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and responsibilities off IT**

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EU MOTOR INSURANCE LAW IN THE UK, ACCIDENTS ON THE ROAD AND RESPONSIBILITIES OFF IT

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Introduction

Remedies for a Member State's breach of EU law includes liability in damages. State liability has experienced [notable successes](#) in UK jurisprudence, but, generally, has also demonstrated limitations in holding the State to account for losses suffered by individuals. Establishing a 'sufficiently serious' breach of the law is frequently the limiting factor. However, in motor vehicle insurance law several state liability successes have been achieved, principally due to the UK's flagrant breach of the [Motor Vehicle Insurance Directives](#) (MVID). The UK's transposing laws in this area include provisions in the [Road Traffic Act 1988](#) (RTA88) and two agreements concluded between the UK and the Motor Insurers' Bureau (MIB) - the [Untraced Drivers Agreement 2017](#) and the [Uninsured Drivers Agreement 2015 \(along with its Supplementary Agreement 2017\)](#). The UK has been, and continues to be in [breach of both Agreements](#). There are also aspects of the RTA88 where English law has not caught up with developments in the MVID. The most recent breach has been the requirement, established in the 2014 judgment of the Court of Justice of the European Union (CJEU) in [Vnuk](#), that vehicles used exclusively on private land are subject to compulsory third party motor insurance. The MIB has, since the ruling, rejected the view that compulsory insurance extends to vehicles on private land. However, the High Court has recently ruled in [Lewis v Tindale](#) that the CJEU decision must be applied in the UK despite the restrictive wording of the RTA88.

The [Lewis](#) ruling applies until [Brexit day](#) when, if the UK leaves without an agreement to remain in the Single Market, national law will lawfully be able to retain its literal and restrictive reading of the RTA88. Contrasting approaches, and the inconsistency present in the interpretation of the RTA88 through national courts, can be seen in the most recent case on the subject. In [R & S Pilling v UK Insurance](#) the Supreme Court considered the issue of the 'use' of a vehicle. Whilst its conclusion was reasonable and pragmatic in the circumstances of the case, the decision of the Supreme Court was interesting in its refusal to apply EU law and to extend the reading of the RTA88. This, we have [argued previously](#), would be possible without a breach of national law, and indeed [according to EU law](#), is a requirement of national courts. The ruling did lead Lord Hodge, providing the only judgment, to remark that in relation to accidents on private property, national law must apply despite an expansive interpretation being provided by the CJEU. Lord Hodge did continue, however, that those CJEU rulings did 'demonstrate a need for Parliament to reconsider the wording of section 145(3)(a) of the RTA to comply with the Directive.'

Given the UK's reluctance to comply with EU law in this area, Brexit will remove many crucial protective rights enjoyed by third party victims of motor vehicle accidents. The only safeguard against the UK's continuing breach of EU law is

membership of the EU. There are so many breaches of the law (some highlighted in the [Roadpeace](#) case and accepted by the High Court, others dealt with in cases including [Delaney v Pickett](#) at the Court of Appeal) that those protections that should be available at present, but which are not, will never be achieved once Brexit has been concluded. Further, the remedy which has at least provided some scope for redress, state liability, will also be lost following the UK's withdrawal from the EU.

Motor Vehicle Insurance Extending its Reach?

It is well known that under English national law owners must possess, as a minimum, third party motor vehicle insurance. This applies to vehicles used on a [road or other public place](#). For the purposes of the law, a public place includes campsites and caravan parks, pay and display car parks, and even dockyards. This seems reasonable. If you use a motor vehicle in a place where people may visit and share the facility with you, for everyone's safety its owner should ensure there is insurance coverage in case of injury following an accident. The law of England (the Road Traffic Act 1930 being the inspiration for the First MVID) originally made provision for insurance to be held for vehicles used on a road. This was then, begrudgingly, extended through amendment of the RTA88 to include those 'public places' (as mentioned previously) following a decision of the [Court of Appeal](#). However, the courts rejected the application of compulsory insurance to vehicles used exclusively on private land (vehicles used, for example tractors on farm land, which did not travel on a road or other public place). However, in late 2018, the High Court ruled that the requirement for compulsory motor insurance does now apply to vehicles used exclusively on private land.

The European Union Interpretation

In its 2014 judgment in [Vnuk](#), the CJEU held that a farmworker in Slovenia could claim compensation when he was injured as a result of the negligent driving of a tractor and trailer. This was despite Slovenian law not requiring such vehicles to be insured (here the tractor was used exclusively on the farm and was never used on a public road). Slovenia considered that the term 'vehicle' in its laws did not include a tractor for the purposes of its statutory interpretation. The Court of Justice considered that in reference to the [MVID](#), the phrase 'use of vehicles' (Art 3(1)) meant any use of a vehicle consistent with its 'normal function.' Thus the requirement for which 'vehicles' are, across the EU, subject to compulsory insurance was significantly widened.

