



CLYDE&CO

# COVID-19: Predicted Impact On Personal Injury Claims

March 2020

# Executive Summary

- With the number of confirmed infections continuing to rise since the first reported cases in late December, COVID-19 is likely to impact businesses and individuals globally. With this comes a heightened exposure for the insurance market.
- This document outlines our predictions for the likely impact of the pandemic on UK personal injury claims generally and also focuses more specifically on the following claims types:
  - Catastrophic injury
  - Liability
  - Motor
  - Fraud
- The key trends we are expecting to see include:
  - Delay to claims and extended cycle times
  - An initial reduction in claims numbers during the lockdown period
  - The inflation of care claims
  - A higher risk of mortality for Claimants in catastrophic injury cases
  - Challenging circumstances to deal with loss of earnings claims
  - A potential increase in claims from businesses employing 'key workers' as they struggle to provide service continuity
  - Possible musculo-skeletal injury claims arising from homeworking
  - Potential for more requirements for long-term vehicle storage and longer repair periods
  - Increased opportunistic fraud and exaggeration on lower value claims, particularly if the whiplash reforms are further delayed

**Clyde & Co will be sharing more detailed updates on some of the issues outlined in this document, over the coming weeks, as the likely impacts of COVID-19 for the insurance industry become clearer.**

# General claims trends

- One of the outcomes of the forced use of remote working and audio/video conferencing may be a long-term change in attitudes to the use of these facilities during litigation, and also for conducting Court business including hearings. The Lord Chief Justice has been keen to emphasise that the Civil Procedure Rules currently offers practitioners enough flexibility to manage the current situation, and individual courts have issued their own guidance. However, a wider-ranging solution may be considered, and it would not be unreasonable to see the introduction of legislation along the lines of the abandoned [Online Courts Bill](#) as and when Parliament is able to consider new measures.
- Concerns would need to be addressed about the creation a patchwork litigation system for litigants to navigate given the various portals currently in or soon to be in operation (such as Claims Portal, Official Injury Claim etc).
- On the same note, the ongoing disruption to Court services may prompt a reconsideration of alternatives to litigation which, by their very nature, would remove some of the issues being experienced currently. Clyde & Co have advocated for the use of alternatives to litigation on many occasions, and we would welcome the opportunity to discuss these alternatives.
- Claims numbers are likely to reduce during the crisis, as appetite for bringing claims is likely to be diminished, and the ability of claimant representatives to progress claims may be affected.
- In respect of existing claims, we expect cycle times on average to increase due to the inevitable delays which will arise as a result of the ongoing restrictions of movement/likely delays to ongoing litigation.
- Claimants and their representatives will inevitably look to increase their cashflow on a short term basis by concluding those claims which can be settled. However, many claimants and firms will continue to experience financial concerns as and when the current restrictions are eased. Therefore, claimants and representatives may reduce their expectations in order to expedite settlement on a longer term basis in order to alleviate financial hardship and also ensure adequate cash flow through the business.
- Key decisions in the Supreme Court and the Court of Appeal remain outstanding, such as *Swift v Carpenter*. Whilst Supreme Court judges have been able to provide their considered judgments remotely, such as those in the matters of *Barclays Bank* and *Morrison's* where hearings had already taken place. However, whilst the Supreme Court has commenced remote hearings, we expect that there will still be a delay for new hearings / outstanding applications for permission to appeal. We note that the highly-awaited hearing in *Swift v Carpenter* was recently adjourned. This decision will address the matter of how future accommodation claims are calculated. These delays may in turn affect further claims who are waiting to understand how that ruling may affect their claim.

# Catastrophic injury claims

- The volatility of the stock markets may prompt a reconsideration of the use of PPOs in catastrophic injury claims. It has recently been speculated that the judiciary could prompt an increase in the PPOs by enforcing their use in select cases, and the current situation may present such an opportunity. Such a move does transfer the risk back to insurers, who may not welcome holding additional risk on a long-term basis.
- The inflation of care claims. Carers (whether family members or private) may be required to self-isolate for periods, and therefore, any agency coverage would be subject to a premium. By the same token, the unavailability of professional carers due to self-isolation may prompt a reduction in the value of care claims as family members are required to that on that role.
- Claims for loss of earnings will require detailed consideration by defendant practitioners. Claimants may be required to self-isolation as a precautionary measure, some claimants may unfortunately lose their job as a result of mass unemployment or be required to take unpaid leave; however the Government's scheme to help ensure employers retain staff during any shutdown should reduce these occurrences. Nonetheless, the consequent prospects of obtaining new employment may also be diminished.
- For those who are self-employed and have ongoing loss of earnings, it is unclear how any Government measures in respect of self-employed individuals will factor into claims. In addition, the Coronavirus Job Retention Scheme will need to be considered. If an individual is absent from work due to injury, yet is made redundant by their employer electing not to use the Scheme – will this affect a loss of earnings claim?
- Access to rehabilitation for seriously injured claimants may be hindered. Planned Initial Needs Assessments will need to be postponed; visits by case managers may be curtailed; and therapies and interventions will be cancelled, and restarted after the crisis has abated.
- As non-essential medical treatment is cancelled, including privately funded treatment, this will delay the recovery times from conditions.
- Very seriously injured Claimants will be in the extremely vulnerable persons category, and therefore be subject to a higher risk of mortality from the virus itself, but also complications of their injuries or other infections. Should a situation arise where NHS staff are prioritising patients who need critical care, these seriously injured claimants may be lower down the priority list.
- The psychological impact of self-isolation may be greater and impact on the claim: those who live alone and rely on socialising with family and friends, therapies and such like, those who reside on in-patient units where visiting is being extremely restricted.

