from among garage employees and have invariably worked for a number of years as body repairers and/or estimators.

Bearing in mind the scope of their previous experience, they are often well placed for controlling the actions of the repair trade. There are a number of independent firms of engineers who will work for insurers for a fee per case. The same firms are often instructed by other organisations acting on behalf of motorists and, indeed, are available to assist individual motorists who might have a dispute with their own or a third party insurer.

Many insurers employ engineers on their own staff. They will obviously act in the best interests of their employer, but this will normally involve a customer focus as well as a cost control function. The use of engineers for any particular repair is very much up to the strategy of the particular insurer. Some insurers will use an engineer on almost every case whereas others will select cases where a cost saving is most likely.

A more relaxed use of engineers may take place where approved repairers are involved. Engineers will agree method and cost with garage estimators and will provide repair authority. They will then be available for consultation, should something change during the course of repair and will 'sign off' the final invoice. The costs calculated by engineers will determine whether or not any particular repair is worthwhile, taking into account the overall value of the damaged car.

Engineers will agree method and cost

If the repair is not economically viable then the engineer will declare the vehicle an insurance write-off. They will then go on to calculate the pre-loss value of the vehicle and in some cases will agree this with the vehicle owner.

D2 Recommended or approved repairers

Insurers will need to be aware of the repairers in any locality that are likely to give a quality and prompt service at a reasonable price. They will also ascertain which repairers can be trusted. Over the last decade or so, insurers have endeavoured to formalise this situation by providing recommendations and/or approval to a panel of repairers.

In order to assist in their marketing and to enhance their credibility, repairers are keen to obtain approved status from as many insurers as possible. However, in many ways a 'blanket' approach does not provide the true benefits that can be obtained from such an arrangement. The benefits are a close working relationship, agreed prices and standards, guaranteed workshop availability, and a steady flow of work for the repairer. There used to be a requirement that an approved repairer should supply a courtesy car, but this feature is diminishing, as a number of insurers now commission hire companies to supply replacement vehicles while the policyholder's own is in the process of being repaired.

The amount of formalisation to such relationships does differ from insurer to insurer but it would perhaps be helpful to describe the full process.

D2A Panels of repairers

The size of the panel of repairers is critical. There need to be sufficient numbers and geographical spread in order to satisfy the needs of the insurer's portfolio of motor policies. If there are too many repairers on the panel, then the work will be dissipated and the benefits of volume business will be lost.

Repairers must work to certain standards and possess all essential equipment in order to carry out repairs to manufacturers' tolerances. Although many repairers will have an affiliation to one or more vehicle manufacturer, it is essential that they have the ability to work on all standard makes and models in such a way as to maintain the effectiveness of manufacturers' warranties.

Repairers need to have a customer focus which should manifest itself in the presentation and quality of their premises and in their willingness to submit to quality standards, such as those certified by British and international standards organisations. Although not vital, it will always help if they are members of one of the recognised vehicle repairer organisations, such as the Vehicle Builders' and Repairers' Association (VBRA).

*Labour rates are
quoted per hour*

Usually there would be a contract between the insurer and the repairer within which labour rates would be agreed. Labour rates are quoted per hour and would not necessarily equate to the precise number of hours spent on a job.

The contract will then normally specify whether the number of hours for certain standard tasks are to be calculated from Thatcham-based rates or rates specified by manufacturers. The resultant number of hours will differ between these two sources and the difference will be catered for by a higher or lower hourly rate charged.

Parts are charged in accordance with the cost to the repairer plus, of course, a reasonable profit margin. It is a fact that repairers rely upon the profit element of parts, and in particular paint, in order to make a living and, therefore, the prices charged must be controlled carefully. The most successful control comes from the use of manufacturers' price lists. Repairers can and do negotiate discounts from such prices and much will depend upon volume purchases.

Insurers might insist upon part of that discount being passed on to them but in order to avoid expensive negotiation on a part-by-part basis, a 'swings and roundabouts' approach is used by agreeing a mid-range discount from manufacturers' list price on all parts. Indeed, a number of insurers have made the discount process even more streamlined by applying a 'bottom line' discount to all invoices to include labour, paint and parts. This will reflect the level of business relationship and volume diversion with the particular repairer.

It should, perhaps, be borne in mind that labour rates may be stringent. As alluded to above, the 'economies of scale' principle will apply and, therefore, a panel repairer would wish to maximise its insurer client potential, to ensure a constant supply of work.

One of the main advantages to the approved repairer process is that the garage can be trusted to start work immediately without the need for an engineer's inspection. That is not to say that an engineer will not look at a repair at some stage during its process and changes to method and price might be agreed at any time. In circumstances where repairers have the insurer's authority to start work immediately, they must be trusted to watch for vehicles that are beyond economical repair.

D2B Computerised estimating

The requirement of an engineer's inspection can be reduced even further by agreeing that repairers will use one of the numerous computerised estimating systems now on the market. Details of the repair can be input to the computer, which will then calculate a labour charge based upon agreed hourly rates.

Some systems also hold manufacturers' price lists and, therefore, that part of the estimating process, including the calculation of discounts, can be automated. However, such systems can only cope with standard processes such as the replacement and painting of a part or combination of parts. What it cannot do is to agree whether or not the part needs replacing in the first place.

Furthermore, if the part can be saved then the amount of labour effort needed to perform the repair would still be a matter of opinion. Repair estimates produced by computer are, therefore, a combination of computer-calculated standard times and opinion times (input by the estimator) multiplied by agreed hourly rates plus parts and paint prices – all subject to agreed discounts.

Relationships with approved repairers also allow for agreements with regard to the collection, storage and redelivery of damaged vehicles, all of which reduces costs whilst enhancing customer service. One of the more innovative developments has been the use of 'remote video assessment'. This is effectively where video images of the extent of the damage to a vehicle are transmitted back to the in-house engineer of the insurer. Whilst this is still an expensive option, requiring sophisticated computer and video equipment, it does enable an engineer to assess the nature and cost of the repair work, plus the appropriate labour work necessary to complete the repair, without actually leaving the office. Improvements to the quality of the pictures produced have increased the attractiveness of this form of remote estimating.

D2C Towing and storage charges

Under the terms of the standard motor policy, insurers will pay for the reasonable cost of removing the vehicle from the scene of an accident to the nearest competent repairer. They will pay for the cost of safeguarding the vehicle and then returning it, after repair, to the policyholder's permanent address in the UK.

Initial towing charges can be quite onerous, especially if the vehicle is towed from a motorway under police instructions. It is quite difficult for insurers to control this aspect of the cost but if they can arrange for an approved repairer to undertake the removal then very favourable, and possibly free, rates can be achieved.

Repairers, especially approved garages, are able and willing to absorb such costs where they are able to profit from a subsequent repair. However, if the vehicle is a total loss then not only will they expect some recompense for the towing but they will also make a charge for storage until the vehicle is moved.

Most approved repairers will allow the initial few days free of charge. This allows time for an engineer to assess the damage and for total loss vehicles to be moved to storage at one of the major salvage yards.

Where insurers have contracts with salvage companies this will normally allow for free storage for a period sufficient to negotiate settlement with the policyholder. After repair the vehicle owner would normally be happy to collect the vehicle from the garage. This is, in fact, made easy if there is a courtesy car to be given back. Whilst at the garage, the owner can check the repair before accepting the return of the car. However, in some instances, for example, where the accident occurred some distance from the insured's address, it would be difficult for the policyholder to collect it after repair. In these instances, insurers will pay reasonable costs for the insured to travel to the repairer or will arrange for the car to be delivered to the insured's address.

D2D Repair invoice

Once repairs are completed the policyholder will be asked to sign a form. Traditionally, this form has been termed a 'satisfaction note', but latterly it has been renamed a **collection note**. The object is to obtain the policyholder's acceptance that the vehicle has been returned in a satisfactory state and that they have checked and approved the repair.

However, in acknowledging the lay status of the majority of policyholders, there would not be a bar to the insured returning the vehicle later if they find fault in the cold light of day. Repairers will normally rectify any faults quite willingly but where the assistance of the insurer and/or its engineer is required, this would normally be arranged.

Upon collection of the vehicle the policyholder will be required to pay any agreed contributions. These may be of varying types:

- excesses as shown in the policy;
- VAT where the policyholder is registered and can reclaim that proportion from HMRC;
- any private work carried out at the same time as the main repair;
- any contribution for betterment (see section D5).

D3 Courtesy cars

Most reasonable-sized repairers now offer some form of alternative transport while they have a customer's vehicle in for repair, and these used to take the form of courtesy cars. The size, type and quality of such cars differ greatly from repairer to repairer, as does their source – e.g. owned vehicles, lease vehicles and rental vehicles. Most insurers insist upon availability of courtesy cars from their panel of approved repairers and, indeed, then use this fact in their publicity material.

The pressure placed upon repairers to provide courtesy cars has led to some difficulties over the past few years. In order to satisfy demand, repairers have had to hold sizeable fleets of such vehicles and/or make arrangements for rental availability. The requirement to retain a large fleet of courtesy cars has for most repairers proved to be an impractical and prohibitive expense.

More recently, some insurers have gone as far as arranging their own source of rental vehicles. There is an increasing move towards the provision of vehicles from hire companies by insurers, rather than rely on the availability of the repairer's own courtesy cars. This arrangement is made in conjunction with the repairer. At the point when the vehicle is delivered to them for repair, the repairer may contact the hire company in order to ensure to facilitate the supply of the hire car. Normally, there is minimal inconvenience to the policyholder, who may then be collected by a representative of the hire company from the repairer's premises, and actually taken to the hire car.

A number of private car insurers, will actually offer this facility within their policies, where a policy condition will confirm that a basic model hire car will be available to the policyholder whilst their own vehicle is off the road being repaired. This will be at no extra cost to the policyholder. There may well be an option on the part of the policyholder to upgrade to a better model, but the difference in the cost of the upgraded model will be the responsibility of the policyholder.

'Courtesy cars' (in the broadest sense), are still billed as being 'free' but the cost has to come into the equation somewhere. A number of insurers have recognised the cost factor and have agreed a separate charge for courtesy cars. All of this can cause difficulties when endeavouring to reclaim the repair and associated costs from a third party or third party insurer and this was catered for in a market agreement known as the **Memorandum of Understanding on Subrogated Claims for Subscribing Insurers**. However, the agreement was terminated in July 2008.

Cost has to come into the equation somewhere

Most insurers will accept the insurance cover on courtesy cars as a temporary additional vehicle under the customer's existing policy, usually free of charge.

D3A Credit hire

Where a Claimant suffers damage to his/her vehicle, and as a result it is rendered unroadworthy, then the Claimant is entitled to claim the cost of hiring an alternative vehicle.

Such reasonable costs may be recovered from the insurers of the vehicle (plus driver) that is deemed responsible for the accident. This is subject to proving that it was necessary to hire such a vehicle, providing it was reasonable and necessary.

This conventional form of hiring will require the hirer to pay for the cost of hire themselves, and then endeavour to recover that cost. Bearing in mind that this particular head of claim may initially be costly, some claimants may either lack the financial resources or be unwilling to incur such a potentially huge outlay from their own pockets.

This has led to the development of the credit hire industry, whereby a hire car would be provided to the hirer, without the latter having to pay for the cost, on the basis that liability is favourable, allowing the credit hire company to recover the cost of such hire direct from the insurers of the negligent driver.

In order to ensure some level of consistency, and bring an element of harmony between the two sides, the Association of British Insurers devised the General Terms of Agreement (GTA), whereby subscribing insurers and credit hire organisations agree to abide by maximum settlement daily rates, depending on the make and model of vehicle hired. These rates are regularly updated. There are also late payment penalties imposed on insurers where there is a delay in payment of the charges, following submission of the

As a result of this "growth" industry, there have been a considerable number of court cases, where the different credit hire schemes have been challenged on the grounds that they are illegal, the most notable success for insurers being in the House of Lords case of **Dimond v Lovell [2002] AC 384**, where it was held that the particular credit hire agreement used was an agreement for credit, being a regulated agreement under the Consumer Credit Act 1974.

Credit hire is still a problem and litigation continues to soar. Where credit is given under a car hire agreement, then the first issue to determine is whether the agreement is regulated by the above Act, or is exempt. In order to achieve an exemption, credit hire companies must comply with the Consumer Credit (Exempt Agreements) Order 1989. Undoubtedly, this area will remain contentious for the foreseeable future.

D4 Alternatively sourced parts

As a rough guide, the cost of parts forms about half of the average repair bill. The cost of such parts is largely dictated by manufacturers, who rely heavily on their after-sales service for profit margins. All of this has a marked effect on the cost of insurance and, therefore, insurers are always looking for ways to reduce this part of the equation.

The use of second-hand parts in vehicle repair has been a feature in many countries for a number of years. In the USA, some states make the use of second-hand parts compulsory as part of their 'green' policy. However, consumer reluctance or at best inertia has not permitted this to happen in the UK, at least as far as insurance repairs are concerned.

Every year thousands of vehicles are broken for spare parts. A few vehicle recyclers have taken the process very seriously with parts removed, bar-coded, catalogued, shrink-wrapped and displayed. The parts, which are often in better condition than the ones they replace, are sold at a fraction of the price of new ones but as far as insurance repairs are concerned they are seldom used other than to save vehicles that would otherwise be beyond economical repair.

Another source of competitively priced parts is that of non-manufacturer parts sometimes known as **pattern** or **spurious parts**. These are often made by the same companies that supply vehicle manufacturers and, indeed, are turned out on the same presses to the same quality.

The prices, without the manufacturer's stamp, are cheaper and they are, therefore, favoured by insurers. Manufacturers who rely heavily on parts' profits are fighting their right to control distribution through the European Parliament; but meanwhile insurers are trying to maximise the use of non-manufacturer parts with some good results. As highlighted previously some insurers will now make it clear within the policy booklet that they may elect to utilize non-proprietary parts. Paint prices are similarly controlled by manufacturers and, once again, this is currently the subject of a European dispute.

D5 Betterment

Betterment contribution is worthy of special mention. In order to preserve the general principle of indemnity, the vehicle should not be returned to the policyholder in a better condition than it was prior to the accident. Sometimes betterment is inevitable – for example, where repair or replacement has been carried out to a corroded panel – and in such instances the insured may be required to contribute to the cost in accordance with the amount of betterment received. It is often quite difficult to calculate the true value of betterment. For consumable parts such as tyres, exhausts etc. that have a relatively predictable life span, the amount of betterment can be expressed as a proportion of the cost equal to the percentage of life used. For other aspects it may be necessary to gauge by how much the overall value of the car has been enhanced, if at all.

It should be stressed that this practice is becoming less popular amongst motor insurers. Customers' expectations have been increasingly heightened by the additional benefits and policy extras now offered under the standard private motor vehicle policy. Invariably, the amount of the contribution that is likely to be sought will be relatively small, and imposition of a contribution can often be a source of friction.

This practice is becoming less popular

Invoices, less the policyholder's contributions, are passed to insurers for payment. Before payment is made the invoices may be checked for accuracy by engineers, but this stage may not be necessary if the original quote was produced by a computer estimating package to include agreed parts prices. The claims handler can usually check the invoice amount against the engineer's report and only refer to the engineer if the amount is different to that authorised.

Question 5

Under what circumstances might a repairer offer a courtesy car to a policyholder?



E Market agreements and their effect

Nowadays there are few agreements between insurers. In fact, they will normally be recommendations, as agreements may be contrary to competition, and the **Competition Act 1998** in particular.

We, therefore, list the main recommendations and undertakings that remain in place.

