# Insurance: bracing for claims inflation

October 2022

Kennedys

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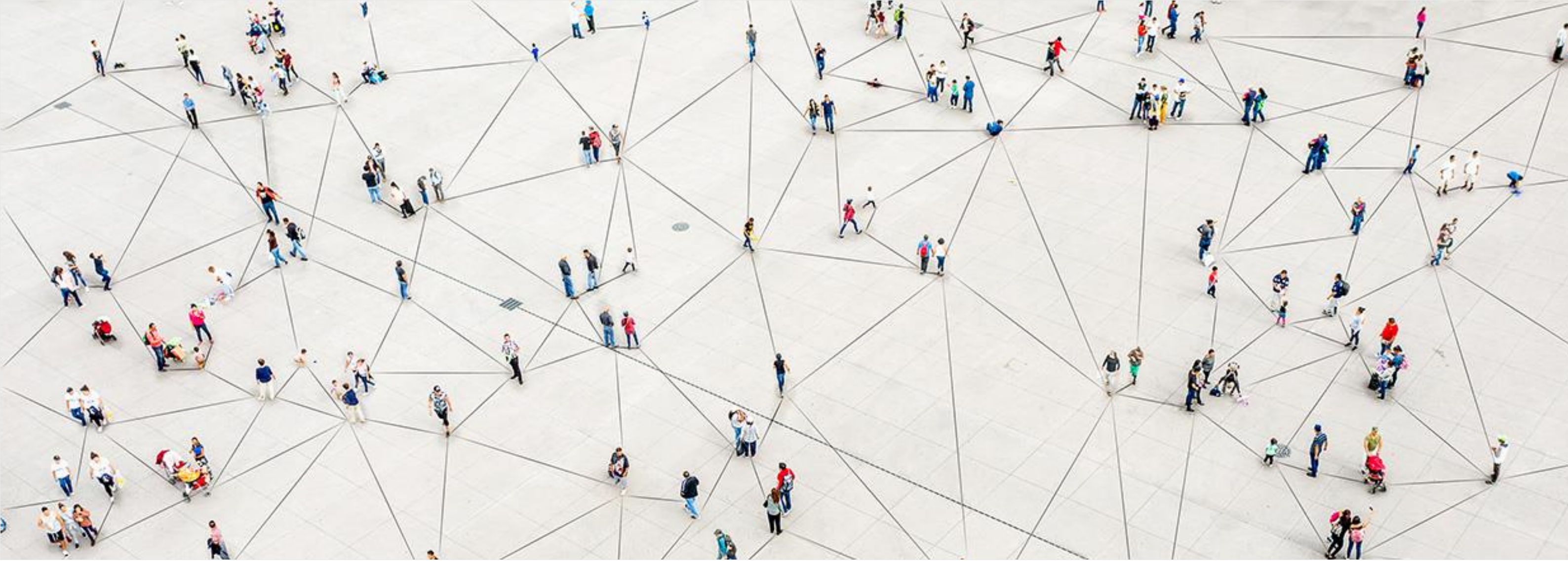
# Foreword

Rising inflation is a topic of increasing global concern. Similarly, excess claims inflation – that is, changes in the cost of claims beyond ordinary economic inflation - has become a priority for the insurance industry, requiring immediate consideration to ensure business resilience and adequate claims management.

Such is the volatile business environment in which insurers are operating, historical claims data does not provide sufficient information for the reserving process or for claims adjustment purposes. This is underpinned by Lloyd's of London's recent request for excess inflation (including social inflation) to be considered at both class of business and geographical levels.

Without adequate allowance for the impact of claims inflation, insurers will potentially be exposed to inaccurate reserves and additional challenges when adjusting claims, including under-insurance, gaps in cover and the development of unexpected or unanticipated claims.

**Against this background, we consider the key drivers of excess claims inflation, direction of travel and why this topic matters to insurers. We also shine a spotlight on personal injury claims, motor claims, the construction industry and the rise of group actions, as well as providing an overview from the US; where social inflation is particularly prevalent.**



# Claims inflation - the challenges

Claims inflation is not a new phenomenon. Insurers, brokers and lawyers take ordinary economic inflation into account every time they consider the future value of a claim and set an appropriate reserve. It is understood as the change in the expected cost of claims from one year to the next.

## Definitions

'Ordinary' economic inflation is calculated by use of standard economic indices, such as the Retail Price Index (RPI), the Consumer Price Index (CPI) and the Annual Survey of Hours and Earnings (ASHE), all of which are provided by the UK Government's Office of National Statistics.