The issue relating to the requirement to insure vehicles on private land is not new (the [Vnuk](#) judgment having been issued in 2014). In 2006 two cases heard in references by courts in Portugal addressed this issue. In the first ([Juliana](#)), a driver killed himself and his two passengers whilst using his mother's (Mrs Juliana's) car. The vehicle had been taken without the mother's consent. The insurance cover had lapsed following the deterioration of the mother's health and, whilst it was still registered under the mother's name and in working condition, it had been stored on private land. Given the lack of insurance, the Portuguese national insurance body paid the compensation due to the victims' families and then brought civil proceedings against Mrs Juliana, as owner of the vehicle, to recover its costs. The case before

the CJEU was whether a vehicle, kept on private land and not intended to be used, was subject to the requirement to be insured.

The second case ([Andrade](#)) involved the use of a tractor, stationary at the time of the accident, but being used to spray herbicide. The tractor slipped down a hill in a vineyard - having itself caused a landslide - and this led to an employee working at the site being crushed to death. The Portuguese law only required insurance to cover accidents caused by the movement of the vehicle. The CJEU was called upon to address the issue of whether EU law necessitated the insurance of vehicles even when they were stationary but with the engine running.

In [Juliana](#), the CJEU, issuing its ruling in late 2018, held

a vehicle which is not formally withdrawn from use and which is capable of being driven must be covered by motor vehicle insurance against civil liability even if its owner, who no longer intends to drive it, has chosen to park it on private land.

This was a reasonably foreseeable interpretation of the law. In [Andrade](#), decided in 2017, the CJEU looked again at [Vnuk](#) and the determination of the 'use of vehicles'. It reiterated the concept of a vehicle's 'use' but also explained that such a concept was not dependent on the characteristics of the terrain where the vehicle is used. It further included any use of it as a means of transport (whether stationary, moving, its engine running or off). On the issue of where a vehicle may be used as both a means of transport and a machine for the purposes of carrying out work, it had to be determined if, at the time of the accident, it was being used principally as a means of transport. In [Andrade](#), it was not contested that the tractor, when used normally as a means of transport, was a 'vehicle'. Instead, the CJEU considered that at the time of the landslide the tractor was not a 'vehicle *in use*' as it was not being 'used principally as a means of transport.' This was because its engine was not being used to create power to provide transport but instead to 'drive the pump of the herbicide sprayer.'

The CJEU concluded that damage caused by vehicles which are also intended to be used as machines for carrying out work must *only* be covered by compulsory motor-vehicle insurance against civil liability when such vehicles are being used principally as a means of transport. Accordingly, the widower of the deceased was unable to recover compensation from the motor-vehicle insurers of the tractor.

English law has not caught up with the [Vnuk](#) ruling through changes to the RTA88. The protection of third-party victims of non-road registered vehicles (such as quad-bikes or vehicles used in purely agricultural, construction, industrial, motor sports or fairground activities) remain beyond the scope of compulsory insurance. Many of these vehicles are being used for the purposes of transport, and not necessarily for work (although it is important to note that the MVID do not impose a requirement of the use of vehicles for transport and presumably further cases will be needed to determine 'work' and 'transport' – motor racing for instance). The EU and national laws in this respect are, as a consequence, misaligned and this is significant. The UK Department for Transport does not report on statistics of accidents occurring on private land involving motor vehicles. What has been [reported upon](#) in the UK Parliament is the consequence of this omission for the possible prosecution of

individuals who evade current laws – such as driving whilst under the influence of alcohol.

The UK Approach

English law is clear on the requirement for third party victims of motor vehicle accidents to be protected. Not only was the original Road Traffic Act the source of inspiration for the first MVID, the UK has a compensatory body (the MIB) established to satisfy claims where the at-fault driver is not insured or cannot be traced. The UK does permit some vehicles to use a road or public place without insurance. Such exclusions are, of course, very limited and typically apply to those owned and used by a State body and thus would have recourse to funds to satisfy claims by the victims of accidents. Vehicles currently exempted from the RTA88 (through Art. 5 MVID) and its requirement to hold compulsory motor vehicle insurance will now fall within the category of 'vehicles' following [Vnuk](#) and will have to carry insurance. Further, the UK, under [s.185 RTA88](#), provides a definition of the meaning of 'motor vehicle' which is too restrictive to comply with the MVID.

That there is clear direction from the CJEU as to the interpretation of an EU Directive, and Member States (even those subject to withdrawal) are required to consistently apply such an interpretation, has not stopped the UK courts from being dismissive of rulings they don't like. To extend the issue of motor vehicle insurance in question for just a moment, consider the inclusion within the RTA88 of a list which, if used by an insurer in an attempt to exclude the cover of the policy, will be held void. This includes 'matters' such as the age of the vehicle, its weight or horsepower etc. Its aim was to stop insurers shirking their responsibilities to compensate victims of road traffic accidents. The list was a common sense approach to preventing insurers from escaping responsibility if, for instance, a car with five seats was involved in an accident whilst at the time containing six individuals (*Houghton v Trafalgar Insurance Company, Ltd.* [1953] 2 Lloyd's Rep. 18). Any third-party victims of an accident involving this vehicle should not find themselves unable to seek compensation because of such a transgression. However, in [EUI v Bristol Alliance Partnership](#) the Court of Appeal interpreted this provision restrictively and held the list as exhaustive. Hence any exclusion not expressly contained in [s. 148\(2\) RTA88](#) was, by definition, permissible under English law. This granted significant scope to motor insurers to escape responsibilities outside of the s. 148(2) list.