E1 Common Law Agreement

Common law agreements used to exist and dealt with claims which arose under either motor or employers' liability policies held by the same insured but with different insurers. The whole cost of the claim in these circumstances was borne by the employers' liability insurer. This agreement has fallen into disuse as a result of the requirements of the Third EC Motor Insurance Directive enacted by the **Motor Vehicles (Compulsory Insurance) Regulations 1992**, and the **Employers' Liability (Compulsory Insurance) Exemption (Amendment) Regulations 1992**, which came into force on 1 July 1994, exempted an employer from the requirements of the **Employers' Liability (Compulsory Insurance) Act 1969** in so far as they related to passengers in motor vehicles. The combination of these two regulations means that, with effect from 1 July 1994, liability for injury to passengers travelling in motor vehicles falls under motor policies whether or not the liability arises out of and in the course of employment.

E2 RTA/DRI Agreement

As has been described in chapter 2, section A2, the status of an insurer in so far as it affects a third party claimant is, for the most part, a matter of fact. In the majority of circumstances the insurer will, at the very least, have the status of RTA insurer and the third party will be able to take advantage of the provisions of that Act in order to make a claim against the insurer. On the other hand, in a small number of instances the insurer will be able to escape the provisions of the RTA but will then become obligated as Article 75 insurer in accordance with the agreement between insurers and the MIB.

In an even smaller number of cases, where the insurer has the right to avoid the policy for non-disclosure or mis-statement, the insurer can, through the process of court declaration, reduce its status from RTA to DRI (**Domestic Regulations Insurer**). Such action is seldom advantageous but amongst other things would allow the insurer to escape subrogated claims from other insurers. This possibility does, however, lead to conflicts between insurers. The RTA insurer would seek to persuade the subrogating insurer that the gaining of a declaration is a foregone conclusion, thus avoiding the cost of litigation. On the other hand, with nothing to lose but everything to gain, the subrogating insurer might insist upon the RTA insurer going through the formalities, thus incurring considerable expense.

The RTA/DRI Agreement seeks to avoid expensive litigation when it is clear that a declaration would, in the circumstances, be obtained. It does this by calling upon the repudiating insurer to provide full details and documentation pertaining to the policy avoidance to the other insurer. Thereafter, should the other insurer still insist that the repudiating insurer seek a court declaration, it will pay court costs in the event that a declaration is obtained.

There is a property limit of £15,000 which can be extended by agreement of the parties. The agreement can also be extended to cater for joint tortfeasor situations.

E3 Dual indemnity undertaking

This recommendation again meets the requirements of the competition law. It states that where an insurance policy is issued by the direct insurer of a motor vehicle, and this provides third party indemnity to a driver who is also entitled to a third party indemnity under an insurance policy relating to another vehicle (where the policy contains a 'driving other cars' extension), then no contribution will be sought by the vehicle insurers from the driver's (i.e. the DOC insurers). The explanatory notes indicate that the system endeavours to simplify the system with regard to the allowance of NCD.

If, however, there are two or more insurers, who all provide third party indemnity, and are all 'direct' insurers (that is, they insure the vehicle, rather than the driver), then they will all share all claims equally, even if the insured has not reported the occurrence to one of the co-insurers.

It is stressed that the undertaking has no legal significance.

E4 Personal Effects Insurance Contribution Agreement

This recommendation similarly confirms that it does comply with competition law. Whilst the document has been produced by the ABI to assist members in their handling of a particular matter, it does indicate that adoption by members of any terms, standards, guidance, recommendations etc. is voluntary and entirely at the discretion of each individual member.

Firstly, the agreement outlines when contribution is required, and explains that insurers subscribing to the agreement who transact household, all risks, motor, travel, and other personal insurances as defined will deal with claims for the loss of personal effects insured under two or more such policies, irrespective of their policy or policies containing contribution or non-contribution clauses or exclusions of property insured elsewhere. It then goes on to explain the parameters in which a contribution will or will not be sought.

Where there is a claim for personal effects, lost or damaged following a motor accident or theft (including attempted theft), then the claim for such personal effects will be settled by the insurer against whom the claim is made subject to their policy limit (if any) without requesting contribution from another insurer who covers the loss.

Within the agreement, it confirms that its purposes are:

- a) to avoid adverse publicity and criticism of the insurance industry caused by insurers referring policyholders to other insurers for payment of part or all of their claim;
- b) to avoid costly and time-consuming handling and payment of small contribution amounts; and
- c) to set out rules for contribution between participating insurers.

E5 Reduction In Paper Exchange (RIPE) Process

Participating insurers are required to agree to the process, which is designed to facilitate the recovery of accidental damage outlays between each insurer, without the need for supporting documentary evidence at the time of the request.

The benefits are obvious but clearly benefit the policyholder, as a result of the reduction of administration costs, and the consequent shortening of the lifecycle of such claims, where the RIPE facility is used.

Once liability has been agreed, then the participants agree that, copy documents will only be requested at the time of the recovery request to substantiate the Accidental Damage outlay claimed, in exceptional circumstances.

**Reimbursement
of accidental
damage costs**

The process itself covers both the reimbursement of accidental damage costs relating to repairable vehicles, and those vehicles which have been rendered beyond economical repair, following accidental damage.

It should be stressed that those participants who engage in the process are not entering into a contract, and this is emphasised in the terms of the process itself. Furthermore, it states that 'the terms of the process are not enforceable in a Court of Law.'

E6 MIB Untraced and Uninsured Drivers Agreements

The origins and extent of the agreements are covered in chapter 2, section A. Here, we shall endeavour to demonstrate the practical application of the agreements.

First, however, in order to understand how this works in practice, we will re-cap the position of the insurer's status. Once there is an indication of cover, then there are three separate sets of obligations to consider:

- Obligations arising as contractual insurer. This is where the contract is fully operative and the obligations that arise are those as set down in the contract of insurance. This is the position with the vast majority of motor claims.
- The statutory requirements to third party victims that arise as a result of Part VI of RTA 1988. Such RTA liabilities will prevail, even though there has been a breach of policy conditions which has resulted in a declinature of indemnity or perhaps even avoidance or cancellation of the policy. The status of an insurer in such circumstances would be described as RTA insurer.
- Compulsory obligations to the MIB as set out in the MIB Article 75. Perhaps the best way to explain this status is that it covers those situations where there is evidence of insurance, but the insurer in question is neither contractual insurer nor RTA insurer. As Article 75 insurer, the insurer is obliged (in specified circumstances) to compensate victims of accidents within the terms of the Uninsured Drivers Agreement but the cost of compensation is met by the insurer, not by the MIB.

E6A How an insurer determines its status

Upon receipt of a claim, an insurer is normally able to determine its status. If the matter can be handled within the terms of the contract, then the insurer is contractual. If not, then the following applies.

The insurer must turn to the RTA to ascertain the extent of its statutory obligations. In other words, where an insurer declines indemnity or avoids or cancels the policy, then reference to RTA 1988 must be made to determine the extent of any liabilities and how they may arise. It should be borne in mind that s.143(1) of the RTA, whilst outlining the basic criminal offences pertaining to the absence of insurance, also forms the basis of when civil liabilities may arise, i.e. arising out of use...of a motor vehicle on a road or public place.

Once such RTA liabilities are determined, that insurer will have a statutory liability to meet an unsatisfied judgment against the defendant policyholder.

Insurer will have a statutory liability

Such insurers, therefore, endeavour to enter into negotiations, in order to exercise an element of control over the matter and thus hopefully restrict their economic liabilities.

You will recall that, as a result of Article 75, an insurer is obliged, in certain specified circumstances, to compensate accident victims from its own funds. As explained in chapter 2, this effectively refers to all those areas where there is evidence of insurance but are not specifically referred to within the Road Traffic Act 1988.

Firstly, two flowcharts are provided which outline the different insurer statuses, and the principal reasons why an insurer's status may be that of RTA Insurer, or Article 75.

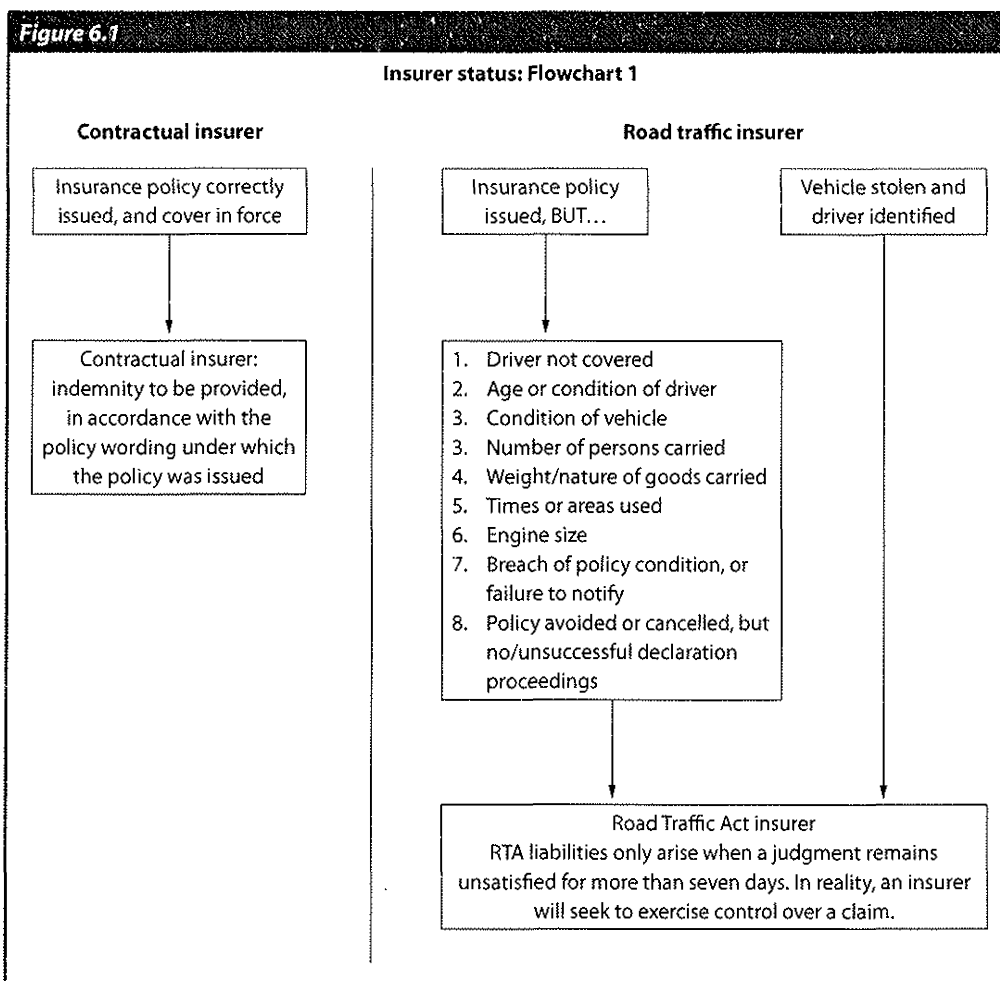
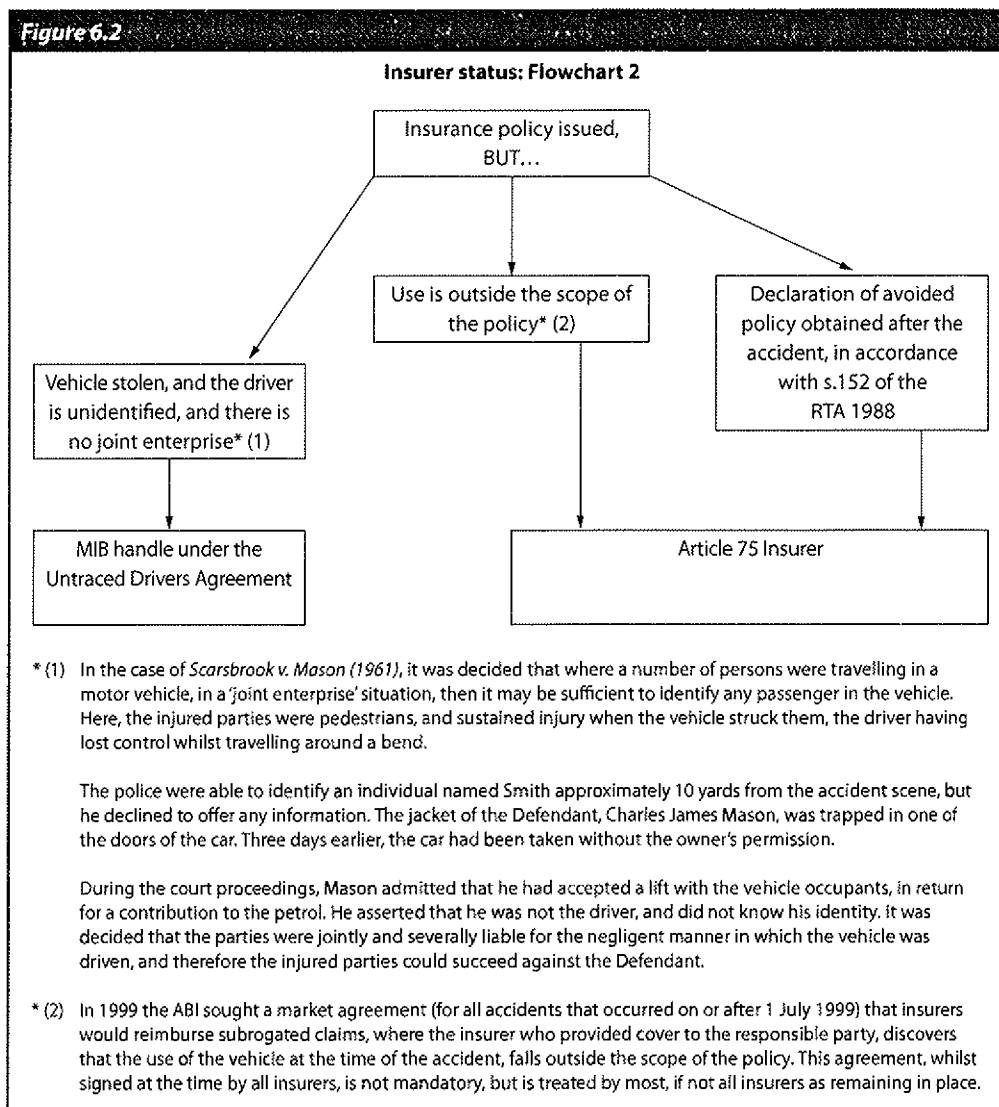


Figure 6.2



As can be seen from the above, it is possible for an insurer to reduce its status to Article 75 insurer by securing a declaration from the court under s.152 of RTA 1988 to the effect that the insurance contract is null and void. Additionally, it is emphasised that a transfer of interest will result in an insurer escaping any liabilities, as insurance policies are based on there being an insurable interest; insurers cannot be expected to insure any vehicle owner of a particular risk, as their assessment of the risk is based on the material facts, specific to a particular policyholder, details of which will have been previously disclosed to the insurers. Such details are usually contained in a proposal form or a statement of insurance.

Somewhat surprisingly, if the use of the insured's vehicle at the time of the accident falls outside the scope of the policy, this will result in the insurer being Article 75 insurer automatically because, as we have noted already, it is a permitted exclusion so far as RTA cover is concerned. In fact, the latest wording of the Article 75 insurer regulations specifically states this to be the case.

So, if the vehicle involved in an accident is being driven at the time by a person who is using the vehicle outside the scope of the policy (say, for example carrying goods for hire and reward, when the policy does not provide such cover), then the insurer will be Article 75 insurer (as opposed to contractual or RTA insurer).

E6B Uninsured Drivers Agreement

The latest Uninsured Drivers Agreement (dated 13 August 1999) was introduced for incidents that occur on or after 1 October 1999, replacing the previous agreement dated 21 December 1988.