Excess claims inflation, however, is the increase in the cost of a claim beyond that of ordinary economic inflation. Below are the definitions we have used in this analysis.

**Excess claims inflation**

Excess claims inflation is driven by many different types of inflationary factors, including the rising risk and costs associated with using new materials, medicines and technologies.

Examples of such inflationary factors include:

- Advances in medical science and technology.
- New categories of claims responding to shifts in the working environment or evolving technologies.
- Professional services spend, such as experts and legal costs.
- Cost of energy, transportation, construction materials and labour.

- Demand surges, for example, after an extreme weather event.

**Social inflation**

Social inflation is a subset of excess claims inflation. It is referred to as social inflation because the increased costs are largely attributed to social trends or movements. The rise of these social trends and movements resulting in an increase in the volume and costs of claims has meant this is an area causing understandable concern for insurers and their customers.

The 'social trends' that are increasing the volume and costs of claims include unanticipated emerging risks, shifts in the legal and regulatory environment, evolving societal attitudes, and demographic and political developments.

Examples of recent social movements resulting in an increase in both volume and value of claims include the activities and actions associated with Black Lives Matter, #MeToo, climate change activism (including Extinction Rebellion), COVID-19, the expansion of the gig economy and, currently, the cost of living crisis.

Along with social trends, procedural changes are facilitating an increase in social claims inflation for the UK market, including by virtue of:

- Third party litigation funding and collective or group actions.
- Growth of claims management companies (CMCs).
- Changes in the regulatory and legal environment.

It is worth noting here that litigation funding is a particular driver of social inflation in the US – which we will come on to. However, unlike in the UK, the US's civil justice jury award system coupled with shifting societal attitudes in respect of classes of claim - such as environmental or discrimination based actions - is considered the main driver of social inflation in the US.

# Drivers of excess inflation

Expanding on the above, the recent drivers of excess inflation include:

**#MeToo**

The #MeToo movement continues to have a global impact on claims, as do similar social media driven groups, such as Everyone's Invited, which gives people the opportunity to share their experiences of abuse and provides a means of support for victims.

**Cost of living crisis**

Many countries are currently facing a cost of living crisis against a background of financial turbulence. The COVID-19 pandemic has left economic scars on the global jobs market despite a jump in wages and fall in unemployment. The key drivers of the increase in consumer price inflation include petrol, food, durables, consumer goods and, crucially, energy prices impacted hugely by the war in Ukraine.

**Fraud**

Instances of fraud increase in times of recession, which means that the combined impacts of COVID-19 and the current cost of living crisis have the potential to cause a significant increase in fraud related claims.

An example of that is Action Fraud recently urging the public to be aware of scam emails claiming to be from Ofgem (the energy regulator). The Financial Conduct Authority is also warning firms about rising fraud rates across all lines of business.

**New types of claims**

As well as an increase in general and special damages (including as a result of new heads of loss) we are witnessing new types of claims, such as those relating to complex post-traumatic stress disorder (PTSD) and Functional Neurological Disorder. Indeed, we anticipate that claimants of the future will be more vulnerable to adverse psychological consequences as a result of the impact of the pandemic on their long-term mental health.

The development of these types of claims, coupled with increased awareness of the ability to claim for such disorders may well increase the volume of such claims, thereby increasing their cost to insurers.

# Direction of travel

During previous spells of high inflation, the insurance industry experienced inadequate reserve levels, unpredictable claims trends and, overall, weaker underwriting performance. Losses presented often resulted in coverage challenges.

Today, the insurance industry is better placed to deal with inflationary based losses due to changes in operational structure, investment and financial reporting requirements. These measures should assist insurers in identifying and responding to these loss trends. However, the current uncertainty surrounding the global markets does still have the potential to threaten underwriting profitability in the long term. Most, if not all, sectors are feeling the ongoing impacts of the pandemic, together with supply chain disruption and the Russia-Ukraine conflict. Climate associated risks are also increasingly becoming front of mind for business. The addition of 40-year record highs in inflation adds another layer of uncertainty to an already unpredictable landscape, which is likely to lead to increased caution when applying underwriting criteria, potentially resulting in reduced capacity and less choice for policyholders.

Forward thinking insurers will place a heightened emphasis on educating their customers; adopting an advisory role about risk-mitigation, as is already being seen in the broker community with regard to climate (and other ESG-related) risks. They will seek out innovative, data-led solutions to assist in setting and maintaining accurate reserves, while meeting the demands of the customer of the future who expects instant responses alongside the highest levels of customer experience, now demanded in a post-pandemic environment.

