

Legal & Policy Update: Birmingham Insurance Institute, 27th July 2021

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Format / running order



- ▶ 60 mins max, questions at any time but via chat function please
- ▶ the presentation is being recorded for later viewing
- ▶ we will cover policy issues and reforms facing the motor and casualty market and present important recent cases dealing with issues of liability and discuss their implications



- ▶ The impact of covid-19
- ▶ Challenges in motor
- ▶ The regulator's priorities



Birmingham Economic Review 2020 Summary



Research
England

UNIVERSITY OF
BIRMINGHAM

West Midlands
Growth Company

West Midlands
Growth Company

West Midlands
Growth Company

West Midlands
Growth Company

Connect. Support. Grow.

2020: A Year of Change

Birmingham Pre-2020: A growing economy facing challenges on skills

- **GVA growth:** 6.1% increase in GVA per capita in 2017-2018
- **FDI track record:** 2nd best performing UK city for FDI (outside London) 2019
- **Centrally located:** 90% UK businesses & consumers within 4 hours travel time
- **Lower skills base:** 12.9% of the working age population have no qualifications

COVID-19: A global health & economic crisis, felt locally

- **Significant case rate:** 11,500 cumulative cases of COVID-19 in Birmingham as of 1st October 2020
- **Wider impact on mental health:** 26% of West Midlands businesses saw an increase in workforce mental health concerns
- **Economic disruption:** 71% of Greater Birmingham businesses saw a fall in domestic sales Q2 2020
- **Jobs losses:** 68% increase in the Birmingham unemployment claimant count Feb-Aug 2020

Impacting Key Sectors:

- **City centre economy:** 48% reduction in city centre footfall in August compared to pre-lockdown levels
- **Automotive & supply chain:** 40.2% decrease in UK car production to Jan-August 2020 vs. 2019
- **Hospitality & tourism:** 79% of eligible West Midlands accommodation & food services roles furloughed at the end of July
- **Arts, culture & live events:** 69% of eligible West Midlands arts, entertainment, recreation & other services roles had been furloughed by the end of July

Population: Youth & Diversity

- **A young population:** 37.5% of the city's population are aged under 25
- **Impacted by COVID-19:** 11.5% - Birmingham's youth unemployment claimant rate as of August 2020
- **A diverse population:** 238,313 Birmingham residents were born outside of the UK at the 2011 census

Sustainability: Modal Shift & the Environment

- **Short term change:** 80% reduction in city centre traffic levels in April/May due to COVID-19 measures
- **Environmental benefits:** 36% average reduction in pollution concentration in Birmingham in April

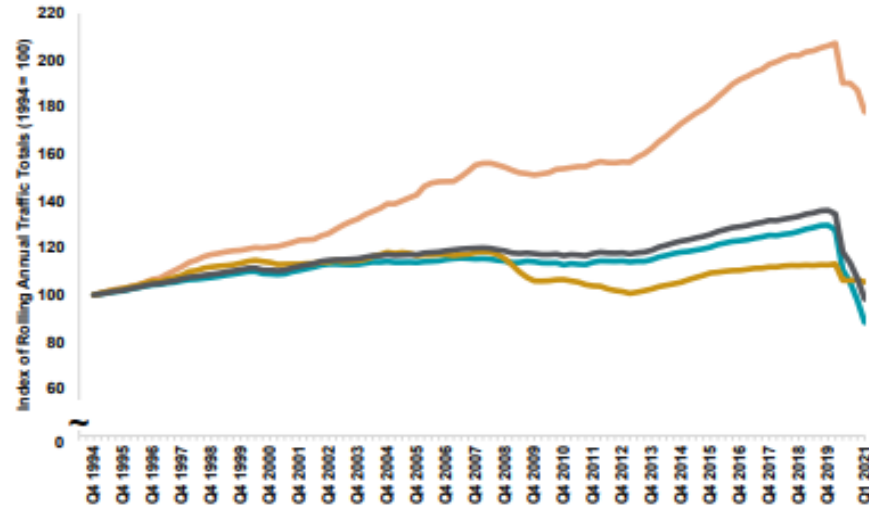
- ▶ vehicle use fell significantly during 2020 (see DfT graphic)
- ▶ but ONS has recently indicated it has picked up again:
- ▶ *“the volume of all motor vehicle traffic on Monday 19 July 2021 was at 99% of the level seen on the Monday of the first week of February 2020”*