This is particularly [worrisome](#) due to the jurisprudence of the CJEU on this issue, and which was available to the Court when making its judgment. The CJEU had in [Bernaldez](#), [Correia Ferreira v Companhia de Seguros Mundial Confiança SA](#), [Candolin v Vahinkovakuutusosakeyhtio Pohjola](#), [Farrell v Whitty](#), and [Churchill v Wilkinson and Tracey Evans](#) been consistent that there exists only one permissible reason for excluding a third party's right to claim against a policyholder's insurers. This is where the third party knew (and this knowledge may not be inferred) that the vehicle in question was stolen. The CJEU purposively interpreted the list of void exclusions provided in Art.2(1) of the Second MVID (now contained in Art.13(1) of the Sixth MVID) as being illustrative. This allowed for the extension of the scope of the civil liability insurance requirements contained in Art.3(1) of the First MVID.

This is but one example of an [inconsistent approach](#) to the interpretation and application of EU law and principles by English courts. Some are favourable to a consistent application of EU laws (see *Allen v Mohammed and Allianz Insurance* (2016), Lawtel, LTL 25/10/2016) whilst others, heard at the same time but in a different part of the country, [are not](#) and adhere steadfastly to national provisions.

This lack of consistency and [legal certainty](#) left the implications of the *Vnuk* ruling, along with effects of Brexit hanging over the legal system, in a state of paralysis. At least until towards the end of 2018.

‘New’ Rights and Obligations in 2019?

In September 2018, the High Court delivered its judgment in *Lewis v Tindale* where the claimant suffered very serious injuries having been run over by a driver on private land. The driver of the vehicle was uninsured and therefore the claimant had to seek compensation from the MIB. The MIB acts as the insurer of last resort and a percentage of every motor policy-holder’s insurance premium is paid into its funds to satisfy claims. The High Court considered the MIB to be an ‘emanation of the State’ and therefore subject to the requirements of EU law – beyond what national law may provide. A consequence of the judgment is that the MIB is responsible for compensating the third-party victims of motor vehicle accidents occurring on private land and, where it refuses due to adherence to the RTA88, will be subject to state liability claims and the vertical direct effect of the MVID. This situation is likely to be untenable and thus legislation will be necessary – if for no other reason than to prevent the MIB being called upon to satisfy claims. As mentioned previously, insurance will also extend to a whole new suite of vehicles which previously have never been required to possess liability cover.

It also calls into question the role that the police will have to enforce the cover of vehicles which are not on the road or necessarily subject to regulation (as applies to vehicles which access roads and public places). It will allow for [prosecutions of drivers](#) of vehicles where injuries (and deaths) have occurred on private land but are, at present, excluded from the scope of criminal sanctions. Further, the requirement for compulsory insurance means that at present those vehicles in public places are subject to the rules relating to the use of a vehicle. This is to be insured and a criminal offense is committed by the owner allowing the car to be uninsured. This should now be applied to private land. This indirect consequence of *Vnuk* and *Lewis* may give greater protection to vulnerable pedestrians and improve safety measures which seem to have a loophole in protection. However, as *Lewis* does not include use of a vehicle for ‘work’, it will bypass the *Andrade* hurdle relating to compulsory insurance. That being said, clearly the vehicle’s use as ‘transport’ was surely merely ancillary to its main purpose for catching and injuring the victim. Thus, is this the normal use of a vehicle (*Vnuk*)? Is the vehicle being used as a means of transport (*Andrade*)? There are perhaps bigger questions to this case than covered by the High Court.

At the very least, the law as developed through *Vnuk* is due to be clarified by the Court of Appeal when the case is heard in May 2019. The UK’s future relationship with the EU will also largely determine what happens next. If the UK remains in the EU, or strikes a deal to remain in the Single Market, then owners of motor vehicles

will be required to have these insured against third-party liability. If the UK leaves or, for instance, establishes a deal with the EU on the basis of a Customs Union arrangement, this may be an area which is changed under the Government's plans post-Brexit.

Whatever the eventual outcome, at the EU level and through the ruling of the High Court, whether driving a buggy on a golf course, or perhaps even a fork-lift truck (until [Vnuk](#) and [Andrade](#) are reconciled), you as the owner of the vehicle should possess liability cover. In its absence, the MIB will have to settle compensation claims. Either way, insurance premiums will be affected.