# Insurer response

Businesses rely on insurers to assist them in mitigating and managing their risk exposure; something in which the industry has a proven history. In return, it is incumbent on policyholders to ensure that valuations are accurate and correctly calculated. That exercise becomes all the more challenging when excess claims inflation is present, putting policyholders at risk of being under-insured in respect of their needs, and in particular with regard to property, stock and contents, plant and equipment, and business interruption. Cyber liability is also a common area of underinsurance.

In turn, underinsurance can leave the policyholder unable to claim for the full loss and make them susceptible to the ‘average rule’, reducing the claim further.

> Insurers are rightly focussing on excess claims inflation, seeking to predict the impact on the future costs of claims. Conversations are taking place regarding the protection gap, being the gap in cover between (i) the protection afforded by an insurance policy and (ii) the actual losses sustained by an insured seeking indemnity under that policy.
>
> The combination of excess claims inflation, including social inflation, black swan events (such as COVID-19) and increases in systemic risks - including geo-political instability and the impact of climate change – has resulted in a challenging underwriting environment in which stakeholders will need to work together to develop new products and strategies to meet these changes and uncertainties.
>
> Ingrid Hobbs, Partner, London

To assist policyholders and to reduce underinsurance disputes, insurers will wish to work closely with their insureds to encourage them to:

- Conduct regular reviews and update asset values - at each renewal at the very least - to close the gap between declared values and replacement values, thereby reducing the risk of underinsurance.
- Explore risk mitigation strategies, such as setting aside emergency funds to deal with excess claims inflation.
- Restructure supply chains to minimise disruptions, perhaps by using local suppliers.
- Discuss the impact of specific undervaluation clauses on their business in the event of a claim.

To ensure adequate product pricing and realistic claims reserving, insurers may also be considering taking steps commonly seen in historical periods of a hard insurance market, including:

- Increasing premiums.
- Increasing the value of policy deductibles/excesses in line with the rate of inflation.
- Increased scrutiny of claims values and appropriate policy limits of indemnity.
- Increasing claims reserves, not only to reflect the rate of inflation, but also excess claims inflation, including social inflation.
- Reintroducing specific clauses into policies to address the risk of undervaluation if asset values are not updated.

**Against this background, we shine a spotlight on the particular challenges and impacts in a number of discreet areas: personal injury and motor claims, the construction industry, and the rise of group actions. We also provide a view from the US.**

# Spotlight on…

## Personal injury claims

According to the Bank of England, the UK's inflation rate has already reached 10% and is projected to rise to 15% in 2023. Add the cost of living crisis, and the long-lasting effects from the COVID-19 pandemic and Brexit, and you have a potent cocktail of issues for insurers which will be felt in personal injury claims.

> Economic and social inflation trends are creating a number of challenges for insurers in the personal injury market. These are of a multi-faceted nature and a range of claims strategies are required to prepare for and mitigate against the increases that are feeding through into damages and legal costs.
>
> James Shrimpton, Partner, Birmingham

### Labour impact

Reports of a 'great resignation' following a shift in post-pandemic working practices reflect global labour shortages, reinforcing the need for businesses to attract and retain talent. As a result, wages have been driven up with rising inflation rates, and with employees seeking bigger pay increases and bonuses to reflect the economic climate. Further, certain sectors, including hospitality and manufacturing, are struggling to find candidates with the necessary skills. This not only drives up wages within their sectors, but also has a knock-on effect within the supply chain.

Considering this new environment, higher value loss of earnings claims are being advanced by claimants. In this uncertain climate, claimant practitioners may adopt a 'watch and wait' approach to settlement, fearing the risk of under-settling cases. Insurers should therefore be alive to these trends to ensure adequate reserving, and to maintain profitability and cashflow. Insurers should also consider deploying claims strategies focused on minimising exposure to longer-term inflation risk.

### Increase in pleaded values

The COVID-19 pandemic has made it difficult for certain claimants to access adequate rehabilitation, resulting in slower recovery and poor long-term outcomes. Accordingly, additional care requirements, time off work, therapies and travel may be sought, pushing up the overall pleaded value of these cases over and above initial reserves.