Clause 5 of the new Agreement effectively outlines the MIB's obligation to satisfy compensation claims, where a judgment remains unsatisfied. However, there are a number of exceptions and it is specifically stated that if only part of a claim satisfies the description of one (or more) of the exceptions, then Clause 5 does not apply to that part.

Amongst the exceptions are:

- a claim arising out of a relevant liability where the vehicle is owned or in the possession of the Crown (unless the relevant liability is covered by a contract of insurance);
- a claim arising out of the use of the vehicle not required to be covered by a contract of insurance under s.144 of RTA 1988, unless the use is covered by a contract;
- subrogation claims, widened to include any claim assigned to a beneficiary;
- a claim in respect of damage where there was not in force a contract of insurance, in accordance with Part VI of the 1988 Act and the claimant knew or ought to have known that this was the case.

The basic premise with claims under the Uninsured Drivers Agreement are that there is no insurance policy covering the driver who caused the accident (or was a contributory cause). The MIB will undertake all necessary enquiries to ensure that there is no policy that will cover the driver, but they will also need to be satisfied that the ('uninsured') driver was in some way negligent. If there is a meaningful degree of negligence on the part of any person properly insured or whose insurers have an RTA liability, then the MIB/Article 75 insurer will escape altogether. In practice, this means that if an insured driver and an uninsured driver are found to be equally to blame for an accident, then the contractual insurer of the insured driver would be responsible for 100% of a claim presented by an 'innocent' claimant other than the uninsured driver.

*Equally to
blame for an
accident*

E6C Untraced Drivers Agreement

The first Untraced Drivers Agreement was dated 21 April 1969, and the current agreement is dated 14 February 2003 and is operative in respect of accidents occurring on or after that date. Unlike the Uninsured Drivers Agreement, there is no tortfeasor to sue. Under Clause 1 of the agreement, the MIB is liable only for death or injury and (since 14 February 2003), property damage. In this last respect, the MIB will only pay damages to the applicant where, on the balance of probabilities, the untraced person would be liable.

Contributory negligence on the part of the applicant can be taken into account, and any application must be made in writing within three years of the occurrence. Moreover, the incident must have been reported to the police within 14 days, or as soon as the applicant reasonably could do so.

The terms of the agreement state that the applicant must give all reasonable and necessary assistance to the MIB.



Example

Untraced Drivers Agreement: An example

An application is made to the MIB by an insured motorcyclist A, who alleges that he was proceeding on his motorcycle along the B396 in a northerly direction on the 26 February 2008, when his vehicle was struck by an oncoming vehicle, who encroached upon his side of the road.

The motorcyclist is an experienced driver, and the weather conditions were fine and dry. The other vehicle did not stop, but the MIB applicant suffered a fractured right leg, plus associated losses. Police were in attendance shortly after the incident, following a call by A.

Having complied with the MIB formalities regarding notification, then a statement will be taken from the applicant by a representative of the MIB, and a copy of the police report sought. Additionally, a medical report will be commissioned, and the examining surgeon will be required to have unqualified access to the applicants GP notes, plus the notes compiled by the Hospital's A and E department following A's admission.

All the evidence secured supports A's version of events:

- The (contemporaneous) statement given to the police at the time of their attendance at the scene is consistent with an accident involving an untraced motorist.
- The A and E notes compiled confirm the allegations made by A, and the injuries are consistent with an RTA.
- The possibility that A may have lost control on a bend, and not been struck by an untraced motorist is dismissed as i) A is an experienced rider, and ii) the weather conditions were fine, together with the other evidence mentioned above.
- There is no evidence of contributory negligence on the part of A.

Points to note

- 1) Ideally, an applicant's statement should be corroborated, but this is not essential – the test is still that, on the balance of probabilities, the injuries suffered were as a result of the use of a motor vehicle on a road by an untraced driver (notice the similarities to s.143 of RTA 1988).
- 2) The evidence accumulated is vital to consideration of an application under the Untraced Drivers Agreement. It is necessary to obtain from the applicant a signed statement and, of course, a police report should be sought. Where appropriate, statements should be secured from witnesses, a copy of the applicant's claim form, a sketch plan plus photographs and full evidence in support of the claimant's losses.

Question answers

1. An internationally recognised standard for an organisation's internal quality management.
2. MIAFTR.
3.
 - There must be a subject matter to the insurance policy (e.g. the vehicle insured).
 - There must be an economic or financial interest in the subject matter of insurance.
 - The interest must be current and not an expectancy.
 - The interest must be a legal interest.
4. True
5. Whilst the policyholder's car is undergoing repair.

Self-test questions

1. **The database, MIAFTR2 is linked to the HPI database. What are the immediate effects, upon registering new information?**
2. **List the elements essential for an insurance contract.**
3. **Outline the purpose of a collection note.**
4. **What are the eight core management principles required for ISO 9001 accreditation?**
5. **Why do some insurers try to ensure that approved repairers are used?**
6. **Why is the VAT status of the insured important when settling own damage claims?**

7. **List the various databases that can be utilised by insurers to combat fraud.**

8. **Outline the various headings that may be found in a business credit report.**

9. **What is the Dual Indemnity Undertaking and when does it operate?**

You will find the answers at the back of the book

7: Motor claims II

Chapter section	Syllabus learning outcomes
A Dispute resolution and arbitration clauses	5.11
B Claims procedure	5.5
C Classification of damages	5.10
D Fraud and counter fraud measures	5.3
E Police and their involvement in the claims process	5.6
Learning objectives	

After studying this chapter, you should be able to:

- ☐ describe the procedures available to assist in settling disputes;
- ☐ discuss the role and procedures of the Financial Ombudsman Service;
- ☐ describe the use of alternative dispute resolution;
- ☐ outline the use of provisional damages and structured settlements;
- ☐ describe the measures available to insurers to combat fraud;
- ☐ outline the role of ACPO in combating fraud;
- ☐ discuss the scope of police involvement in the claims process.

A Dispute resolution and arbitration clauses

Although insurers genuinely endeavour to provide a fair and efficient service, there will, from time to time, be an issue of dispute. Inevitably, a large number of disputes arise at claims time with disagreements relating to cover and quantum, whereas disputes over disallowance of NCD and premium issues tend to be resolved at an early stage.

Within virtually every policy of insurance giving some measure of cover for property damage an arbitration clause will be incorporated. This is the case with motor policies and the wording may for example be:

Where we have accepted a claim but you and we disagree over the amount to be paid, the dispute must be referred to an arbitrator who we and you will agree on. When this happens, the arbitrator must make a decision before you can take any legal action against us.

It should be noted that this relates to quantum issues and only to disputes arising under the own damage parts of the policy. It can also be utilised where there are disagreements under the personal accident or personal effects sections of the policy. Third party quantum disputes are a matter for the third party to consider resorting to law. Arbitration at this level is not inexpensive but is likely to be less expensive and less stressful than a court of law which, as can be seen, cannot be utilised until and if arbitration has failed.

Costs can be considerable

It is seldom desirable to take a dispute to either arbitration or to court. In the end, the costs can be considerable and it is unlikely that either party will be fully satisfied. Insurers, therefore, take every care to set up an internal complaints procedure that, hopefully, will cater for the majority of disputes. The procedure is normally incorporated in the policy wording and might be along the lines:

We are proud of our reputation for fairness in our treatment of our many Policyholders. However, occasionally disputes or misunderstandings can arise. Any enquiry or complaint you have regarding your Policy may be addressed to either the broker or intermediary who arranged the Policy for you or to the branch of our Company which issued the Policy.

In either case you should provide details of your Policy and in particular the Policy number to help with speedy handling of your enquiry. If you are not satisfied with the way in which a complaint is dealt with please write to the Manager of that branch or if you still get no satisfaction write to the Chairman and Chief Executive at our Head Office address.

For personal insurances a further reference may be made to the Financial Ombudsman Service.

A1 Financial Ombudsman Service

The Insurance Ombudsman Bureau (IOB) was formed in 1981 to provide personal insurance policyholders with an independent body that could arbitrate on disputes without cost to the individual.

Following the enactment of the **Financial Services and Markets Act 2000**, the Insurance Ombudsman became part of the Financial Ombudsman Service (FOS) (www.financial-ombudsman.org.uk) under the control of the FSA. Membership of the FOS is compulsory for all authorised insurers, with every company required to participate and contribute funds to its operation. However, the FOS will only become involved once all usual negotiations have been exhausted.

The FOS is an entirely independent mechanism for dealing with disputes. The Ombudsman only deals with disputes where the insured is either a private individual or a small commercial enterprise having a turnover of less than £1 million. It is not concerned with commercial insurance for larger enterprises. The scheme only operates where the dispute is between an insured (a private individual) and an insurer. The Ombudsman aims to provide both impartial and independent conciliation of disputes between these two parties. Any cause for complaint is investigated, but the vast majority of cases referred to the Ombudsman which proceed to formal adjudication involve claims.

The Ombudsman ensures that all possible steps are taken by the insurance company itself to try to resolve the dispute. If the dispute remains unresolved, the Ombudsman then steps in to review the dispute and make a decision. The maximum award which the Ombudsman can make, which is binding on the insurers, is £100,000. The insured can either accept or reject the Ombudsman's decision.

*The
Ombudsman
then steps in*

Accepting the decision results in the insurer being required to pay an award, up to a monetary limit. However, if the insured rejects the decision, the insured can still choose to issue legal proceedings. On the other hand, the insurer is bound by the Ombudsman's decision.

From 14 January 2005, insurance intermediaries came within the jurisdiction of the FOS. The following intermediary activities became regulated:

- dealing in insurance contracts as agent;
- arranging deals in insurance contracts;
- advising on insurance contracts; and
- assisting in the administration and performance of insurance contracts.

There are a few specific exceptions to this extension of the FOS's jurisdiction:

- travel agencies – when the insurance is sold as part of a package holiday;
- retailers – if they are selling extended warranties on appliances, TVs etc.;
- loss adjusters – but not loss assessors who are acting for policyholders in respect of insurance claims;
- the handling of insurance claims on behalf of insurers under a delegated authority.

The matter must be referred to the Ombudsman within the earliest of:

- six months of the date on the firm's letter advising the claimant of its final decision regarding the complaint;
- six years after the event complained about; or
- three years after the complainant knew, or should have known that they had cause for complaint.

A1A The process

Firstly, the complaint must first have been considered by the senior management of the member insurer, and the final decision of the insurer will have been rejected by the complainant.

Additionally, the complainant must not have instituted proceedings in any court of law or made reference to arbitration unless the proceedings have been discontinued or arbitration withdrawn prior to any final judgment. This is because the FOS will not become embroiled in legal proceedings. Moreover, the complaint must not have been considered previously (unless new evidence is now available). Finally, the Ombudsman must have received the complaint within the timescales specified.

A2 Alternative Dispute Resolution

Alternative Dispute Resolution (ADR) is a method that has been formulated primarily to lighten the case-load of courts of law, assisting with the resolution of disputes with third parties. It is a less formal procedure where the ultimate solution is determined by the parties themselves through mediation rather than by any judge or arbitrator.

It is a generic term for a non-contentious method of resolving disputes, without the need to litigate, although it does not prevent this course of action if one or both of the parties wishes to take such action. In other words, if both the parties wish ADR to be binding, then the option to pursue litigation is prevented.

Normally, a mediator is appointed by mutual consent. It is the job of the mediator to facilitate discussion through a series of meetings and to encourage the parties to bring various aspects of the dispute to a point where there is mutual understanding and acceptance. The solution is often a compromise which is acceptable to both parties.

ADR can be used to assist in all manner of disputes including complaints to insurers. It can, perhaps, have a particular benefit in disputes between insurer and commercial policyholder where, otherwise, there is nothing available before full arbitration and/or court action.

The courts, as a result of the Civil Procedure Rules, are obliged to encourage the use of ADR, in order to prevent the courts from being overburdened, but also to develop a change of attitude to disputes, and move away from an adversarial approach.

A2A Types of ADR

There are a number of different forms of ADR available:

- **Adjudication:** This can be used as a generic term to describe an alternative dispute resolution process, where a third party makes a decision to resolve a dispute. Such a term can embrace judges, arbitrators and ombudsmen. Adjudication involves an independent third party considering the claims of both sides and making a decision. Often the adjudicator will be an expert in the subject matter in dispute. Adjudicators are not bound by the rules of litigation or arbitration, and their decisions may be interim, and can be taken another stage to reach a final decision, by say arbitration. They can however be binding on both parties, if a prior agreement is reached.

- **Ombudsmen:** It should be remembered that Ombudsmen investigate and resolve complaints about public and private organisations. By their philosophy and approach, they may encourage good practice in the way complaints are handled by organisations and government bodies, creating a recognised mechanism for complainants. Of course, services provided by banks, building societies and insurance companies are all covered by the Financial Ombudsman Service (FOS).
- **Mediation and conciliation:** Generally a conciliator will be more active than a mediator. The former highlights areas that the parties may wish to consider, rather than letting the parties finding their own way to settlement.

The best use in a motor insurance context may be where there is a dispute as to quantum between, say, the policyholder's insurers/representatives and a third party/representative. Where a mediator is used, then the parties have the option of not revealing information which they believe is confidential.

- **Mediation-arbitration:** A modified form of mediation, whereby the parties can move to arbitration, if the mediation does not produce an agreement. The mediator may then become the arbitrator, if the matter is not resolved initially.
- **Mini-trial or structured settlement procedure:** The parties appoint a neutral person to sit as a chairperson of a tribunal composed of the chairperson, plus a senior representative of each of the parties. They sit as a panel and are presented with details of the case as presented by both parties.
- **Expert appraisal:** Parties can refer their dispute to an expert in that particular field for them to give an opinion. Their opinion may prove to be influential.
- **Judicial appraisal:** The Centre for Dispute Resolution has a scheme whereby judges and senior counsel are available to give a preliminary and prompt view on the legal position as between the parties. It is then up to the parties whether they decide that the decision is binding.
- **Expert determination:** This could be considered to be a cross between arbitration and ADR. In arbitration, as here, the parties select experts to decide the case for them.
- **Early neutral evaluation:** Otherwise known as ENE. An independent third party considers the claims made by each side and gives an opinion. Such an opinion is non-binding; the parties have the option of using it if they wish in considering how they want to proceed with their case.

A2B Advantages of ADR

The use of ADR is now actively encouraged in the handling of civil claims, precipitated by Lord Woolf in his report on the reforms to the civil justice system, whereby he indicated that there was a need to adopt a less adversarial approach to litigation and that solicitors should be encouraged, wherever possible, to discuss with their clients the possibility of using ADR instead of litigation. Until the reforms were introduced, the courts were clogged with cases, whereby the value of the amount sought was totally disproportionate to the cost of the litigation process and, in particular, the costs incurred by both sides, to secure an outcome.

The courts were clogged with cases

Therefore the advantages of ADR are that:

- It helps to save litigants the ever-mounting cost of bringing their actions to trial.
- The parties are not bound by the timetable of the litigation process, in order to attain a result.
- A settlement is possible, without either party compromising their commercial relationship or reputation.
- There are potentially a number of different settlement options, and it is a more efficient use of judicial resources.
- ADR is significantly cheaper than litigation and arbitration, although the latter is cheaper than pursuing a matter through the courts.
- There is a wide variety of choice as to the form of the ADR, and there are no strict procedural rules.
- Similarly, no case precedents can be used by the parties to bind or restrict the decision, although the parties may cite decisions in order to support their arguments.
- The use of ADR will also preserve business relationships, as the hearings are in private.
- With a third party (the mediator) proposing settlement terms, then a strong element of commercial reality can operate.

