



Informing Progress - Shaping the Future

FOIL UPDATE

20 November 2020



Update – FOIL Learning Event: Cross Border Motor Claims in Ireland post-Brexit

This virtual Learning Event took place on 19 November with 43 attendees.

In his introduction the first speaker, **Alistair Kinley** of **BLM**, issued a reminder that applicable law and jurisdiction are two completely different matters. There can only be one applicable law but there may be more than one country with jurisdiction. These issues need to be considered separately.

By way of background, Alistair considered two paradigms:

- i) The visiting victim – a British or Irish citizen who, while visiting another EU jurisdiction, is struck by a vehicle from that or another third-party state.
- ii) The unlucky resident – someone from Britain or Ireland struck by a vehicle driven by a foreign driver.

These need to be considered against the current situation; what is in the Withdrawal Agreement; the situation from 1 January 2021; and the practicalities of the end of the transition period.

The current position is that through Brussels I, Rome II, the 4th EU Motor Insurance Directive (MID) there are, for cross border motor claims connected to the UK or Ireland and one of the EU 27 states, effectively identical rules in both jurisdictions. However, the current

IN BRIEF

Two expert speakers considered:

The current provisions relating to cross border motor claims

What has been happening during the transition period

What is happening on 1 January 2021

rules in the UK and Ireland for non-EU cross-border claims are very different from this body of European law (although both countries' approaches in such cases closely resemble each other).

Under Brussels I, an injured party has a broad choice on **jurisdiction**. Very often the injured party will **sue the motor insurer direct**, in his or her home state, as is allowed for in Brussels I. The MID obliges member states to provide such a right. In the UK, the direct right as implemented falls short of the MID requirement as it is restricted to accidents the UK involving UK-based vehicles. The direct right of action implemented in Ireland is much wider and relates to EEA accidents involving EEA vehicles.

Where an insurer wishes to bring an action against a policyholder, beneficiary or victim - ie the insurer will be acting as claimant - that must be brought in the member state in which the defendant is domiciled.

The claimant injured while visiting another jurisdiction may still bring his or her action in their country of domicile. The **applicable law**, however, is set out in Rome II. It is generally that of the state in which the event giving rise to the damage occurred, subject to cases where the parties have the same habitual place of residence.

Both the MIB and MiBi (MIB Ireland) are deemed to be an **emanation of the state** and thus responsible for the full implementation of EU motor law. This is particularly relevant during the debate as to the definitions of a 'vehicle' and 'use' currently taking place.

The Withdrawal Agreement (Articles 66 and 67) preserves the position in relation to jurisdiction, in motor claims, until the end of the transition period, provided proceedings have been instituted before 1 January 2021 (and this saving also extends to the enforcement of any subsequent judgment in proceedings instituted before that date).

Unless the UK Government enters into some late alternative arrangements (such as acceding to the Lugano Convention), the position alters from 1 January 2021. While that Ireland remains the same, the UK position changes in that:

- The Brussels I Regulation no longer applies and jurisdiction will be based on the requirements of CPR 6.36, PD 6B and the common law. The outcome of applying these in practice is far less predictable than under the current provisions.
- The Rome II approach is retained but as domestic rather than EU law and therefore subject to interpretation by the UK courts.
- The provisions currently under 4th Motor Insurance Directive which enable an insurer to be sued directly will continue under the European Communities (Rights against Insurers) Regulations 2002 but only in relation to accidents in the UK involving UK vehicles.
- The 'visiting victims' regime of the MID falls away. UK citizens injured in another EU jurisdiction will no longer be able to sue in the court of their place of domicile as of right but will need to satisfy the requirements of CPR 6.36 and PD 6B. In many (if not all) cases they will need to bring their proceedings in the jurisdiction in which the damage occurred.

What this may all mean is a possible spike in claims before 1 January to retain the benefit of the current provisions. However, there is some doubt as to awareness within the claimant community regarding the loss of 'visiting victims' rights. After the transition period comes to an end, the volume

of cross-border vehicular traffic will probably remain high, but the ability to bring cross-border claims will become much more complex.

The second speaker, **Denis Smyth** of **MIBI** looked at international claims handling and the impact of Brexit.

The Green Card System

This covers 48 countries. It was introduced in 1951 to facilitate cross-border travel, without the need for separate insurance for each state and to facilitate claims settlement. The scheme works through the local equivalent of the MIB, as Green Card Bureaux. The Green Card certifies that the motor insurance policy provides the vehicle in question with at least the minimum permissible level of cover. There is, however, no requirement for a Green Card within the 48 member states, as the registration plate of the vehicle is taken as a sign that it will be insured. The scheme offers protection to the victims of road traffic accidents.

The scheme operates in two ways. First, to assist with accidents abroad involving a domestic vehicle, either by directing the claim to the domestic insurers appointed agent abroad or to the local MIB where the vehicle was not insured. The domestic MIB will then reimburse the foreign bureau.

The second is in relation to a foreign registered vehicle causing an accident in the victim's country of domicile. The local MIB identifies the relevant insurer which then instructs its nominated agent in that domicile, or the local MIB handles any uninsured claims and seeks reimbursement from the foreign insurer.

Compensation Body Claims and Information Centre

The 4th EU Motor Insurance Directive deals with compulsory insurance to meet the claims of innocent victims. All member states were required to set up information centres, which enable claimants in that domicile to obtain details of vehicle insurers. MIB in England and Wales and MiBi, fulfil this role. It ensures that victims are protected if involved in a road traffic accident while visiting a member state and are able to bring the claim within their own country of domicile.

The Compensation Body is concerned particularly where a foreign insurer does not respond to the claim in time or at all; where no insurer can be identified; or where there is an untraced vehicle.

It will be involved where a resident from the same country is injured abroad (as Foreign Compensation Body), or where a foreign resident is injured by a vehicle registered there (Domestic Compensation Body – here Ireland).

The impact of Brexit

The UK remains a member of the multilateral guarantee agreement. This should mean that the claims handling process will continue on the basis of deemed insurance cover. In the event of an accident involving an uninsured Spanish plated vehicle, that would still be deemed to fall under the Spanish bureau.

The visitor protection set up under the 4th Directive no longer applies and claimants will no longer be able to return home to bring their claims against a foreign vehicle.

There are, however, bilateral agreements in place to offer some reassurance to claimants, with 90% of insurers confirming that they will adhere to current claims handling arrangements, even though there is no legal obligation to do so. This will involve the claims being processed through the foreign insurer's representative in the victim's place of domicile. There are similar arrangements between the MIB and other compensation bodies, to deal with uninsured and untraced claims, but with the victim going to the compensation body in the country in which the accident occurred.

Unless agreement is reached, from 1 January 2021, UK registered vehicles will require Green Cards. Irish registered vehicles entering the UK will not require Green Cards. The UK will accept PDF versions of Green Cards, where required.

EU and EEA insurers will no longer be required to nominate claims representatives in the UK. Where this arises, a claim will need to be brought where the accident occurred. Differing limitation periods *may* come into play more than before.

However, the UK will retain its Information Centre, even though EU law will no longer apply. This means that MIB will continue to provide the insurance details of foreign registered vehicles.

Green Card Claims

Claims made or litigated before 1 January 2021 will be dealt with 'as normal'.

Given the fluid nature of this area of law, FOIL will continue to monitor developments and will alert members to any changes that take place.

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