Comparison with 20 years ago

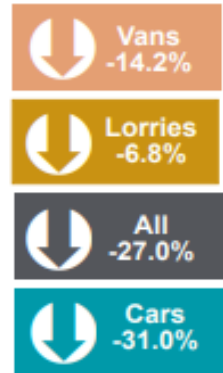
Over the last 20 years, traffic has changed at varying rates across vehicle types:

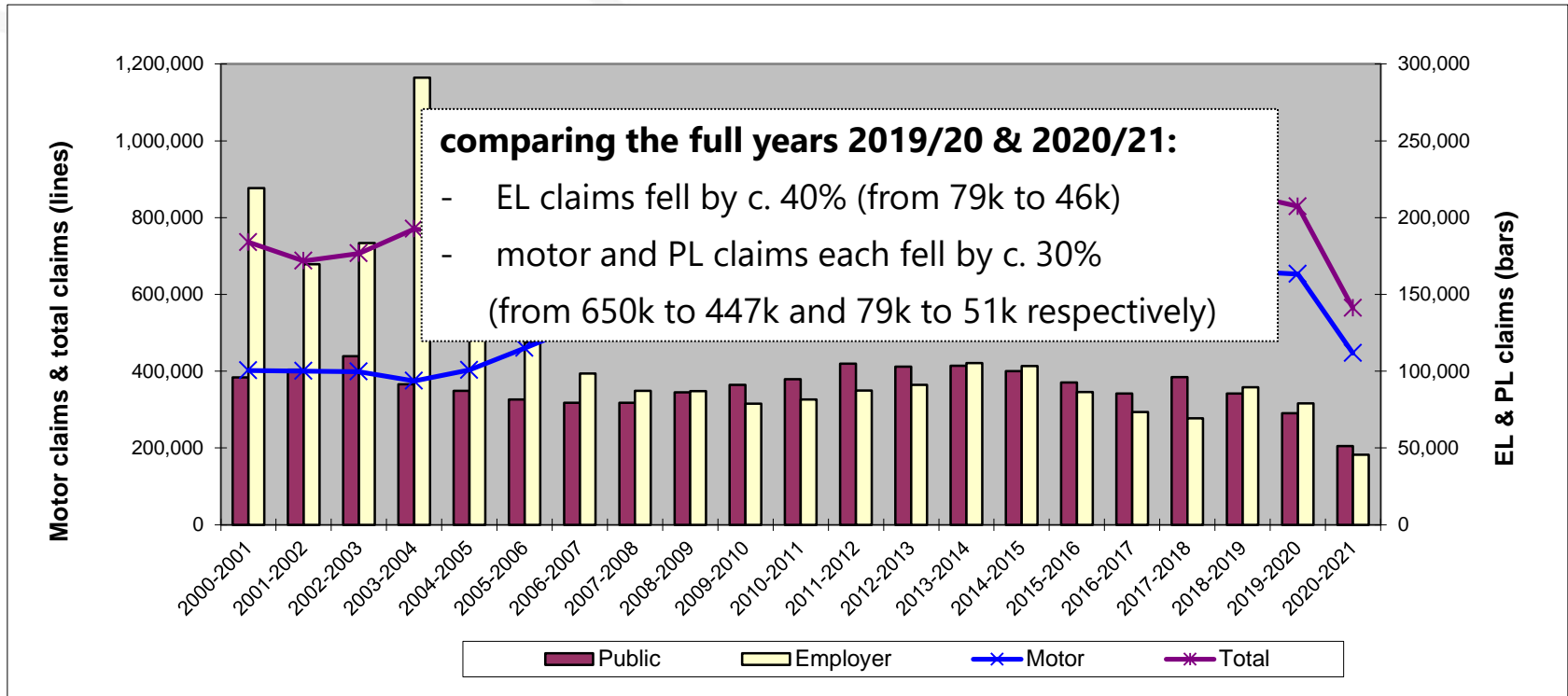


Chart 3: Rolling annual index of road traffic in Great Britain, by vehicle type from 1994 [\[TRA2501b\]](#)



% Change from year ending March 2020...







