



Institute
and Faculty
of Actuaries

Motor insurance: consideration of the 'Vnuk judgment'

IFoA response to Department for Transport

31 March 2017

About the Institute and Faculty of Actuaries

The Institute and Faculty of Actuaries is the chartered professional body for actuaries in the United Kingdom. A rigorous examination system is supported by a programme of continuous professional development and a professional code of conduct supports high standards, reflecting the significant role of the Profession in society.

Actuaries' training is founded on mathematical and statistical techniques used in insurance, pension fund management and investment and then builds the management skills associated with the application of these techniques. The training includes the derivation and application of 'mortality tables' used to assess probabilities of death or survival. It also includes the financial mathematics of interest and risk associated with different investment vehicles – from simple deposits through to complex stock market derivatives.

Actuaries provide commercial, financial and prudential advice on the management of a business' assets and liabilities, especially where long term management and planning are critical to the success of any business venture. A majority of actuaries work for insurance companies or pension funds – either as their direct employees or in firms which undertake work on a consultancy basis – but they also advise individuals and offer comment on social and public interest issues. Members of the profession have a statutory role in the supervision of pension funds and life insurance companies as well as a statutory role to provide actuarial opinions for managing agents at Lloyd's.



Motor Insurance Team
Department for Transport
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31 March 2017

Dear Motor Insurance Team

**IFoA response to Department for Transport Technical consultation on motor insurance:
Consideration of the European Court of Justice ruling in the case of Damijan Vnuk v
Zavarovalnica Triglav d.d (C-162/13)**

1. The IFoA welcomes the opportunity to respond to this consultation. Members of the IFoA's General Insurance Board, many of whom have direct experience in pricing and reserving within the motor insurance business of large insurers have been involved in drafting this response. We have provided general comments on the implications of this directive for insurers, claimants and the broader public interest in the context of the current UK political landscape rather than addressing each individual question in the consultation.

General comments

2. The IFoA is supportive of policies which facilitate the victims of accidents being fairly compensated. The rules set out in the directive would bring many new vehicles and drivers into scope and the increased coverage of insurance could help to protect individuals, both victims and at-fault parties, from financial hardship in the event of an accident. We would stress the importance of maintaining some mechanism for individuals who are injured through no fault of their own to be compensated and this will be an important factor to balance under the transposition of the Directive into UK law.
3. Whilst the 'comprehensive option' as set out in the consultation would not change the fundamental mechanisms underlying insurers' business, the larger range of scenarios where motor insurance is required would introduce new risks not previously covered by motor insurers. The comprehensive option would open up a wide range of new scenarios for insurers to consider, data on which has not been readily collected. How to price the risk for these scenarios would therefore be an important question for insurers. We note for example the discontinuation in 2003 of the Home & Leisure Accident Surveillance System, which could have been a useful dataset in helping insurers and policymakers to assess the cost of accidents involving newly-in-scope vehicles. We are not aware of a suitable alternative source of such information.
4. Pricing for these new risks would therefore prove problematic. Insurance prices will need to increase to cover the new costs associated with the new risks and insurers will only quote at a level they can be reasonably confident they can cover costs. The lack of data will result in

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higher short and medium term pricing to reflect the uncertainty around the new scenarios where motor insurance is required.

5. The 'amended directive' offers a less expansive option where newly-in-scope vehicles are only subject to compulsory insurance when used on public land. This option would reduce one level of complexity compared to the comprehensive option, but would still provide insurers with additional risks to price.
6. Putting aside the question of price setting there are broader societal implications to the consequences of this ruling. The increased cost of insurance for individuals and businesses, in particular those who rely on motor vehicles on private land, could be a financial burden, exacerbated for those on low incomes. Additionally there is potential for increased pressure to be borne by the MIB, under either of the options. Any material increase in the number of claims being processed by the MIB will ultimately lead to an increase in motor premiums, placing an additional burden on consumers of motor insurance.
7. The extension of the MIB to cover these new risks would ensure that anyone injured in circumstances where compulsory insurance cover should have been in place but is not will now have a new means of obtaining compensation. However this would still have implications for the at-fault party in terms of them being pursued by the MIB for redress. Therefore it would be important for those affected by the extension of the reach of this ruling to have adequate insurance in place both to ensure that those injured through no fault of their own can be appropriately compensated, and as a financial safety net for the at-fault party. This means that any new insurance product will need to be appropriately designed and marketed so that affected parties awareness is raised and suitable cover is sought.
8. There is a real risk that the practicalities of insurers getting their product to market will be exacerbated by a potential lack of public awareness, unless an awareness-raising campaign were put into force (again at additional cost). Furthermore for many of the vehicles now brought into scope (e.g. mobility scooters for those who have difficulty walking) a significant amount of the premium charged may well derive from the expenses of producing and providing the insurance product rather than that required to cover the cost of claims unless an efficient mechanism is put in place to drive take up and distribute these products.
9. The government and insurance industry could perhaps consider whether motor insurance is the only or most appropriate route to extend this cover from. Household insurance, for example, could be a more natural fit for some newly-in-scope vehicles such as mobility scooters, and business insurance cover or public liability policies could be used to cover some agricultural vehicles. Current motor policies could possibly be extended to cover a driver's additional risk when operating a newly-in-scope vehicle, though this would only be workable for those with existing motor insurance. It will also be important to consider how different insurance products interact with each other, and whether for example a driver/vehicle could be covered by a personal or employers' liability insurance in some circumstances, rather than by a motor policy, for the same sort of accident. There is an argument, for example, that in the Vnuk test case, the claim could have been covered by an employers' liability policy, in the UK at least, rather than a motor policy.
10. There is currently a well-established framework around driving and motor vehicles in terms of insurance and licencing which helps to ensure successful enforcement under the current rules. The enforcement of this directive for newly-in-scope vehicles would be much more difficult, in particular their use on private land, and increased pressure could have wider knock-on effects for enforcement of compulsory motor insurance under the current rules. The effect of the directive on current licencing rules would also need to be considered, as these

rules may need to change if motor insurance is needed for all vehicles on private land.

11. Circumstances permitting, the UK will leave the European Union by April 2019. The potential implementation costs of such a significant operational change to the UK insurance market could be considerable. The Government has made it clear that they are uncomfortable with the change to European law as determined by the Vnuk judgement. We also note that the ABI has recently commented that 'There is no need for compulsory insurance for many of the vehicles potentially brought into scope by how the ECJ's Vnuk judgement has been interpreted'. We would ourselves be concerned that insurers and government risk spending considerable sums now implementing a policy for the sake of a limited period of time to address something for which there is a more proportionate response outside of the European Union.

Should you want to discuss any of the points raised please contact catherine.burtle@actuaries.org.uk in the first instance.

Yours sincerely,



Colin Wilson
President, Institute and Faculty of Actuaries