A2C Disadvantages of ADR

- The parties are not bound by the procedure and, therefore, can resort to litigation, if appropriate.
- Awards are not enforceable. The parties can, however, enter into a contract stating that they agree to be bound by any ADR decision that is reached.
- It is possible that the parties may not agree to the ADR solution, or that it is inappropriate, for example, where an injunction may be required, or where a point of law needs determining, perhaps by means of legal precedents.
- It is possible not to reveal all pertinent facts.
- ADR encourages compromise. Compromise can be a good way to settle some disputes, but it is not appropriate for others. In serious justice conflicts and cases of irreconcilable moral difference, compromise is simply not an option because the issues mean too much to the parties involved.



Question 1

Is a decision made by the Financial Ombudsman binding on the insurer or on the insured?

A3 Arbitration

The law relating to arbitration is contained within the **Arbitration Act 1996**. The principles are generally contained in s.1 of the Act, which states:

The provisions of this Part are founded on the following principles, and shall be construed accordingly—

- (a) the object of arbitration is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense;

- (b) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest;
- (c) in matters governed by this Part the court should not intervene except as provided by this Part.

As we have seen arbitration is an alternative to litigation, and invariably in commercial type policies there will be an arbitration clause. An example could be:

If We accept that there is a claim under this Policy but there is disagreement in respect of the amount to be paid the disagreement will be referred to an Arbitrator appointed in accordance with current statutory provisions. In these circumstances an Arbitrator's award must be made before there is any right of action Against Us.

Insurers often prefer for such disputes to be referred to arbitration rather than to litigation, as this enables them to have matters resolved in private by a person or group of people who have been chosen for their experience in that particular class of business. Arbitration avoids a public hearing in an open court by a judge, who may not be skilled in the specific areas governed by the issues raised.

Generally speaking, an arbitrator has similar powers to a court of law, except that arbitrators do not have power to make orders such as injunctions, or to carry out sanctions such as imprisonment. In the policy wording example given, the policyholder does have the option of pursuing the matter through the courts, if the settlement given by the arbitrator is unacceptable. Here though, 'arbitrator' is not defined.

Perhaps to ensure that the matter is referred to an 'arbitrator' within the meaning of the Arbitration Act, there may be an additional clause stating:

Any dispute arising out of or in connection with this matter shall be referred to and finally resolved by arbitration under the Rules of the Chartered Institute of Arbitrators, which Rules are deemed to be incorporated by reference to this clause.

A3A Commencement of arbitration

In the absence of any specific arbitration process outlined in the policy document, the process will usually commence if no agreement as to quantum can be reached between the parties to the insurance contract. The difficulty may be the choice of arbitrator. Section 15(1) of the Arbitration Act states:

the parties are free to agree on the number of arbitrators to form the tribunal and whether there is to be a chairman or umpire.

The Act also provides (s.15(3)) that 'if there is no agreement as to the number of arbitrators the tribunal shall consist of a sole arbitrator'. Whilst the Act does cater for the procedure where a sole arbitrator will be appointed, but in default of agreement states that either party can make a written request to the other for a joint appointment to be made and, where this does not succeed, either party can make an application to the court under s.18 of the Act for one to be appointed.

***It will be usually
a sole arbitrator***

Unless the nature of the dispute is incredibly complicated, then it will be usually a sole arbitrator who will be appointed. The potential problem is that the policyholder may be unaware of whether a particular arbitrator would be suitable to hear the nature of the dispute, and the insurer has to appear to be even-handed in the choice of the person nominated to arbitrate.

In the interests of equity, it may be prudent for the parties to agree that, say, a list of three different arbitrators be sought from the Chartered Institute of Arbitrators, with detailed CVs on each. This would then enable both parties to the dispute to reach consensus on the agreed nomination.

To ensure a fair approach, the Chartered Institute of Arbitrators has drawn up guidelines for good practice requiring the following to be revealed:

- past or present relationships with either of the parties or any important witnesses;
- substantial social relationships with any of these people;
- any prior knowledge of this dispute;
- commitments which may affect the arbitrator's availability to arbitrate.

Once the arbitrator/arbitrators have been appointed, then they will guide the parties as to the process to be followed.

At the hearing itself (agreed to be heard on a mutually convenient date) s.33 of the Arbitration Act says (*inter alia*) that the Tribunal shall:

- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent, and
- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.

A3B Offers

***The written
offer must be
kept secret***

It may be necessary for the arbitrator to precipitate a settlement by applying pressure to the claimant. There are no payments into court (although in litigation this process is becoming far less common although the respondent is able to send a **calderbank letter** instead, although they may also send a sealed letter to the arbitrator which contains details of the offer they are putting forward). A calderbank letter is a written offer to the claimant which is expressed to be 'without prejudice save as to costs'. If the claimant rejects the offer and the case proceeds, the written offer must be kept secret until the issues have been resolved. If the claimant then fails to achieve a better result than that contained in the written offer, the letter can be drawn to the arbitrator's attention in respect of costs. In such circumstances, the arbitrator will probably order that the claimant should pay all the costs of the action since receipt of the calderbank offer. Where this offer is not subsequently improved upon at the hearing, the respondent can invite the arbitrator to open the letter and bear its contents in mind when exercising their discretion as to costs.

A3C Hearing

Unless the parties agree to the contrary, an arbitrator can make a declaration, order payments of money, and have the same powers as the court to order the parties to do something or to stop doing something.

A3D The award

Similarly, the award should be in written form and signed by the arbitrator who must give reasons for their decision, unless there is a contrary agreement.

B Claims procedure**B1 Assessment**

As we have already discussed, the policyholder's claims for the damage to their own vehicle, will be assessed on the basis of the principle of indemnity and this is used to determine the extent of the insurer's liability. The principle only really becomes significant when the cost of repairing the vehicle approaches the value of the vehicle, although indemnity can be used to determine whether a contribution is to be paid by the policyholder, where there is believed to be an element of betterment.

Of course, there are 'benefits' offered under motor policies, which are not bound by the principle of indemnity, e.g. the personal accident benefits section.

The same principle is generally used to assess third party claims, although the courts will take into account the question of remoteness (in accordance with the principle of reasonable foreseeability), and whether any particular head of claim is speculative (and purely based on a mere possibility).

On a practical level, the courts may be reluctant to award damages for an item of special damages claim which is not supported by evidence.

There are a number of practical aspects to claims negotiation and settlement. The insurer may require more detailed evidence of the location of the incident, not simply the rough plan that will have been drawn by the policyholder on the accident report form.

More detailed evidence of the location

B2 Admission of liability

All motor policies contain a condition that the insured must make no admission of liability without the consent of the insurers. It is important to recognise that solicitors acting for (defendant) insurers should not admit liability on behalf of the insured in an action without obtaining the prior consent of the insured (*Groom v. Crocker (1939)*). It is considered by some that this case does not necessarily apply to insurers though it clearly applies to solicitors acting on behalf of insurers. However, provided the terms of the policy indicate that the insurer can handle any claim as 'it sees fit' (i.e. the insurer has absolute control), then even if the solicitor receives conflicting instructions from insured and insurer and acts in accordance with the insurer's wishes the insured will not be able to complain, where that insurer is providing indemnity.

It would be unwise to make a categorical denial of liability before completing enquiries into the incident. This could precipitate the issue of a Claim Form (previously called a summons). If a repudiation of liability is the decided course of action, this must be after careful consideration of all the evidence. All communications should be conducted 'without prejudice' (or 'without prejudice save as to costs'), in order to avoid compromising a position, especially where offers are made to resolve matters.

B2A Without prejudice

The expression 'without prejudice' means that any action taken or any opinion given is not to be construed as an admission of liability. Correspondence marked 'without prejudice' cannot be produced as evidence in legal proceedings, neither can interviews that are held on this understanding. This means that negotiations may be undertaken freely. If an insurer omits to mark a letter 'without prejudice', this will not cause difficulty provided that one letter in the series has been marked in this way.

This particular expression has been the subject of detailed scrutiny by the House of Lords. In the case of *Ofuluc v Bossert* (2009) UKHL16, the court upheld the public policy justification of allowing the parties to be able to speak freely about the issues in a dispute, where there is a genuine attempt to resolve such issues, without fear that any statements etc. will later be relied upon against them in court.

There are basically four different strands of the without prejudice rule:

- The lack of the words 'without prejudice' is not decisive.
- Conversely, the use of the term 'without prejudice' is not conclusive: if it is not part of the genuine attempt to resolve a dispute.
- However, the absence of the words 'without prejudice' will create an inference that the party sending the 'open' communications are willing for them to be brought to the attention of the court.
- There are however important exceptions to the 'without prejudice' rule: in other words there are specific times when a court will admit such communications:
 - When the rule is being abused to conceal fraud, blackmail, or other forms of 'unambiguous impropriety'. This phrase has been used in previous cases, and basically means that there must be a clear case of improper conduct.
 - When 'without prejudice' evidence is sought to act as proof as an agreed settlement.

B3 Civil Procedure Rules

Whilst the Civil Procedure Rules are covered in more depth in other texts, mention should be made here of the Rules (CPR), introduced in April 1999, following a five year long 'Access to Justice' investigation by Lord Woolf. All previous rules on procedure were to be discarded.

The CPR is in plain, straightforward English, comprising a series of Rules, supported by Practice Directions which effectively provide an explanation of how the Rules are to be implemented. The most important part of the CPR is Part 1(1), which describes what is titled the 'overriding objective', this being to deal with cases 'justly'. Part 1(2) then goes on to explain what 'justly' should incorporate, which is:

- a) that the parties are on an equal footing;
- b) saving expense;
- c) dealing with a case in ways which are proportionate to the amount involved, the importance of the case, the complexity of the issues, and the financial position of the party;
- d) ensuring that it is dealt with expeditiously and fairly; and
- e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

B3A Pre-Action Protocols

For the first time, the pre-action procedure of the parties was governed procedurally, details of which are contained in the Pre-Action Protocols. The idea was to ensure consistency and openness in the manner in which the claim was handled, prior to proceedings. In fact, the principle is that the parties would resolve matters either without recourse to litigation, or prior to a court trial.

The Pre-Action Protocols lay the foundations for the claim, requiring the claimant's solicitors to outline their client's case, based on the information available at the time. The Letter of Claim should contain a clear summary of the facts, plus an indication of the nature of the injuries sustained, and any financial loss suffered. The defendants or their insurers then have 21 days in which to reply.

*Clear summary
of the facts*

The defendant's insurers then have three months from the date of acknowledgement of the Letter of Claim to complete investigations into the question of liability (as far as is reasonably practicable), and provide the claimant's solicitors with a view. If liability is to be denied, then reasons should be given. Specifically, if the defendants have documents in their possession which support their denial, these should be disclosed. All actions hinge on the overriding objective and the need to be open, coupled with a desire to resolve matters.

B3B Litigation

If matters do proceed to litigation, then there are key concepts which should prevail, these being:

- Co-operation: the parties must be open and provide information to each other. This may mean disclosing information which is detrimental to their own case.
- Negotiation: the approach is that the parties endeavour to resolve matters amicably, and that there are no 'vexatious litigants'. Parties should consider other possible forms of resolution, other than litigation, to attain a settlement. Alternative Dispute Resolution is a generic term covering any dispute resolution mechanism, where an independent third party is used to secure agreement.

Why litigate? There are various reasons given, but amongst them are the following:

- Interest: This effectively protects the client's position, by adding interest to the amount of the claim. Interest will run on general damages from the date of service of the Claim Form, until the date of trial (or settlement). With special damages, the approach is that it will run from the date of the accident, until the date of trial (or settlement), at half the special account rate.
- The court's judgment is enforceable against the losing party. This means that where the claimant's representative believes that their client has reasonable prospects of success, then they will hope to secure judgment and gain recovery of their client's damages.
- Another reason for commencing litigation is that costs generally follow the event. In other words, the successful party's representative should, hopefully, recover most if not all of their costs.
- Whilst litigation is an involuntary process, this may suit some parties, as it will potentially force the defendant (and their insurers) to act promptly, and precipitate a settlement. Proceedings can be perceived as encouraging a resolution where the defendant (or their insurers) appear to be taking a somewhat dilatory approach to the claim.
- It gives access to the knowledge of judiciary. Whilst this may be considered by some as a lottery, their expertise may, in certain cases, mean that an informed objective view is used to reach a sound, reasonable judgment.
- It is also possible that the defendant has no reasonable defence (or that is the belief of the claimant) and, therefore, they will seek to have any defence 'struck out'.

Proceedings are commenced in either the County Court or the High Court. The choice of court hinges on the type and value of the claim. In order to begin proceedings, a (Part 7) Claim Form is invariably issued (as this has taken the place of the writ or summons). It is essential that accurate particulars of both the claimant and defendant are given. A concise nature of the claim should be outlined, plus whether interest is sought on the amount claimed. The Claim Form should indicate whether the Particulars of Claim is attached, or will follow.

Following the issue and service of proceedings, the next step is for an Acknowledgement of Service to be filed, and also a defence. Both can be filed together. If the defendant intends to contest any part of the claim, then a defence must be utilised.

A defence must state which of the allegations in the Particulars of Claim are denied, which are admitted, and those which are not admitted and require to be proved. Silence on a particular allegation will result in it being treated as admitted.

Part 20 of the CPR is 'any claim other than a claim by a claimant against a defendant.' This can be used by a defendant to pursue a counterclaim against the claimant. The other uses of a Part 20 claim are:

- A counterclaim by the defendant against someone other than the claimant.
- Claims by the defendant against a non party (a third party).
- Co-defendants claiming contribution or indemnity against each other.
- Claims by a third party against a further (fourth) party.

If the defence raises matters which require clarification, from the claimant's perspective, or the Particulars of Claim makes assertions that are ostensibly unsubstantiated, then a Part 18 application may be filed, as this relates to the provision of information in respect of a party's case.

The Part of the CPR which facilitates a resolution of the matter or, at the very least, places the other side on risk for interest and costs is **Part 36**, by bringing pressure to bear. A party would usually wish to demonstrate to the court that it has taken constructive steps to attain settlement, thereby following the philosophy of the CPR. Under Part 36 of the CPR, either claimant or defendant can make offers to settle matters, and the defendant can also utilise the option of a Part 36 payment into court. Such a tool can be used to achieve a complete settlement, or merely resolution of particular aspects of the claim.

Normally, any party who is unable to better a Part 36 offer received may well suffer penalties in relation to costs. From 6 April 2007, defendants making Part 36 offers will no longer be required to make a payment into court, in order to gain costs protections etc. This will hopefully result in swifter binding settlements.

The Rules now state that:

- The offer must be open for a period of at least 21 days, and can be left open for longer.
- An offer can be accepted at any time unless it has been specifically withdrawn, even where a counter offer has been made. The party to whom the offer is made does not need the permission of the court to accept out of time.
- A claimant must now either match or beat their offer in order for the costs consequences under Part 36 to apply.
- Once an offer has been accepted, payment must be made within 14 days unless the parties agree in writing to a longer period. If no such agreement is reached and no payment made within the 14 days, the offeree can enter judgment for the unpaid sum.

In order for an offer to be valid under the new Rules, it must meet the following criteria:

- The offer must be in writing.
- Indicate whether it is to have the consequences of Part 36.
- Indicate whether it relates to the whole or part of the claim, and advise whether it takes into account any counterclaim.
- Be open for acceptance for a period of at least 21 days.

Once the claim has been defended, and assuming that a settlement has not been agreed, then the court will be required to **allocate** the case to the appropriate track. There are three tracks, the small claims track, fast track and the multi track. This reflects the court's obligation to be active in case management. Each party to the proceedings will be required to complete an **allocation questionnaire**.