Civil Liability Act 2018 part 1:

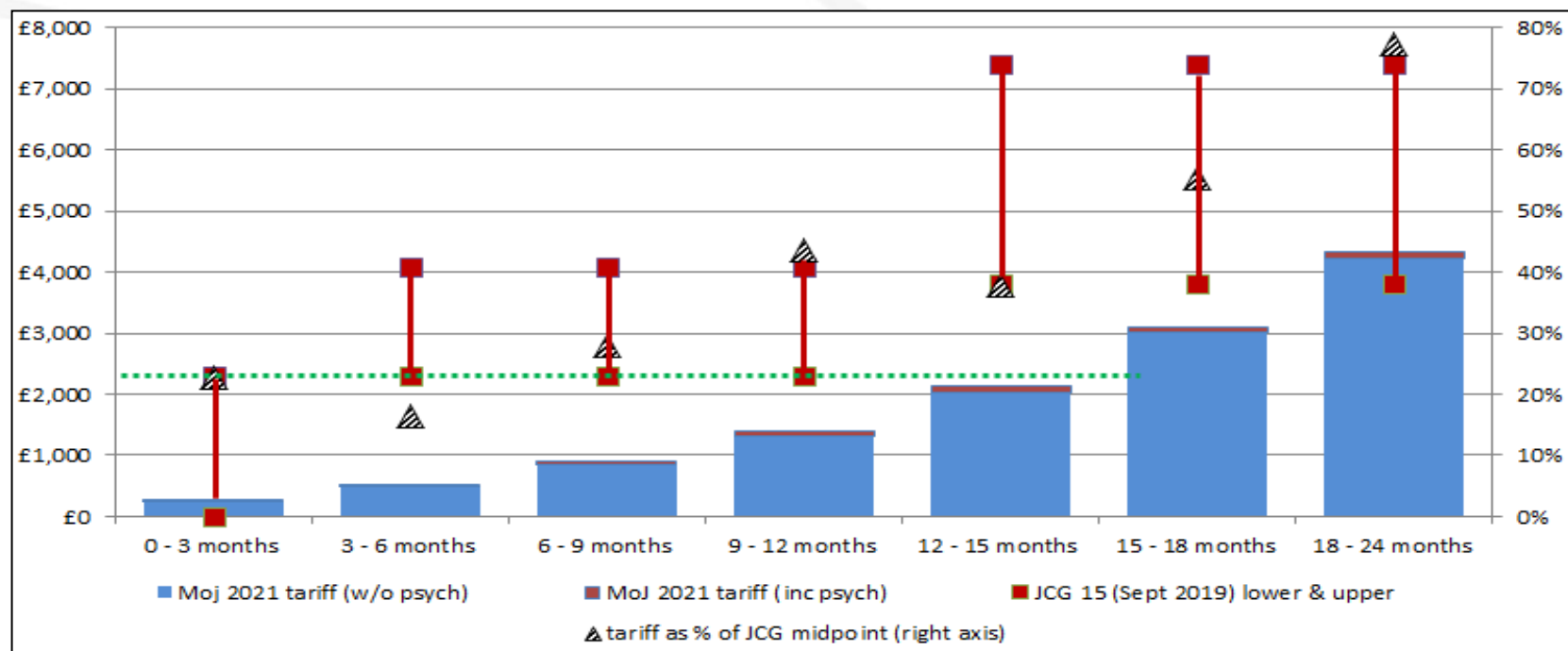
- ▶ define: whiplash is a soft tissue injury to the neck / back / shoulders
- ▶ decrease: introduce a new statutory tariff of damages where whiplash symptoms >2 years
- ▶ disallow: bring an end to 'pre-med' offers
"... ban offers to settle claims without the support of medical evidence and introduce a new fixed tariff of compensation for whiplash injuries with a duration of up to 2 years."

related changes to CPR, SCT, VRUs

- ▶ SCT: limit to increase to £5,000 in motor, ie no costs
- ▶ VRUs: vulnerable road users excluded
- ▶ **accidents on or after 31 May 2021**

plus a new OIC portal

- ▶ www.officialinjuryclaim.org.uk
- ▶ dashboard data expected in September 2021






Baroness Vere of Norbiton

Conservative

Life peer

 Lords

Answered on

22 July 2021

The Department is running trials of rental e-scooters to assess their safety and wider impacts. Some 32 trials are underway and will run across the year, with final trial schemes due to conclude by 31 March 2022. The evidence gathered during the trials will inform whether e-scooters should be legalised in the future and how we can ensure their use is as safe as possible. Until we have that evidence, we do not want to speculate on the future legal status of e-scooters or on specific issues like insurance.