Illustrating the increasing cost of personal injury claims, the 16th edition of the Judicial College Guidelines, published on 11 April 2022, states that the figures for general damages (i.e., for pain, suffering, and loss of amenity) "reflect that at the end of September 2021 the general increase in the retail price index (RPI) since the last edition has been 6.56%". Taking into account the current inflationary pressures, it would be reasonable to assume that the 17th edition of the Guidelines will follow this upwards trend. Commercial care costs are also rising. This is as a result of hourly rate increases, driven by a shrinking labour supply as a result of Brexit, COVID-19 vaccination requirements and by additional pandemic overheads, such as PPE, as well as rising travel costs.

Following the Court of Appeal's decision in *Swift v Carpenter* [2020], there has been an increase in accommodation claims in relation to mid to high value personal injury claims. Further, a combination of Brexit and the impact of the pandemic has led to an increase in the cost of building works and housing adaptations which also form part of any accommodation claim, presenting difficulties for accurate reserving.

Claimant practitioners are making allowances within their schedules of loss for the ever-rising price of goods, energy, materials, labour and services. The cost of aids and equipment including prosthetics has also risen steeply due to supply chain disruption, as have vehicle and fuel costs.

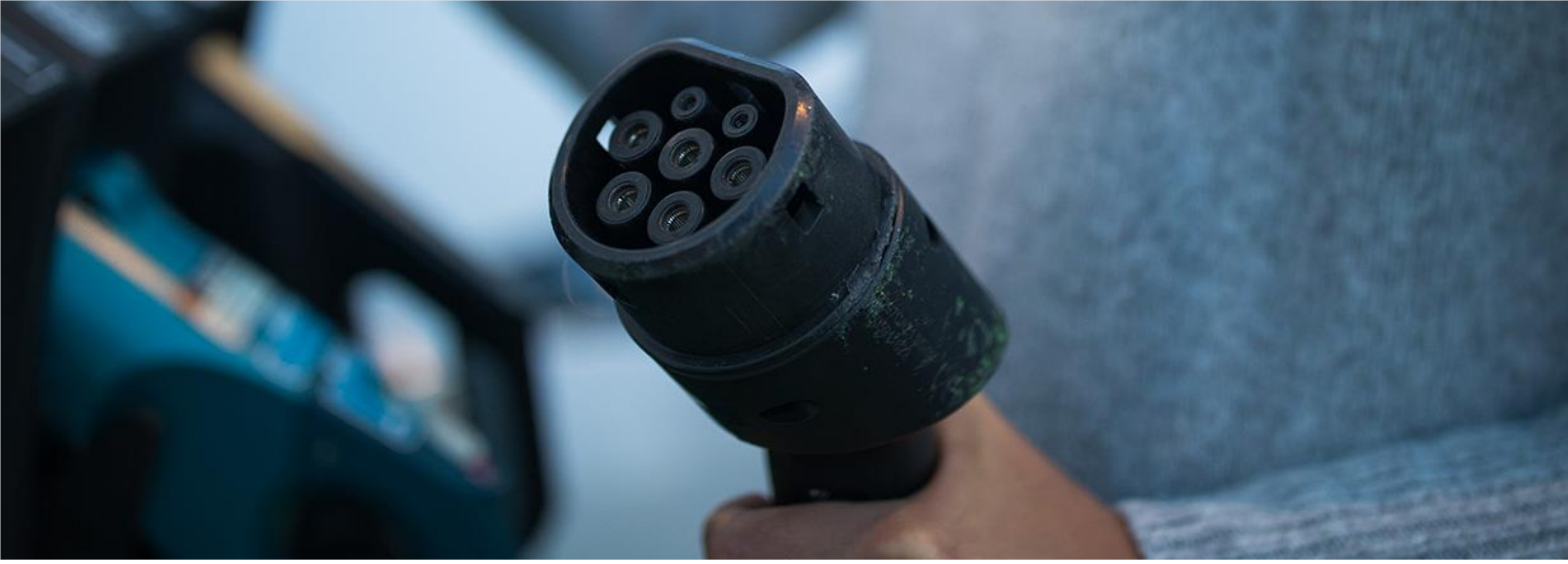
## New types of claims

Statistics from the Health and Safety Executive show a worrying increase in the numbers of workers suffering from work-related stress, depression or anxiety. This is set against national studies which show a significant increase in reported levels of anxiety and depression within the population which, over the last two years, was closely linked to the effects of the COVID-19 pandemic, and which we might also expect to be exacerbated by the unfolding cost of living crisis. The broader trend in the country's mental wellbeing is of concern for insurers, not only in terms of claims for stress at work, but also arising from the interconnectivity with injury claims. This is because worse outcomes frequently arise where there is an underlying mental health issue, or where a mental health issue is caused by the physical injury.