Once completed and returned by the parties, the contents of the questionnaires are reviewed, along with the pleadings, to determine the issues that remain between the parties, and to allocate the case to the appropriate track. An order can be made by the court, allocating the case and giving case management directions. This then sets the timetable, which the case should then follow.

It may entail a case management conference, which is usually arranged, where:

- there is a clear disagreement between the parties on the directions; or
- the case raises complex issues, where the close case management by the courts is deemed appropriate; or
- there is considerable disagreement as to which track the case falls to be dealt with.

Case management usually entails disclosure and inspection. Disclosure will usually be required by means of a list, and these will invariably comprise documents, although there may be video evidence to be seen, and perhaps car parts and the like, where unroadworthiness is alleged.

The pre-trial checklist is the next significant stage in the court timetable. The checklist verifies that all directions have been complied with, and confirmation that the parties are preparing for trial.

The vast majority of cases do not proceed to trial

The vast majority of cases do not proceed to trial: economics and resources dictate that insurers and their opposite number make all reasonable steps to resolve matters before then. This then corresponds with the principle cases which are sometimes fought on quantum, but the number of situations where motor insurers could claim success are rare.

This is a brief synopsis of the CPR, and merely provides a brief outline of the Rules. If further information is sought, then access should be gained to comprehensive texts.



Question 2

What was the purpose behind the introduction of Pre-Action Protocols?

B3C The Road Traffic Act 1988 and litigation

In order to perhaps more obviously reflect the principle of proportionality and to avoid the continuous battle between the claimant and defendant sides of the personal injury camps, Section II of the Civil Procedure Rules Part 45 was introduced towards the end of 2003. This was initiated by the Civil Justice Council, and it took approximately 18 months for the section to be created.

The new rule provided that the claimant was entitled to recover only fixed costs of £800, plus 20% of the damages agreed up to £5,000, plus 15% of the damages agreed between £5,000 and £10,000. So, for example, if the agreed settlement figure for the claimant was £4000, then the claimant solicitors costs would be £1600 (i.e. £800 plus 20% of the settlement sum of £4000).

Section 25A of the Part 45 Practice Direction stated that the above rule only applied to road traffic disputes, where the accident which gave rise to the dispute occurred on or after the 6th October 2003. It did not apply to disputes where the agreed value of the damages was within the small claims limit, or exceeded £10,000, and the case had to be resolved prior to proceedings being issued.

There was a London weighting to reflect the higher costs regime in the capital of 12.5%. Children, patient and multiple party actions were excluded from the scheme.

Subsequent to the predictable costs regime, and perhaps running in parallel with it, from April 2010 a new system has been introduced for the handling of RTA personal injury claims with a value of between £1,000 and £10,000.

The aim is to ensure that straightforward claims, where liability is admitted by the defendant's insurer, are settled more quickly and that associated legal costs are kept to a minimum. The new system is underpinned by an electronic portal which makes it easier for claimant solicitors and defendant insurers to comply with the restricted timescales that apply to eligible claims.

There are three stages to the process:

Stage 1: The claimant's solicitor sends a Claim Notification Form to the insurers electronically; the insurers then have 15 days to respond (admit liability, or admit liability but allege contributory negligence, or deny liability altogether). If the insurer fails to respond within 15 days, the claim falls out of this process.

Stage 2: where liability is admitted, the claimant's solicitors obtain medical evidence and send the insurer either an interim payment request or a settlement pack. If this offer is rejected there is a further 20 days for the two parties to negotiate. If accepted, insurers have 10 days to pay the damages and fixed costs of £800. Medical evidence is gathered between Stages 1 and 2, for which there is no fixed time period.

Stage 3: if settlement cannot be agreed, application is made for the claim to be assessed by the court (either a written or oral hearing). Costs are paid by the losing party according to a fixed scale.

The electronic portal referred to above can be accessed by one of two methods. One is a web browser based access to a web server, which facilitating the completion of electronic forms online, which are then transferred to insurers and compensators.

The second option is via 'application to application' interfaces with the web server from a claimant's lawyers internal claims management systems.

B3D Litigation funding

As mentioned in chapter 3, section K4A, the most important method of funding civil litigation is the conditional fee agreement (a CFA, otherwise known as the 'no win-no fee' agreement). 'No win, no fee' means that in the event of losing, the client will not be liable to pay any fees to their lawyer; but if the case is won then whilst there may be an element of the costs for which the client is responsible, as indicated above – the costs usually follow the event. A CFA is an agreement whereby a lawyer and a client can agree to share the risk of the litigation by coming to a financial arrangement on the fees payable based on the outcome of the litigation.

But what if the client loses the case – how does the 'no win-no fee' concept work? The lawyer, acting on behalf of the client assesses the risk, and satisfies themselves that there are reasonable prospects of success.

The potential cost exposure can be avoided, either by utilising cover under a 'before the event' policy, which as the title implies is one that is in policy prior to the event, which has resulted in a claim, or alternatively by purchasing 'after the event' insurance (ATE).

*Agree to share
the risk of the
litigation*

A before-the-event policy is usually sold with other insurance (for example, car insurance or house insurance). It could be, perhaps, a legal expenses policy, attached to a motor policy. If this is not available, then a claimant may need to enter into a conditional-fee agreement, and arrange for the purchase of an ATE policy.

ATE Insurance is taken out once legal proceedings are contemplated. The insurance will indemnify the insured's own disbursements and their opponent's costs and disbursements in the event that the legal action is ultimately discontinued or lost at trial.



Question 3

By what name is a conditional fee agreement more commonly known?

*Special
damages
and general
damages*

C Classification of damages

As explained in chapter 1, section A4, damages are used to compensate a victim, who suffers injury, loss or damage following an incident, where a tort has operated to cause such loss. In essence, damages are awarded for both financial and non-financial losses. Such damages may be grouped under two distinct headings – special damages and general damages. Often, there will be a claim for personal injuries.

C1 Special damages

These are in respect of a quantifiable financial loss, which will include:

- **Loss of earnings** incurred by the date of trial or settlement. This head of claim can be calculated by securing particulars of the claimant's earnings for a designated period before the accident, usually 13 weeks, and for the entire period of the absence/loss. This will normally be substantiated by wage slips or confirmation from the claimant's employers of what they calculate to be the gross and net wage loss. The defendant insurers will need to be satisfied that the figures are a true reflection of the claimant's earnings, and if there are huge fluctuations, due to overtime or bonus payments, then details for a longer pre-accident period may have to be secured, in order for the defendant insurer to calculate an average weekly wage. If a claimant is self-employed then an insurer will request trading profit and loss accounts for three years and the corresponding tax returns for the same period.
- **Medical expenses:** these will be supported by invoices etc., for attention or services provided. For example, this may include the cost of a carer, treatment provided, aids and appliances etc.
- **'Out-of-pocket' expenses,** which could include a whole host of different heads of claim, including travelling expenses. Additionally, it may incorporate a claim for loss of use and inconvenience, which the courts recognise as a valid head of claim.
- **Hire of an alternative vehicle:** This is the cost of the claimant hiring another vehicle, whilst their own vehicle is off the road, awaiting repair, or requires replacement. In some instances, the claimant will obtain a hire car from one of the recognised car hire firms (e.g. Hertz, Avis, Enterprise).

- Additionally, this head of claim has resulted in a growing industry of companies offering '**credit hire**'. Credit hire ostensibly benefits the claimant, as they receive a hire car, without incurring any cost 'upfront', as the hire car is provided 'on credit'. However, there are potential problems with what appears to be a very attractive arrangement:
 - Some credit hire agreements will state that the hirer will need to repay the cost of the hire if the credit hire company are not successful in recovering their outlay from the insurer of the other party.
 - The hirer may be encouraged to enter into a credit hire agreement by a garage or intermediary, when there is little or no chance of a recovery being effected.
 - Some credit hire rates are unreasonable, and can result in the other party's insurers taking a very robust line.
 - In order to be valid, the credit hire agreement must comply with various consumer credit regulations or alternatively exempt order regulations.
- '**Loss of services**': The cost of a housekeeper, gardener, painter, DIY person etc. If it can be shown that the claimant would normally have performed such tasks, and as a result of the injuries has been unable to undertake the same, then the reasonable cost of such services will be paid.

A defendant insurer will need to be satisfied that the claim is valid, and the level and frequency of the services will need to be scrutinised. This area can be one of the most contested parts of a claimant's claim, and remains one of the most litigious.

Example

A claimant is injured in a motor vehicle accident, suffering a 'whiplash' type injury. Amongst the various heads of claim is the cost of a gardener, which the claimant asserts is an expense that arose from the injuries sustained. However, it transpires that the gardener was employed on the same basis for some considerable time prior to the accident.

On this basis, the claimant has not actually suffered a loss, as the gardener would have been employed, irrespective of the accident.



C2 General damages

These relate to those losses which cannot immediately be quantified and are less easily assessed; they can include the following:

- **Pain, suffering and loss of amenity.** Nowadays, both the courts and the insurance industry utilise the Judicial Studies Board Guidelines for the Assessment of General Damages in personal injury cases. They will provide an outline of the injuries to each area of the body, and include psychiatric injury. The injuries will then be banded depending on the severity.

In 2000, there were a basket of cases brought before the Court of Appeal, the lead case being *Heil v. Rankin* (2000). This effectively allowed an increase in the values of awards, for those injuries that were worth in excess of £10,000. As a result of this decision, the JSB Guidelines had to be adjusted to take into account the increase.

It is often assumed that general damages are, in fact, confined to pain, suffering and loss of amenity. This is clearly not the case; other items of damages that can be considered general damages are those which are not capable of accurate pecuniary assessment at the time of trial and, therefore, future losses were regarded as 'general damages'. However, the pertinent point is whether they are easily capable of quantification, and, in fact, the Civil Procedure Rules now requires a claimant to supply a schedule of both past and future losses. To this extent, the distinction between 'special' and 'general' damages becomes academic. Valuations of pain, suffering and loss of amenity are not an exact science, although the JSB Guidelines, clearly help both sides and the courts to calculate such values.

- **Future loss of earnings.** This will, of course, extend beyond the date of any settlement (if the matter is resolved amicably), or trial hearing (if the case is litigated, and a negotiated settlement is not possible). In fact, future loss of earnings will be calculated from that date, and will be based on a multiplier/multiplicand calculation. A multiplier represents the number of years over which the loss will be suffered, but must take into account the fact that there is an 'accelerated payment'.

In other words, the claimant may have the benefit of receiving a lump sum in settlement, which obviously includes a sum reflecting the total amount for the future earnings claim.

The multiplicand is the net annual amount of the claimant's losses arising in the future, e.g. a wage loss of £18,000 per annum.

The Ogden tables (see section C7B) are used to calculate the correct multiplier (following the decision in *Wells v. Wells* (1999), and the correct 'discount rate' (to reflect the accelerated receipt of the loss), is determined by the Lord Chancellor, pursuant to s.1 of the **Damages Act 1996**. The rate currently stands at 2.5%.

- **Loss of potential on the labour market**, in accordance with the decision of *Smith v. Manchester Corporation* (1974). It is commonly known as a 'Smith v. Manchester' award, and is a lump sum, to reflect the fact that the claimant may be unable to return to their pre-accident employment, or their chances of progressing have been curtailed, or if they may be forced to take early retirement, due to the injuries. It may also be made if the general job opportunities are less than would otherwise be.
- Smith v. Manchester award would be appropriate where the claimant is at a disadvantage on the open labour market. The amount of the award would be calculated based on the claimant's age, the likely period of disadvantage and the person's salary. Other factors would include the type of work they are employed in and whether they would have been able to continue in this particular field had the injury not occurred, whether they are qualified to do any other type of work or can they retrain.

The claimant must establish that there is a real not speculative risk of losing their job. Mention should also be made of what is called a Blamire award. This is where the courts deem it appropriate where there are too many uncertainties to adopt the multiplier/multiplicand approach to quantifying future loss of earnings;

- **Loss of congenial employment:** In certain circumstances, a court may make an award for the fact that the claimant may have lost job satisfaction, although they may incorporate such an award in the amount for pain suffering and loss of amenity.
- **Future loss of capacity to undertake housekeeping, DIY, gardening etc.** If this is recognised as a valid head of claim up until the date of settlement or trial, then an annual sum will be calculated for the cost of tradesmen performing the tasks, and a multiplier/multiplicand used.
- **Pension loss:** the loss is calculated from the time the claimant would have drawn their pension, were it not for the accident. The case of *Auty v. National Coal Board (1985)* outlines the method for calculating such a head of claim, although it is not without its critics.
- **Care:** this will occur where the injury suffered is serious enough to justify the costs of a carer. The reasonable costs of such (professional) care will be considered, or if it is provided gratuitously, then reasonable compensation may be paid, if the 'carer' has been required to forgo part of their normal salary, in order to be a carer.

As with the future loss of capacity to undertake housekeeping etc, there are usually three factors that have to be taken into account: was it necessary for a third party to undertake the housekeeping, DIY, care etc.; the period for which the housekeeping, DIY, care etc. was required (this will often hinge on the evidence of the claimant, and that contained within the medical evidence) and the number of hours per day that the housekeeping, DIY care etc. is required.

It should be emphasised that the above lists the more common heads of claim, and is not intended to be exhaustive.

Should the injured party die, as a result of the injuries sustained, then their estate can claim pursuant to s.1 of the **Law Reform (Miscellaneous Provisions) Act 1934**. If the deceased had dependants, then they may also seek recompense as a result of the provisions of the **Fatal Accidents Act 1976**.

C3 Interest

The general rule regarding interest for damages is that it is to be awarded at the discretion of the court: s.35A of the **Supreme Court Act 1981**, plus s.69 of the **County Court Act 1984** refer. However, it should normally be sought within the pleadings. Nevertheless, it will normally be awarded for any claim over £200 for personal injury or death, unless there are special reasons why it should not be so awarded.

The principles for awarding interest for special damages are a little complicated, as they very much hinge on court decisions. In the Court of Appeal decision of *Jefford v. Gee (1970)* it was decided that interest should be paid at half the special account rate from the date of the accident, until the date of trial. This decision was then followed in the case of *Dexter v. Courtaulds (1984)*. The special account rate is the rate at which interest is earned on the money in court.

For general damages, interest is assessed from the date of the service of the claim form of the date of judgment. A standard rate of 2% is used by virtue of decisions in *Birkett v. Haynes (1982)* and *Wright v. BR (1983)*.

C4 Single settlements: a 'once and for all' principle?

The general principle of personal injury claims used to be that damages were assessed and recovered 'once and for all'. Accordingly, once a claim has been settled for personal injury a further claim could not be made and a second action was, therefore, prohibited. This, therefore, explains the reluctance of advisers of claimants to agree settlement until the full consequences of the injuries are established.

Payment was in 'full and final settlement' and the claimant was then left to their own devices as to how to invest the award, in order to maximise the best return. However, there were two fundamental problems with such an approach:

- What if there is a serious deterioration in the claimant's condition, following settlement, or payment of the award?
- What if the award, intended to last the rest of the claimant's life, was extinguished earlier, due to incorrect financial advice, poor investment and profligacy?

C5 Provisional damages

With regard to the first point, it was recognised that severe injuries might take a long time to settle, and there may, on occasions, be a serious deterioration in the claimant's condition, a situation that may not have been envisaged.

If the prognosis for a condition is that there is a prospect of such a serious deterioration, or the development of a separate serious condition, then the court may have to consider an award of 'provisional damages'. This facilitates a return to the court, to seek a further award, if the risk becomes a reality.

Originally, s.6 of the **Administration of Justice Act 1982** empowers the court to permit a review of the award. Such a case can, therefore, be re-opened in the case of serious deterioration of physical or mental condition.

Under paragraph 4.4 of the Practice Direction to Part 16 of the Civil Procedure Rules, there must be specific reference to a provisional damages award being sought in the Particulars of Claim.