Delivered on: 29 June 2021



On 21 February 2021, the government announced it intended to [remove the effects of the 2014 European Court of Justice's ruling in the Vnuk case from GB law](#).

The government has been clear since the ruling in 2014 that it does not agree with it. The decision directed the unnecessary extension of the provisions requiring motor insurance to private land as well as a greater range of vehicles that potentially includes motorsports, agricultural machinery and light electric vehicles.

This has led to excessive liabilities on the insurance industry and to potential increases in motorists' insurance premiums. Delivering on this commitment is a priority for the government and we will continue to explore bringing forward the necessary legislation as soon as parliamentary time allows.

The Hon. Member for Wellingborough has introduced a private member's bill entitled 'Motor Vehicles (Compulsory Insurance)' which aims to deliver the necessary legislative change. The government will follow passage of this bill with interest.

- ▶ **general insurance pricing review**
 - ▶ 1 October 2021: systems and controls, product governance, premium finance provisions
 - ▶ 1 January 2022: pricing and auto-renewal remedies, reporting requirements
- ▶ **a new customer duty** (consultation closes 31 July 2021)
 - ▶ “We are proposing to introduce a new ‘Consumer Duty’, that would set higher expectations for the standard of care that firms provide to consumers. For many firms, this would require a significant shift in culture and behaviour”
- ▶ **customer vulnerability** (already in place)
 - ▶ “The fair treatment of vulnerable consumers is embedded into all our work ... Firms should note that the way we supervise the treatment of vulnerable customers will be integrated into our supervisory approach - it will not be a one-off supervisory exercise”

Also keep a look out for....



- ▶ *Lloyd v Google* (Supreme Court)
- ▶ increased guideline hourly rates (CJC)
- ▶ extended fixed costs (MoJ)

- ▶ Key cases ...
 - ▶ Vicarious liability
 - ▶ Manual handling
 - ▶ Occupier's liability
 - ▶ Workers
 - ▶ Potential Covid claims

▶ ***Morrison v Various Claimants [2020]***

- ▶ Facts: Begrudged audit employee leaked the personal data of nearly 100,000 employees.
- ▶ Decision: Supreme Court ruled unanimously that *Morrison* were not vicariously liable. The lower courts had defined “field of activities” too widely & employee’s motive was highly material.

“the wrongful conduct must be so closely connected with acts the employee was authorised to do that ... it may fairly and properly be regarded as done by the employee while acting in the ordinary course of his employment.”

- ▶ Impact: The mere fact that an employee’s job provides them with the opportunity to commit wrongdoing is not sufficient to establish vicarious liability. The Supreme Court has reinstated the orthodox legal position, which is a narrower application of vicarious liability under English law

▶ ***Barclays Bank plc v Various Claimants [2020]***

- ▶ Facts: Alleged that the Dr engaged by Barclays to conduct pre-employment checks assaulted a number of individuals during their examinations.
- ▶ Decision: Supreme Court held that Barclays were not vicariously liable for any wrongdoing of the Dr as he was in an independent contractor relationship and was not in a relationship with the bank “akin” to employment.

“the question therefore is, as it has always been, whether the tortfeasor is carrying out business on his own account or whether he is in a relationship akin to employment with D”;

- ▶ Impact: Independent contractors defence still in existence. The facts of a case could override any express agreement between the parties if on those facts the relationship between those parties made it fair, just and reasonable to impose vicarious liability.