# Liability claims

- The issues we have identified on the previous page regarding loss of earnings issues will likely be applicable in lower value liability claims.
- There may be claims by individuals who allege that they contracted Covid-19 in the work environment, particularly those who were expected to continue to work in close proximity of others during a period in which 'non-essential' workplaces should have been closed. However, the likelihood of success of such a claim will be very dependent on the precise circumstances and available evidence.
- We would expect to see an increase in claims submitted to insurers or litigated in the immediate aftermath of the pandemic, arising from an existing cohort of claims which occurred prior to February 2020. However, there will be a reduction in claims arising during ongoing restrictions/enforced measures forming part of the strategy to mitigate the spread of Covid-19.
  - Employers' liability claims – as more places of business close/take on reduced capacity, then there is the prospect of fewer claims associated with employment
  - Public liability claims – as the amount of visitors to various venues / locations decreases, this may prompt a proportional drop in claims
- Contrarily, a reduction in traditional claims might also be accompanied an increase in injuries in particular sectors:
  - Employers who remain operating on their usual sites, such as retailers, may find employee numbers reduced due to self-isolation guidelines, and therefore may ask remaining workers to carry out tasks which they are not trained for, possibly resulting in more serious injuries;
  - By the same token, in the medium-term, if construction projects are put on hold, the restart of these projects may mean more corner cutting and less supervision given that deadlines may now be tighter;
  - There will be employees who are required to work from home, and have not been subject to a suitable risk assessment. It is possible that those parties sustain some form of injury as a result of continued home working – such as a musculo-skeletal injury – and seek to make a claim;
  - Those working from home may also suffer from stress-related illness if they are left to work from home without support and supervision;
  - Similarly, there will be individuals who are employers in areas where their work (and the importance of that work) has increased dramatically during the outbreak of COVID-19. Those individuals may be at increased risk of overwork leading to psychological injury and overwork / redistributed work leading to physical injury.

# Motor / Fraud

## Motor

- From February 2020 onwards, there is likely to be a commensurate reduction in motor claims - as fewer journeys were made due to the closure of schools, increased home working, greater restrictions of travel; the likelihood of being involved in an accident has been reduced.
- By the same token, fewer vehicles on the road may mean fewer multi-vehicle collisions, and also fewer collisions involving vulnerable road users such as pedestrians and cyclists.
- The ABI has confirmed that those volunteering to assist the NHS [do not need](#) to contact their insurer to update their documents or extend their cover. Similarly those affected by public transport limitations or 'key workers' travelling as part of their employment [will not need](#) to update their coverage. These extensions will result in a greater number of journeys covered than ordinarily, and there may be additional claims as a result.
- Whilst motor collisions will be expected to reduce during restrictive social distancing measures, those which do occur will raise issues. The Government has confirmed that there will be a [6 month exemption](#) for those vehicles requiring a new MOT and therefore many garages can be expected to close for the safety of customers and staff. This could impact the availability of repair services, and increase the need for storage facilities on a longer-term basis for damaged vehicles, which have been left not roadworthy. Insurers may also be unable or take longer to inspect vehicles to make assessments on whether a vehicle is considered to be a write-off, thus making a PAV payment or repairable. Repair parts may also be delayed as a result of the pandemic.

## Fraud

- It is a distinct possibility that the ongoing whiplash reforms could be delayed for a

further period. The Motor Insurers Bureau issued an email last week confirming their expectation that the Civil Procedure Rule Committee will present the updated rules and pre-action protocols in May, to ensure that the new portal will be operational in August; however, the current situation means that a delay would not be unexpected. Irrespective of the date, we expect to see a surge in registered claims, whether genuine or not, immediately before the reforms are introduced, in order to take advantage of the more generous damages awards for whiplash injuries.

- Opportunistic fraud or exaggeration of genuine claims in the months following the alleviation of the crisis may increase, particularly if the whiplash reforms are further delayed. It is an unfortunate possibility that those individuals who are adversely affected on a financial basis by the crisis may view an exaggeration of injuries sustained in a vehicle collision as a 'victimless crime'. The recession following the financial crisis in 2009 was marked by [evidence of increased levels of fraud](#).
- There will be an inevitable focus on those personal injury claims arising from staged/induced accidents; however, the last recession showed that insurers can expect increases of attempts to write off vehicles in a fraudulent manner. This instances will increase as individuals are increasingly unable to pay their personal contract purchases. In addition, those households which have two or more vehicles, one of which is no longer needed, may attempt to obtain funds from the write-off of one of those vehicles.
- The dishonest exaggeration of injuries is often prevented by the use of intelligence gathering and in serious cases, surveillance. Whilst social distancing measures and restrictions on exercise suggest that this evidence may now be difficult to obtain, there remains information and intelligence available allowing parties to identify fraudulent behaviour.



# Covid-19 Advice

The world is facing unprecedented impacts from the Coronavirus (COVID-19) pandemic. The impact on people, businesses and supply chains is unfolding rapidly, and is now being felt in every part of the globe.

Clyde & Co is supporting clients around the world from over 50 offices and associated offices, assisting as developments unfold.

If your business or people are impacted, please speak to your usual Clyde & Co contact or access our online resources by clicking below:

[Coronavirus Information Hub >](#)

[The Insurance Hub >](#)

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# 440

Partners

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# 1,800

Lawyers

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# 4,000

Total staff

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# 2,500

Legal professionals

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# 50+

Offices worldwide\*

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\*includes associated offices

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