C6 Structured settlements

As indicated, the traditional one-off payment approach to claims has inherent disadvantages: the assessed life expectancy of the claimant may be found to be inaccurate, and even if the claimant does secure what appears to be sound financial advice, then the investments may under-perform, or even fail. What is required by the claimant is financial security.

Rapid escalation in the assessment of damages has led insurers to consider alternative methods of compensating claimants who are seriously injured.

The structured settlement involves a payment to allow for immediate needs and an income to follow. Such settlements were recognised in the schedule to s.22 of the **Social Security Act 1989**. The definition used is:

A settlement involving payment of a sum to the claimant with further sums as specified over a period of years.

*Alternative
methods of
compensating
claimants*

It has been agreed by HM Revenue and Customs that the periodic payments will be regarded as damages deferred or as instalments of a debt and as such, these payments can be made free of tax. However, each case must be referred to the HM Revenue and Customs individually and without giving advance approval an indication will be given if the proposals are 'out of line'.

The structure can be treated as a debt, in which case no annuity need be purchased. In this case, the original insurer invests the money and pays from their own funds. This method of settlement is likely to gain favour particularly in the element of inflation-proofing that it contains. Generally, it is not worthwhile to consider this type of settlement where damages are less than, say, £200,000.

*The structure
can be treated
as a debt*

Following the introduction of the **Courts Act 2003** (in November 2004) the courts now have the power to order periodic payments, whether requested by either party to the proceedings or not. In all case involving a future loss, the court will consider whether an order for periodic payments best meets the **needs** of the claimant, rather than the claimant's wishes.

The intention is that the court will give an indication at the earliest practicable stage, whether it considers that the case is suitable for periodic payments. Specifically, if there is expert evidence that the life expectancy of the claimant is likely to be affected by the incident leading to the claim, then it is more likely that the periodic payments option will be considered.

Section 2 of the Damages Act 1996 (as amended) allows the court to order periodical payments if, in all the circumstances of the case, it best meets the claimant's needs, which effectively echoes the Courts Act requirement.

The two questions that the court must address are:

- Is the award the best way of meeting the needs of the claimant, having regard to the circumstances of the case, the preference of the parties, plus the amount of the annual payments?
- The court needs to be satisfied that the continuity of payment is 'reasonably secure.'

Here, 'reasonably secure' means that the payment is protected by a scheme under s.213 of the Financial Services and Markets Act 2000, which pertains to the Financial Services Compensation Scheme, or the scheme is one provided by the government or health service organisation. Alternatively, the courts may decide to locate an alternative method of funding, but must be satisfied that the scheme will provide the necessary method of funding, and that it will meet the criteria of the award. This area is covered by Rule 41 and Practice Direction 41 of the Civil Procedure Rules.

Whilst a claimant will, undoubtedly, benefit from a settlement on a periodic payment basis, this method of resolution will, undoubtedly, cause headaches for both insurers and reinsurers, as their files will have to remain open and the award will not potentially be discharged until the day on which the claimant dies.

Additionally, those service providers also involved in the process will need to keep their files open and if they are involved in the administration process (e.g. the solicitors for the defendant insurers), then further charges for the work involved will be applied.

**Question 4**

When can provisional damages be awarded?

C7 Level of awards**C7A Injury awards**

As a result of the *Heil v. Rankin* (2000) decision, there was a general increase in the level of awards for personal injury. Following this decision, the courts revised the figures used for awards over £10,000 and, as a consequence, a new edition of the JSB Guidelines for the Assessment of General Damages in Personal Injury Cases was issued, reflecting the changes.

These guidelines, along with court decisions where awards are made for similar injuries, are used to calculate values of any potential third party claim for pain, suffering and loss of amenity. Court decisions on quantum are found in publications like *Kemp and Kemp: the Quantum of Damages*. A number of insurers now use software programs where the guideline parameters are inserted by the insurer, and these are used by handlers for reserving and negotiation purposes.

C7B Discount rates

The Ogden tables are an actuarial measure used to assess life expectancy and are designed to provide a guide for courts (and defendant insurers) in assessing damages awards for future losses in personal injury and fatal accident cases. They are prepared by a multi-disciplinary group of actuaries, lawyers and accountants together with representatives of the insurance industry. The tables provide factors known as multipliers which are used to assess present capital values of future annual losses or expenses.

There is also a 'discount rate', which has to be factored in, and this is the rate that courts allow for the investment of the lump sum of any compensation designed to produce income.

The Lord Chancellor is empowered to set the discount rate for courts to use under the terms of the Damages Act 1996 although there has been a tendency to leave such decisions to the courts. However, the Ogden actuarial tables tend to be regarded as the definitive guide for calculating multipliers.

The current discount rate was set at 2.5% by the Lord Chancellor on 25 June 2001, utilising powers bestowed by the Damages Act 1996.

D Fraud and counter fraud measures**D1 Fraud Act 2006**

Aside from the industry taking constructive steps to tackle fraud, the Government has also identified that the law on this area lacks clarity. The Fraud Act swept all of the old statutory deception offences away. Instead a new offence of fraud has been defined as the defendant having been dishonest, and have intended to make a gain or to cause a loss to another.

In addition, the defendant must carry out one of these acts:

- Making a false or misleading representation.
- Failing to disclose to another person information which they are under a legal duty to disclose.
- Abusing a position of trust.

As indicated, in each case, the defendant's conduct must be dishonest and their intention must be to make a gain, or cause a loss or the risk of a loss to another. That is the total of the evidential requirements. Crucially, no actual gain or loss needs to be proved, but merely the intention to make a gain or loss.

There is a revised offence of obtaining services dishonestly. This effectively fills a legal loophole, (as a machine could not be 'deceived'). This latter offence has a maximum penalty of five years' imprisonment. As a result of the proposed changes, all the deception offences under the Theft Acts 1968–1996 have been abolished.

**Obtaining
services
dishonestly**

The Act also extends the scope of the existing offence of fraudulent trading. Furthermore, it will tackle the problem of 'phishing', which is the act of attempting to fraudulently acquire sensitive information, such as passwords and credit card details. Normally, an email is received which purports to be from a reputable company and personal data is secured.

However, there remains no precise definition of 'fraud'. The Act merely explains in detail the three situations where an offence of fraud is committed and whilst the Act is generally acknowledged as long overdue, it is not without criticisms. Specifically, it is felt by some that fraud by a failure to disclose is not clear. In the case of *Derry v. Peek* (1889), it was held that a thoughtless, but genuine belief in an allegation would not be deceit. The Fraud Act appears to go beyond this.

Additionally, there are concerns over what constitutes fraud by an abuse of position, but it is thought that this will effectively be anyone in a fiduciary capacity. Clearly, there will be case law which will further interpret the Act, and outline its parameters.

Question 5

What are Ogden tables used for?



D2 Fraud clauses in policies

As shown in chapter 3, most motor insurance policies contain a fraud clause, which basically states that all benefit under the policy will be forfeited in the event of a fraudulent claim or where the claim is in any way supported by fraudulent devices.

However, breach of this condition will not result in the policy being rendered void *ab initio*. Moreover, any third party RTA liability would have to be considered, especially in the light of s.148(5) of the above statute.

A typical fraud clause may say:

We will not pay the claim and all cover under the policy is forfeited if you or anyone acting for you makes a claim under the policy knowing the claim to be false, fraudulently inflated or supported by fraudulent documents or if loss, damage or injury is caused by your wilful act or with your connivance.

The latest case law suggests that 'forfeit' means the right to refuse to pay the claim, or perhaps the right to terminate the policy immediately after the incident, as a breach has occurred. It may also enable the insurer to seek recovery of all payments made to the policyholder in respect of the current claims. Conversely, the insurer would also be obliged to reimburse the premiums paid by the policyholder, although some insurers incorporate as part of the wording, a statement indicating that they '**reserve the right to retain the premiums paid**'. The justification for this would be that the insurer would wish to offset some of its administration costs, in creating and handling the claims, with which they would have been presented.

D3 Fraud prevention

As indicated, no precise legal definition of fraud exists, more an explanation of the three different offences under the Fraud Act (see above). Many of the offences that are referred to as fraud were originally covered by the Theft Acts (or common law in Scotland).

From a motor insurance perspective, 'fraud' is used to describe multifarious offences, including forgery, deception, the concealment of material facts, representation etc.

Whilst motor insurers may well be exposed to fraudulent behaviour on the part of their employees, we are concerned here with fraud perpetrated by those who wish to claim from an insurer.

This may take various forms, but the most common are where:

- The policyholder has not suffered a genuine loss, but submits a claim, alleging that they have been the 'victim' whereas, in reality, they may have destroyed the property themselves. For example, a policyholder submits a claim under the Fire section of the policy, alleging arson with fire damage having rendered his vehicle beyond economical repair, whereas the truth is that the policyholder has set fire to the vehicle himself.
- A claimant (whether a policyholder or a third party), has exaggerated the extent of the loss, beyond the point where it is used for negotiation.
- The loss is genuine, but the policyholder suppresses information that could potentially result in a decline of indemnity, or avoidance of the policy.
- The property (vehicle) is recovered in an undamaged condition, but the policyholder fails to inform the insurers.
- If the policyholder has fabricated the circumstances of the loss for example, even though a genuine account would have been covered.

Of course, if the fraud involves two or more individuals, then the perpetrators may be guilty of collusion.

Whilst insurers may take a 'reasonable' amount of time to investigate claims that are suspected of being in some way fraudulent, it is, undoubtedly, sensible to complete all such investigations as soon as practicable, otherwise trails of useful evidence could go cold fairly rapidly. Moreover, to be in a position to allege fraud, such investigations will have to be thorough and meticulous.

An allegation of fraud can be a high risk strategy, with huge implications, exposing the insurer to litigation if the stance is maintained and, potentially, a media campaign if the policyholder feels aggrieved. Payment of part (or all) of the claim or an admission of liability could waive all rights.

The criminal standard of proof for fraud is greater than the civil standard of 'balance of probabilities'. Repeatedly, the courts have argued that the burden falls somewhere between the civil standard and the criminal burden (i.e. beyond reasonable doubt). However, in practical terms, an insurer will need to collate evidence that is overwhelming.

Insurers' approaches to what is believed to be fraudulent claims vary but, generally, the market is taking a firmer line, especially as it has become apparent over the last few years that fraud has cost the industry a significant proportion of their income. A study in 1996 by the European Insurance Committee calculated that the growth of fraud over the previous 20 years had cost European insurance companies in the region of £6.5 billion.

Insurers, therefore, are now more acutely aware of the extent and effect of fraud and, as a result, are more resolute in their policy. Some insurers have, in fact, created separate fraud departments, especially as the classes of business most hit are motor, household and fire. In some instances, this may be a theft and fraud department.

Philosophically, of course, the approach to claims perceived as fraudulent is totally different from those which are genuine, where the service requirement remains paramount. To strike a balance, therefore, some insurers believe the more dubious claims should be handled outside the service environment.

With the advent of MIAFTR and CUE plus access to other credit databases (see above), insurers can now often gain a complete picture which may assist with proving fraud. Once they are successful in this respect, then the policy can be avoided, and premiums paid by the policyholder may be set off against any potential liabilities that may arise under the RTA 1988 or perhaps even against those expenses incurred in investigating the matter. Insurers may also make a complaint to the police which could lead to a criminal prosecution for a fraud-related offence.

Insurers can now often gain a complete picture

However, the message must be that for an insurer to succeed with an allegation of fraud, it must really prove it. Suspicion, even strong suspicion of a policyholder's guilt, is insufficient to demonstrate guilt. In the unreported case of *McGregor v. Prudential Insurance Co. Ltd* (1997), it was held that it was an inevitable consequence of all the circumstantial evidence that the claimant (the policyholder) was the arsonist.

Moreover, in the case of *John Edward Cooper v. P&O StenaLine Ltd* (1999), it was believed by the defendants that the claimant was a malingerer but this was not specifically pleaded nor, more importantly, was the question of fraud. Once again, it became clear that fraud should only be pleaded if the evidence undermining the credibility of the claimant is good. Failure to do so can result in a costs award on an indemnity basis, which was the case here, as the court held that the claimant was genuinely disabled.

If the insurers, following acquisition of all appropriate information, believe that a fraud has been committed, they can make a complaint to the police, supplying all relevant evidence, in order to precipitate a criminal prosecution.

We have already examined the use of various databases by motor insurers to assist in the fight against fraud. However, there are a number of other initiatives which are currently being pursued.

D4 ACPO and fraud

For an insurer, the identification of fraud must be of prime importance, not only to avoid meeting those claims which are not legitimate, but also to protect the central pool of premiums, otherwise premiums will unnecessarily rise for the honest policyholders.

It may be a scam

Fraud can take various guises; it may be a spurious fire or theft, where the original perpetrator of the loss is, in fact, the policyholder themselves. Alternatively, it may be a scam, where the circumstances of the accident are completely fabricated, and both the alleged vehicular damage and the purported third party injuries are bogus. It is here that co-operation between the police and insurers is imperative.

In order to combat fraud, the Association of Chief Police Officers (ACPO) has created the National Working Group on Fraud which, in turn, has published The Fraud Reduction website. This website deals primarily with commercial fraud in a policing context.

The membership of the police National Working Group on Fraud (NWGF) is drawn from a range of UK police forces, including Northern Ireland and Scotland, to ensure that the interests of all fraud squads, irrespective of size, are equally represented. This working group is regarded by the ACPO Crime Committee as a key source of information and advice.

As a result the NWGF has become an important liaison point for commercial organisations, as well as law enforcement and government agencies, tasked with combating fraud.

The NWGF is responsible for investigating all types of fraud, and their involvement in insurance fraud is not just restricted to vehicle crime.



Example

A scam example:

The NWGF website gives the example of an insurer, which was formed and based in a major city centre. It placed advertisements in local press and trade media offering building, contents and public liability insurance. Members of the public and businesses proprietors responded to these advertisements. Additionally, high street insurance brokers, on behalf of clients, obtained quotes from this insurance company and a large amount of insurance business was transacted, with hundreds of thousands of pounds being paid to the insurance company in premiums. The purported Insurance documents were issued and passed on to the customers who believed they were insured, either by the insurance company itself, or by other insurance companies to whom the risk had allegedly been passed on.

Problems then arose, when claims were being refused by legitimate insurance companies due to non-payment of premiums, and it transpired that premiums paid by customers had not been passed on to the legitimate insurance companies as required. Complaints were made to the police and the (then) Department of Trade and Industry that insurance premiums had been paid for worthless cover.

It transpired that this fraud was perpetrated principally by three men, one a career criminal, one an international businessman and the third an experienced insurance broker. A company was bought 'off the shelf' and then established in rented office accommodation in a city centre office block. Advertisements were placed in various publications, and salespersons were recruited to visit companies and businesses to sell insurance packages for buildings and contents and also public liability, a necessary insurance for business or commercial premises. Quotes provided were, in the main, substantially cheaper than those in the industry and a large amount of business was generated. Some insurance risks were purportedly taken on by the company itself but others were passed on to legitimate insurance companies in the UK, with the company, in effect, acting as a broker rather than an insurance company in its own right.

Other risks were passed on to offshore insurance companies. It seems, however, that these were either unaware of the risks or were actually being run by associates based abroad. With very few exceptions, no insurance cover was ever arranged and any purported insurance documents that were issued were of no use and certainly did not denote that cover was in force.

A few minor claims were paid to maintain an air of legitimacy and to prevent early intervention by the authorities in the case of complaints. Any customers that did not need to make a claim were unaware that they were, in fact, uninsured, and none the wiser that they had been duped. All three main principals in the fraud were sentenced to terms of imprisonment for their part in it.