▶ ***Chell v Tarmac Cement and Lime Limited [2020]***

- ▶ Facts: The Defendant's employee played a 'practical joke' on the Claimant resulting in an explosion that caused the Claimant to suffer a perforated right eardrum, noise induced hearing loss and tinnitus.
- ▶ Decision: Ruled that the Defendant's were not vicariously liable. If the wrongdoer is on a "frolic of his own", his employer will not be held responsible.
- ▶ Impact: The ruling confirms that in order for liability to be established, the wrongdoer's actions must be within the field of activity entrusted to him by his employer.

▶ ***Lee Walsh v CP Hart & Sons [2020]***

- ▶ Facts: The Claimant, a delivery driver for the Defendant, fell from his work vehicle. As a consequence, he sustained a serious head injury.
- ▶ Decision: On appeal ruled that the Defendant was in breach of the regulations 4 and 6 of the Work at Height Regulations 2005 and measures should have been in place to ensure that the tail lift was always raised if a worker was in the back of the lorry.
- ▶ Impact: Reaffirms the law relating to the 'reasonably practicable' test. Namely that Judges should ask whether a measure would have been "grossly disproportionate", rather than merely doing a balancing act. Proving a measure to be unreasonable is an "onerous duty" on Defendants.

▶ ***Needle v Swallowfield Plc [2020]***

- ▶ Facts: The Claimant, an engineer, was tasked with fixing a pump and in doing so he injured his left hand due to the manual handling involved.
- ▶ Decision: Claimant was unsuccessful in his claim. Ruled that the handling of the pump had not involved a foreseeable risk of personal injury. The task was unique but was within the Claimant's capability and expertise. There was nothing "*inherently or uniquely dangerous*" to have required further warning or a risk assessment to have been carried out by the defendant in respect of that specific tasks.
- ▶ Impact: Key is that there was no foreseeable risk of injury from carrying out the task in question if employees with the relevant skill and expertise were warned of the need to carry out a dynamic risk assessment .

▶ ***Wilson v B&Q Plc, Clerkenwell County Court [2020]***

- ▶ Facts: Claimant alleged that she slipped and fell on ice when visiting one of the Defendant's stores.
- ▶ Decision: The claim was dismissed . The Claimant was unable to show that there was ice on the ground at the time of her accident. If the Claimant had shown that there was ice on the ground, the claim would still have failed as the Defendant had reasonable systems in place by way of gritting and the use of appropriate signage.
- ▶ Impact: Defendant succeeded because they had done everything reasonably possible to ensure that the Claimant would be reasonably safe when visiting their store.

▶ ***Uber BV and others v Aslam [2021]***

- ▶ Facts: Former Uber drivers took Uber to an employment tribunal in 2016, arguing they worked for Uber. Very specific points were considered. Firstly, whether Uber owed the drivers holiday pay and secondly whether Uber under-paid the drivers by reference to the National Minimum Wage.
- ▶ Decision: Supreme Court ruled: Uber drivers on 2016 contractual terms are “limb (b)” workers, and not self-employed contractors and’ “working time” includes any period when a driver was logged in and ready and willing to accept trips.
- ▶ Impact: Suggests the possibility of an expansion of employers’ liability at common law in the context of PI. May be inevitable that courts will recognise that employers owe a duty of care to those who are not, strictly speaking, “employees” as such but who would fall within the definition of “worker” in the employment context’.

▶ ***Addison Lee Ltd v Lange and others [2021]***

- ▶ Facts: A claim was brought against Addison Lee by Mr Lange and two colleagues claiming that drivers for Addison Lee were 'workers' under the Employment Rights Act 1996.
- ▶ Decision: Mr Lange and his colleagues were within the definition of 'workers'. Court of Appeal considered that the *Uber* Case confirmed a tribunal should disregard any contractual provision that it does not reflect reality.
- ▶ Impact: Court will look to the reality of a relationship and will not be bound by language used in documentation when determining worker status and rights.

- ▶ Potential for claims
 - ▶ Predicting a 40% increase in litigation of COVID claims in the next 12 months.
- ▶ Direct COVID claims
 - ▶ Where your employee or visitor has themselves contracted COVID-19
- ▶ Indirect COVID claims
 - ▶ Where an injury occurs as a result of measures taken in response to COVID-19
- ▶ Other claims issues – data breach, discrimination



CLEAR ▶ CONCISE ▶ CONNECTED