D5 Fraud and the ABI

Independent research conducted in late 2002 on behalf of the ABI found some startling results. It was estimated that fraudulent insurance claims on motor and household policies alone cost insurers, and, therefore, policyholders, in excess of £1 billion a year.

The research also revealed that around 7% of people admit to having made a fraudulent insurance claim. It further discovered that 'insurance cheats' are more likely to have committed other crimes as well. Of those who admitted making up an insurance claim:

- 38% had used someone else's credit card;
- 31% shoplifted as an adult;
- 53% admitted having knowingly bought stolen goods.

In fact, the ABI Research Brief completed in July 2009 estimated that undetected general insurance claims fraud totals £1.9 billion a year, which adds approximately £44 to the annual costs individual policyholders face, on average, each year. This latter figure equates to approximately 6% of the total premiums paid, across all general insurance product funds.

However, the detection of general insurance fraud has improved significantly over the previous five years. Over £730 million worth of fraudulent claims were detected and prevented in 2008, which represented a 30% increase in detection since 2007.

The most common and costly form of general insurance claims fraud is opportunistic retail fraud. Opportunistic retail fraud is where individuals exaggerate or inflate genuine claims to increase the value of a payout. In a minority of cases opportunistic fraudsters will fabricate an entire claim, including, for example, deliberately causing damage so as to be able to claim.

The cost of undetected general insurance claims fraud increased by approximately 24% from 2006, when it was estimated to be £1.6 million to £1.9 million in 2008.

The latest ABI survey interviewed members in order to establish why they believed there had been an increase in the detection of fraud. This, it was suggested, was due to several reasons primarily:

- The introduction of dedicated fraud teams. This can also avoid potential conflicts of interest that can arise where the staff charged with detecting fraud, also have claims processing targets to meet.
- The use and increase in sophistication, of IT-based automatic processes (e.g. rules-based scorecards etc.) in order to 'flag' suspect claims. It was felt that this was important, as it had reduced false-positives (in other words, a distorted perception of the true picture).
- Insurers have increased the use of Conversation Management and Cognitive Interviewing techniques, both of which were developed in the 1980s.
- There is now a greater awareness of the costs that can arise from meeting fraudulent claims or of fraudulent customers, so that sales team, as much as the claims department are more tuned to the need for vigilance.
- Databases and software solutions for fraud detection are now commercially available.
- In some cases, the (increased) use of more sophisticated detection techniques such as voice stress analysis.

- A general improvement in the productivity of staff as they become more proficient in the application of various systems improvements.

In 2003, the ABI, in conjunction with ACPO, published a Memorandum of Understanding, providing guidelines on the exchange of information between insurers, the police and loss adjusters. These replaced the guidelines published by the ACPO Crime Committee back in 1978. The guidelines relate to information requests from insurers and loss adjusters, in relation to property crime. Details of previous convictions, reprimands, warnings etc. will not be supplied.

Applications to the police for information are to be made by insurance companies and loss adjusters under s.29(3) of the **Data Protection Act 1998**, and will include a) why the claim is believed to be fraudulent, b) what information is requested and c) why this information is requested. Police will then undertake to advise insurance companies when there is evidence to demonstrate that a fraudulent insurance claim has been made. They would normally be advised as part of the investigation. This would be a disclosure under powers provided by s.29(3) of the Data Protection Act 1998.

Additionally, the ABI has initiated a data-sharing project which will deliver a bespoke counter-fraud system designed to meet insurers needs. From their perspective, there are two types of electronic anti-fraud tool available. There are databases against which specific records can be matched and there are data-mining tools that can search a large data set for fraud indicators. These might be based on rules or use artificial intelligence to identify anomalies and patterns.

The ABI project is concerned with establishing the most effective data-mining system to meet insurers' needs. Ideally, this system would also interface with other databases to allow searches against registers of known fraudsters. This may at some point result in interfacing with databases run by other industries, e.g. those developed by banks or building societies.

D6 The Insurance Fraud Bureau and IFIG

In July 2006, the Insurance Fraud Bureau was launched. The IFB will look for evidence of organised fraud on industry databases, develop cross-industry intelligence and co-ordinate investigations between insurers, the police and other agencies. It also runs a confidential Cheatline where people can report suspected insurance frauds.

The IFB will analyse data from industry databases including the Claims and Underwriting Exchange, the Motor Insurance Anti-Fraud and Theft Register and the Motor Insurance Database.

The IFB is led by an operational steering group of insurance fraud risk managers from various insurers and is based in London. It states that it supports the wider insurance industry and the ABI's anti-fraud strategies.

Additionally, there is IFIG, which stands for the Insurance Fraud Investigators Group. This is an organisation 'dedicated to the detection and prevention of insurance fraud.' It is a non-profit making organisation created to tackle the growing problem of insurance fraud in the UK.

Its members include insurers, lawyers, loss adjusters and various investigation agencies, the common purpose being that they are all committed to preventing insurance fraud. IFIG has close ties with other anti-fraud organisations, and law enforcement agencies.

Their website facilitates the reporting of any insurance fraud that has occurred or may occur within the UK.

D7 Fraudulent exaggeration

The question of fraudulent exaggeration was considered in the non-motor case of *Orakpo v. Barclays Insurance Services* (1995). The claimant endeavoured to submit a fraudulently exaggerated claim, under his household policy, for a property that had been in a state of disrepair since 1985. The bulk of the claim for damage did, in fact, relate to this disrepair, although some damage had resulted from the operation of insured perils (e.g. frost damage in January 1987).

At the time of the storms in October 1987, huge holes were created on the roof of the property and the last remaining tenants moved out and were replaced by vandals, who further damaged the property. Protective measures were undertaken by the local authority who sought to recover from Mr Orakpo, who, in turn, required indemnity from his household insurers.

It was held that the claimant's claim was fraudulently exaggerated, especially as loss of rent was claimed on all 13 bedrooms and yet only 3 were occupied at the time of the first casualty. The vast majority of the claim was attributable to the disrepair. The fraudulent exaggeration entitled the insurers to avoid the entire contract for breach of the duty of utmost good faith. Sir Roger Partner stated:

Just as on inception the insurer has to a large extent to rely on what the assured tells him, so also is it so when a claim is made. If the assured knows that, if he is fraudulent, at least to a substantial extent he will recover nothing even if his claim is in part good.

The majority view in *Orakpo* was approved in the case of *Diggins v. Sun Alliance* (1994).

The question of fraud and the interplay with the duty of utmost good faith were considered in depth in the case of *Manifest Shipping Co. v. Uni Polaris Shipping Co.* (2001) (the 'Star Sea' case). This case arose out of an insurance claim for the constructive total loss of a vessel, caused in part by unseaworthiness and the incompetence of the Master. Underwriters rejected the claim alleging fraud and breach of the duty of utmost good faith. This was triggered by information disclosed in a report that was allegedly privileged.

This decision reached the House of Lords in the early part of 2001, and the issues before the House were as follows:

- Whether the duty of utmost good faith (under the **Marine Insurance Act 1906**) continued beyond the making of the claim and the issue of court proceedings prosecuting the claim.
- The content of the duty at the claims stage and thereafter – whether the Court of Appeal was correct in assessing the duty as being one of refraining from the fraudulent presentation or prosecution of a claim.
- Additionally, had there been a breach of the requirements of the Marine Insurance Act with regard to the duty?

In response to some of these questions, it was held that the duty of good faith continued throughout the relationship 'at a level appropriate to the moment'. This duty 'revived' whenever there was a duty (express or implied) to supply information to enable the insured to make a decision. The degree of disclosure was different in respect of the claim than at the time of making the contract – there had to be fraud to defeat a claim.

The cases of *K/S Merc-Skandia XXXXII v. Certain Lloyd's Underwriters (2001)* and *Agapitos v. Agnew (2002)* have led to a reappraisal of the legal position:

- The duty of utmost good faith is triggered by a contractual obligation to provide information to insurers. This certainly exists at inception, and whilst there is often no specific wording emphasising this point, the duty surely exists at renewal bearing in mind that it is a new contract.
- If the obligation to disclose exists, then any failure to reveal cannot be relied upon unless such a failure constitutes a repudiatory breach of the contract by the policyholder.
- The potential for a continuing duty of utmost good faith is terminated by the commencement of proceedings. It is, therefore, evident that the duty of disclosure is likely to be more onerous at inception of the policy than at the claims stage. Innocent misrepresentation at the claims stage would not defeat a claim.
- Submission of a fraudulent claim is not a breach of the duty of utmost good faith, but a re-iteration of the principle that an insured cannot benefit from their own wrongful act. A policy will not be voidable *ab initio* if the policyholder submits a fraudulent claim.

Insurers can protect their position on fraud by the insertion of a specific clause, outlining the consequences and, as indicated, public policy would not allow an insured to benefit from a fraudulent claim.

In *Axa General Insurance Ltd v. Gottlieb & Gottlieb (2005)*, the Court of Appeal decided that the proper scope of the common law in relation to fraud was to forfeit the whole of the claim to which the fraud related. This was to include any sums that pertained to the genuine loss, in respect of which the insured was entitled to indemnity. Outstanding interim payments were also deemed to be bound by the same rule, and should similarly fail.

The principle that fraud renders the forfeiture of the whole claim, including those elements that were originally deemed to be good, was reinforced.

D8 Acceptable exaggeration

So what is the difference between fraudulent exaggeration and acceptable, or 'legitimate', exaggeration? This, perhaps, is one of the most difficult questions to answer. Hoffman, J in *Orakpo* stated:

In cases where nothing is misrepresented or concealed, and the loss adjuster is in as good a position to form a view of the validity or value of the claim as the insured, it will be a legitimate reason that the insured was merely putting forward a starting figure for negotiation.

**Exaggeration
does not always
constitute fraud**

Gross exaggeration has been held to be strong evidence of fraud where it is out of all proportion to the true extent of the loss – *Goodman v. Harvey* (1836). On the other hand, mere exaggeration does not always constitute fraud and, in fact, it may be intended to be a starting figure for negotiation. The degree of the exaggeration cannot be the sole test here; it is always possible that a small exaggeration in comparison with the size of the loss may be fraudulent, if it is proved that there was an intention on the part of the policyholder to obtain a benefit to which they were not entitled.

Unfortunately, little guidance is given by the case law. Where an insurer believes at least part of the claim is exaggerated (and may, therefore, be fraudulent), then any payment in respect of the claim could be a waiver of their rights, as was the situation in *Diggins v. Sun Alliance*.

E Police and their involvement in the claims process

The involvement of the police is often crucial to the determination of liability on an accident. However, and whilst notification to the police of a theft loss is essential to consideration of a claim, it is of less significance generally, as their involvement tends to be more passive: the incidence of successful apprehension and conviction of criminals involved in vehicle crime is not particularly high.

E1 Accidents

Police can be called to the scene of a vehicle accident, but will only become involved if one of the parties suffered injury and/or witnesses saw the occurrence.

The police accident report compiled by English police constabularies will record details of the attending officers, plus the time and date of attendance, together with the precise accident.

The abstract will list the vehicles involved in the accident, together with a brief description of the area of damage. It will also provide the full particulars of the occupants of the vehicles, including confirmation of whether they are drivers or passengers, and their position in the vehicle. Again there will be a brief description of the injuries suffered, and the identity of the hospital to which they have been conveyed.

Full particulars of any witnesses will be supplied within the abstract plus statements from all persons present at the scene. Depending on the circumstances, statements will either be taken contemporaneously, or within a very short time after the accident. If a police vehicle engineer or accident reconstruction expert does attend and prepares a report, then this too will usually be incorporated within the report.

With regard to road fatalities, the Police National Road Death Manual states that 'In any investigation of road death the SIO (Senior investigating Officer) should consider where any alleged liability or culpability for the death may lie. There will be occasions when it is apparent working regimes, illegal or dangerous practices or negligence have contributed to the death. It will be during such investigations that an SIO may consider liability in respect of corporate bodies and/or personal liabilities of officers within those bodies.' Basically, this stresses the necessity to consider the possibility of work-related road accidents, and thereafter scrutinise the possibility of corporate responsibility.

In fact, the investigation extends to any employer/employee situation, and where a duty of care is owed.

Currently, serious consideration is being given to the extension of RIDDOR (the **Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995**) to those accidents. The regulations currently require an employer, self-employed individuals or those in control of work premises to report some work-related accidents, diseases and dangerous occurrences.

Basically, the regulations currently say that if there is an accident connected with work, and an employee or self-employed person working on the employer's premises is killed or suffers a major injury or a member of the public is taken to hospital, then the 'enforcing authority' (usually the Health and Safety Executive) must be informed 'without delay'. Such a requirement also extends to any employee or self-employed person who suffers an over three day injury, or there is an event which does not result in a reportable injury but which clearly should have done and, therefore, constitutes a dangerous occurrence.

The police report from the attending constabulary is not available until 21 days after the date of any conviction hearing, to allow for the possibility of any appeal against the sentence. Moreover, the police will not create abstracts for single vehicle accidents where there are no injured passengers and no defect in the vehicle itself.

In 2007, a new version of the Association of Chief Police Officers (ACPO) Road Death Investigation Manual (RDIM), which UK police forces use as the basis for their investigation of Fatal and Serious crashes, was released to UK police forces.

The manual is used to assist police forces throughout England, Wales and Northern Ireland to develop policies and processes to ensure that officers fulfil their duty in conducting thorough investigations into the circumstances leading to road deaths. This means that all road deaths can be investigated to the same standards, across the regions.

The latest RDIM allows for other agencies (like the Health and Safety Executive) to be involved, where at least one criteria operates, comprising:

- Driver Competency – i.e. the employer has failed to ensure that drivers are competent and capable of doing their work in a way that is safe for them and other people.
- Fitness and health – the employer has ignored the obvious signs that an employee is unfit to drive.
- Vehicle suitability – vehicles are being used for a purpose for which they are not intended,

And/or:

- There is a serious continuing risk (e.g. one that could result in a similar incident occurring in similar circumstances) which can not be addressed by the police using road traffic legislation etc.

The implications of this are that the investigating authority could well look at how a policyholder is managing all aspects of work-related road risks.

E2 Thefts

The police are to be notified of any theft of a vehicle as this, at the very least, should give the loss some form of credence. However, a police crime reference number (allocated to the loss by the police) is not to be treated as a seal of authentication. Vehicle thefts and fires are an obvious opportunity for fraudulent behaviour.

Police will not usually undertake any form of investigation merely as a result of notification of the theft and the creation of a crime book reference report. Normally, the discovery of spurious theft claims by the police is as a result of a wider operation, where the perpetrators are ringing vehicles, or some other nefarious activity.

Question answers

1. The insurer.
2. To ensure consistency and openness in the way claims were handles and, indeed, to encourage the parties to settle matters without litigation.
3. A 'no win-no fee' arrangement.
4. If a claimant's condition is such that they could suffer a serious deterioration or that a separate serious condition could develop, with the possibility that a return to court to seek a further award could arise.
5. To provide a guide in assessing damages awards for future losses in personal injury and fatal accident cases.

Self-test questions

1. **What does the overriding objective of the Civil Procedure Rules say?**
2. **What are the most common forms of fraudulent behaviour that manifest in the form of a claim?**
3. **Outline the type of evidence that could be sought by a defendant insurer, when presented with a loss of earnings claim.**
4. **What is a Smith v. Manchester award, and how is it calculated?**
5. **With what claims disputes can the Financial Ombudsman Service become involved?**

You will find the answers at the back of the book

Chapter 1 self-test answers

1. Moral – questions could relate to the character of the proposer or which may give some indication of their character. For example, certain non-motoring convictions relating to dishonesty or arson, those motoring convictions and accidents relating to adverse 'behaviour' (e.g. leaving the scene, defective tyres, road rage, reckless or competitive driving, and unexplained thefts).

Physical – high performance vehicle, claims experience, high risk garaging area, young or inexperienced driver.

Most motoring convictions are regarded as physical hazard apart from the above or where there are so many it is clear that the driver has a total disregard for the rules of the road.

2. Examples could include:

- Speeding.
- Lose control.
- Defective vehicle.
- Distracted – by passenger, pedestrian.
- Loss of concentration.
- Eating, drinking, smoking, using phone.
- Disregard traffic signs.
- Alcohol/drugs.

3. Examples could be:

- Crossing against lights.
- Lack of kerb drill or ignoring Highway Code.
- Not wearing seat belts.
- Alcohol/drugs.

4. A mechanically propelled vehicle intended or adapted for use on roads.

5. These could include:

- Loading and unloading.
- Working on it.
- A passenger being driven doing calls.
- Parked, doing shopping.

6.
 - i) Yorkshire: Any liability arising from the trailer, e.g. as a result of it becoming unsecured and causing an accident would not be regarded as an RTA liability. The liability could be covered by a public liability policy or by a motor policy extended to include the detached trailer risk.
 - ii) France: The same accident would be regarded as an RTA requiring compulsory insurance. This may be covered by either:
 - a) the motor policy of the vehicle which parked the trailer; or,
 - b) a specific motor policy covering the trailer itself.
7.
 - i) A UK driver insured by a UK insurer who is driving in France has the benefit of the French RTA cover or the UK RTA cover, whichever is the greater. This is because France is a member of the EU.
 - ii) If they drive into Switzerland, the cover becomes equivalent to Swiss RTA cover. This is because Switzerland is not a member of the EU, but is a member of the group of other countries subscribing to the EU directives.

Chapter 2 self-test answers

1. Accidents where another motorist is involved and:

1. is properly insured; or
2. their insurer has declared RTA Insurer status and, in either case, the motorist is partly to blame for the accident.

On this basis, the Article 75 Insurer 'inherits' MIB's position as a 'fund of last resort' and the other insurer deals with the whole claim.

2. Recommendations included:

- Empower the police to seize and, in appropriate cases, destroy vehicles being driven uninsured.
- Link the DVLA's Vehicle Register with the MID, allowing the police to identify which vehicles on the road are uninsured.
- Allow fixed penalties for those who ignore reminders that their insurance has expired.
- Concerted action by insurers to continue to improve the MID.
- Introduce simpler and clearer notification procedures so that no one is in any doubt when their insurance expires.
- Automatic reminders to be sent to those motorists who forget to insure on time.

3. The Motor Insurance Database was set up to:

- To provide the mechanism by which the UK complies with the 4th EU Motor Insurance Directive, which requires that insurance details of all vehicles in Member States can be easily accessed from a national information centre by claimants.
- To help reduce the incidence of uninsured driving by providing a means by which the police can readily establish if a vehicle is insured.

Chapter 3 self-test answers

1. This depends on how the policy is worded. If the policy states the cover will cease if the insured car has been disposed of or has been damaged beyond economical repair then DOC would not apply but, in the absence of this and in the absence of anything to the contrary, unless the insurers have cancelled the policy, the DOC extension will operate.
2. There is no cover under the standard policy for court representation unless there is the possibility of a claim being made under the third party section of the policy.
3. The policy excludes liability for damage to property which belongs to or is in the custody or control of the person indemnified. In this case, the damaged property belongs to the policyholder (the garage door owner) who is a third party to the driver and the policy will indemnify the driver.
4. There is no cover under the policy as this is classed as an 'airside' risk.
5. The insurers will issue a commercial vehicle policy to cover the car and the TPPD limit is likely to be £1m, £2m or £5m, as opposed to £20m under the motor car policy.
6. There is no cover for the part of the car that broke down, but the remainder of the damage to the car and the driver's liability for the damage to the lamppost is covered.
7. This incident goes beyond what the deception exclusion is intended to avoid and would be covered.
8. The loss is covered. Cover is not restricted to effects belonging to the policyholder.
9. There is provision for this both in the policy and in RTA 1988 s.150.
10. Most private car policies will waive driving restrictions and young driver excesses when the car is being parked by a hotel or restaurant employee.
11. Until *Dodson v. Dodson* (2001), it was generally accepted that driving other cars and other policy benefits (e.g. personal accident) lapsed if the car was sold or became a write off, even before the policy had cancelled.

The authority for this had been *Tattersall v. Drysdale* (1935). The judgement in *Dodson* altered this and stated that, unless the policy said otherwise, in these circumstances, the policy benefits continued until the insurers had effectively cancelled the policy.

Chapter 4 self-test answers

1. Proposal forms are usually completed and signed by the proposer but are retained by the insurer. Statements of fact are completed by the insurers, usually online, or by telephone and a copy is sent to the proposer who only has to take action if they disagree with what is on the statement. The main difference is that the statements cut out the need for a form to be completed and returned, making policy issue that little bit faster.
2. No, it is an offence to backdate evidence of RTA cover (RTA s.175). If the client has to produce evidence to the police, the correct procedure is to explain the position to the police and, if necessary, request a letter of explanation from the insurers.
3. A certificate is usually issued on an annual basis and is only evidence of the existence of compulsory motor insurance. A cover note incorporates a certificate of insurance but is also issued as a temporary policy and contains a summary of the important features of the policy. It is both a holding cover letter and a certificate of insurance.
4. This case sets out the law relating to agents retaining certificates instead of passing them on to the client. For an agent to hold a certificate legitimately, they must do so on behalf of the policyholder and have the policyholder's express permission to do so.
5. The Motor Insurance Database is a more accurate means of identifying an insurer as it is updated in real time in most cases and vehicle number plates can be read whilst a vehicle is in motion.
6. Pro rata rates are based on the proportion of time the policy has been in force, e.g. six months on risk, 50% of the premium is payable.

Short period rates incorporate a pro rata charge plus an extra charge to cover expenses associated with the issue of the policy and insurer's other costs.
7. Motor trade and fleet policies are open covers designed for flexibility. Fleet additions and deletions are usually notified by monthly, quarterly or even half yearly declarations. Motor trade policies generally run until the following renewal before insurers make any adjustments.
8. It is important that an insurer follows the procedure set out in the cancellation condition of the policy. This will usually involve giving the policyholder at least seven days' notice, often by recorded delivery, at the last known address. They will also ask for the return of the certificate immediately after the cancellation date. Usually the insurers will allow a pro rata return of premium as opposed to charging short period rates but only allowable when the certificate is surrendered.
9. Unlike other motor policies, motor trade and fleet policyholders are themselves responsible for advising changes to MID. This task may be delegated to the broker or another agency but the ultimate responsibility belongs to the policyholder.
10. Most policies covering damage to the car permit the policyholder to suspend cover apart from fire, theft (and sometimes accidental damage) for a period. A return of premium is allowed based on the period of reduced cover.

11. Police officers will usually contact insurers or brokers where there is doubt regarding whether or not a driver is insured. There may be issues over use, licence, permission or the vehicle itself. There is also an established helpline that police can use where the vehicle does not appear on MID but the driver insists that it is insured. On the other hand, the police may know that the driver has a number of convictions and want to check that the insurers are aware of these, lest there might be misrepresentation or non-disclosure of a material fact.

Chapter 5 self-test answers

1.
 - a) Labour rates; cost of parts; vehicle values; inflation.
 - b) Inflation; legislation changes; cost of hire cars; MIB levies.
2. Any five from the following:
 - Occupation/Business.
 - Cover.
 - Class of use.
 - Area of use/garage.
 - Age of drivers.
 - Driving limitation.
 - Vehicle.
 - NCD.
3.
 - Protected NCD; once the maximum level of NCD is reached it will remain unaffected, provided not more than two claims are made in any five year period.
 - Guaranteed NCD; the maximum discount remains intact, irrespective of the number of claims.
4. Insurers may offer an introductory discount (sometimes known as introductory NCD) to proposers without recent previous insurance whose profile is satisfactory.

'Accelerated NCD' may be available and enables a proposer to qualify for a full year's NCD after just six months, provided a further full twelve months policy is effected.

'Introductory NCD' is offered to proposers who have no previous insurance history in their own name, but who have been an additional driver under a policy issued by that insurer.

Some insurers allow a discount to those who have driven company cars without claim.

5.
 - a) The 'earned' portion of a premium increases as the period of insurance progresses. For example, six months in to the policy period 50% of the premium is earned.
Written premium, on the other hand, is the total of the annual premium.
 - b) Vehicle numbers represents the number of vehicles insured by the account. Vehicle years represents the period of time each vehicle has been insured during the period. For example, a vehicle that has only been insured for six months represent 6/12 of a vehicle year.
6.
 - Price.
 - Difference in price.
 - Amount of increase from previous year.
 - Brand loyalty.
 - Suspicion (e.g. if differential is great).
 - Customer's profile (some groups are more liable to change than others).
7. If it has been dealt with by the court, the offence is spent and need not be disclosed. If the offender had been under 18 at the time of conviction, the offence would have been spent after 2 ½ years.

8. The risk is presented as that of an experienced and mature driver, typically a parent with a view to obtaining a lower than justified premium, when the main driver is in fact someone young or inexperienced.

In these cases, the insurers could be justified in avoiding the policy *ab initio*.

9. Since the mid-1990s, manufacturers have built in to cars a reasonable level of security as standard. This action was prompted by a large increase in thefts and incidences of joyriding.

10.
 - Density of traffic – more claims, high frequency.
 - Thefts.
 - Malicious damage.
 - Fewer garages.
 - On-street parking.

11. Typically, this term applies to mechanical navvies and excavators but could also apply to other vehicle with plant attached. The risk occurs where the plant is being used, for example, to dig trenches or lift machinery.

Insurers tend to exclude this risk unless extra premium is paid. Many contractors arrange cover under their public liability policies but any RTA liability must remain with the motor insurers.

12. Cover can be provided for other vehicles (e.g. GCV) used solely for agricultural or forestry purposes for which a road fund licence is not required, or under a licence with exemption from duty under the Vehicles (Excise) Acts.

13. Public hire vehicles (taxis) are permitted to ply for hire and can be hailed or hired from ranks.

Private hire vehicles can only be hired via their office, usually by telephone or by prior booking.

'Prestige' vehicles used for weddings and other pre-booked hirings are also regarded as private hire risks.

14. a)
 - Suitable for businesses having a small number of drivers.
 - Driving is restricted to named persons.
b)
 - This is particularly suitable for medium-sized and larger risks.
 - Rating is based on several factors with a particular number of points being allocated to each.

15. Any eight of the following:

- Claims experience for a minimum of at least three years.
- Vehicle years.
- No. of claims.
- Claims paid.
- Claims outstanding.
- AD/TP split.
- Position at last year.
- Cover.
- Date of extraction of experience.

16. The insurer may apply book rates for each vehicle and adjust the total premium by allowing a 'fleet discount' to produce a premium sufficient to cover the expected burning cost and other elements in the risk premium.

In other words, the fleet is rated on a 'rate per vehicle' or on a 'book minus fleet discount' basis, depending on its size, mix of vehicle types and cover required.

Chapter 6 self-test answers

1.
 - Firstly, an automatic check is made to establish whether or not a finance arrangement is current on the vehicle.
 - Secondly, the vehicle will be held on HPI's 'Condition Alert' register, which can be accessed by members of the motor trade or public if the vehicle is later offered to them for sale.
 - Additionally, new registrations are also validated against the statutory vehicle record maintained by the Driver and Vehicle Licensing Agency (DVLA).
 - MIAFTR also now provides registering insurers with valuable audit trail and management information, which assists them in refining and improving their claims processes.
2.
 - An agreement, which is usually demonstrated by offer and acceptance.
 - Consideration, which can include a promise to pay.
 - An intention to create legal relations.
 - The agreement must be in a form recognised by law.
 - The parties must have the capacity to contract.
3. The object is to obtain the policyholder's acceptance that the vehicle has been returned in a satisfactory state and that they have checked and approved the repair.
4.
 - Improved consistency with traceability.
 - Focused leadership.
 - Enhanced customer focus.
 - A system approach to management.
 - The involvement of people.
 - Continual improvement.
 - A factual approach to decision-making.
 - Mutually beneficial supplier relationships.
5. Approved repairers are used to ensure:
 - quality of service;
 - guaranteed price;
 - trust; and
 - steady volume of work.
6. If the insured is VAT registered, they are liable for the VAT element of any own damage claims payment and can offset this when completing their own VAT returns.
7.
 - Motor Insurance Anti Fraud and Theft Register (MIAFTR).
 - Hire Purchase Information Ltd.
 - CUE (Claims and Underwriting Exchange).
 - CIFAS (Credit Industry Fraud Avoidance System).
 - Northern Ireland Personal Accident Register.

8. The various headings that may be found in a business credit report:

- company accounts;
- credit check;
- credit rating;
- company profile;
- credit reference;
- credit limit;
- company directors; and
- County Court judgments.

9. It states that where an insurance policy is issued by the direct insurer of a motor vehicle, and this provides third party indemnity to a driver who is also entitled to a third party indemnity under an insurance policy relating to another vehicle (where the policy contains a 'driving other cars' extension), then no contribution will be sought by the vehicle insurers from the driver's (i.e. the DOC insurers). The explanatory notes indicate that the system endeavours to simplify the system with regard to the allowance of NCD.

If however, there are two or more insurers, who all provide third party indemnity, and are all 'direct' insurers (that is, they insure the vehicle, rather than the driver), then they will all share all claims equally, even if the insured has not reported the occurrence to one of the co-insurers.

The undertaking has no legal significance.

Chapter 7 self-test answers

1. The overriding objective means to deal with cases 'justly'. Part 1(2) of the CPR explains what 'justly' should incorporate, which is:
 - a) that the parties are on an equal footing;
 - b) saving expense;
 - c) dealing with a case in ways which are proportionate to the amount involved, the importance of the case, the complexity of the issues, and the financial position of the party;
 - d) ensuring that it is dealt with expeditiously and fairly; and
 - e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.
2.
 - The policyholder has not suffered a genuine loss, but submits a claim, alleging that they have been the 'victim' whereas, in reality, they may have destroyed the property themselves.
 - A claimant (whether a policyholder or a third party), has exaggerated the extent of the loss, beyond the point where it is used for negotiation.
 - The loss is genuine, but the policyholder suppresses information that could potentially result in a decline of indemnity, or avoidance of the policy.
 - The property (vehicle) is recovered in an undamaged condition, but the policyholder fails to inform the insurers.
 - If the policyholder has fabricated the circumstances of the loss for example, even though a genuine account would have been covered.
3. They may seek evidence of the net and gross income for say 13 weeks prior to the accident, and for the entire period of the absence/loss. This will normally be substantiated by wage slips or confirmation from the claimant's employers of what they calculate to be the gross and net wage loss. If a claimant is self-employed then an insurer will request trading profit and loss accounts for three years and the corresponding tax returns for the same period.
4. A Smith v. Manchester award would be appropriate where the claimant is at a disadvantage on the open labour market, and reflects the loss of potential in that market. The amount of the award would be calculated based on the claimant's age, the likely period of disadvantage and the person's salary. Other factors would include the type of work they are employed in, whether they would have been able to continue in this particular field had the injury not occurred and whether they are qualified to do any other type of work or can retrain.
5. The FOS will only become involved once all usual negotiations have been exhausted.

The Ombudsman only deals with disputes where the insured is either a private individual or a small commercial enterprise having a turnover of less than £1 million. It is not concerned with commercial insurance for larger enterprises. The scheme only operates where the dispute is between an insured (a private individual) and an insurer.

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