Companies and organisations within the hospitality, transport and retail sectors are seeing a rise in discrimination claims from customers relating to interactions with their employees, such as against security guards trying to enforce the wearing of face masks during the pandemic. These claims pose both a financial and reputational risk to businesses, with a significant proportion of these claims pursued by litigants in person requiring greater input from a represented defendant.

Looking to the future, with the next review of the discount rates in England and Wales, and Scotland approaching, insurers should consider what impact different rates and approaches to setting the rates may have on pricing risk, and whether localised pricing reflects the outcome sufficiently to avoid underinsurance.

> In the prolonged period of economic conservatism, low interest rates and relative financial returns, seriously injured claimants were often willing to explore the possibility of receiving part of their compensation within the framework of a periodical payment. However, as interest rates rise, and those with money to invest anticipate better rates of investment return, insurers may face a barrage of requests for compensation favouring lump sums. This raises the prospect for insurers and their advisors to revisit settlement strategies, and if appropriate, to consider making earlier, robust commercial offers to limit a claimant's ultimate desire for a Periodical Payment Order.
>
> Richard West, Partner, London



# Motor

## The greatest challenge in the motor sector is claims inflation relating to vehicle damage claims.

The challenge presented by extraordinary levels of claims inflation has been building for some time due to several contributory factors – including increasing operational costs, advancements in vehicle technology and the associated rising cost of vehicle parts, combined with a skills shortage in specialist engineers. Vehicle repair costs are increasing significantly and have been for some time.

The second-hand car market was seeing significant inflationary rises in early 2022 but has stabilised. Claims inflation, resulting from considerable disruption to supply chains during the pandemic, is now compounded by increasing inflation and energy price hikes.

### Operational costs

The operational costs challenges that independent garages and dealer workshops are facing - from higher delivery costs and wage increases, through to the significant amount of energy used in the repair process - will inevitably be passed on in many instances, thereby increasing claims costs. The significant amount of energy required to melt spray paint prior to application, is one such example of how the repair process is affected by increased energy prices.

### Technological impacts

Advancements in vehicle technology and the consequent rising cost of vehicle parts has further impacted claims costs. Even entry-level vehicles, outside of those considered a premium manufacturer, are now awash with sensors and cameras forming part of the Advanced Driver Assistance System (ADAS). Windscreen replacement can be particularly expensive as the ADAS systems are commonly housed directly behind the interior rear-view mirror, and frequently require recalibration when the glass is replaced.

In addition, a skills shortage of those qualified to repair increasingly sophisticated vehicles and repairs on electric vehicles (EVs) can take longer than combustion engine repairs.

> With a lack of trained EV specialist engineers, we can expect salary costs to increase and delays in repairs to continue as the skilled workforce required catches-up with demand.

## Hire costs

The delays in repairs now and in the future will see hire periods (for temporary replacement vehicles) extend further, pushing up claims spend. This is compounded by a reduction in the number of cars available for hire companies to buy given the delay and shortages in new cars entering the market. Our data analysis based on litigated road traffic accident claims that we are currently handling suggests hire lifecycles have increased by up to ten days.

## Whiplash reforms

The volume motor market anticipates savings against previous general damages reserves (for bodily injury claims) as a result of the implementation on 31 May 2021 of the Official Injury Claim (OIC) process and the tariff for whiplash injuries. However, the picture is not entirely positive. Claims are processing slowly through the OIC process, generating concerns that the envisaged savings may not materialise at all or in such a significant value.

Injury claims frequency is down but in the low-value high-volume whiplash space, the early data suggests the reforms will not be as successful as hoped on the claims that are made. Our data shows that less than 12% of claims are pure whiplash and thus in the lowest tariff bracket. Our data also shows that psychological injury claims and those for non-tariff injuries are 40% higher historically than seen in the earlier Ministry of Justice process.

> The good news story of the OIC is being overshadowed by increasing spend on bent metal claims, and undermined by concerning signs in the OIC itself.
>
> Ian Davies, Partner, Birmingham

# The construction industry

The cost of construction claims arising from new builds and rebuilds due to fire, natural catastrophes, water damage and faulty design or workmanship will significantly increase due to excess inflation.

## Supply chain impacts

In recent years, global events such as Brexit, the COVID-19 pandemic and the Russia-Ukraine conflict have triggered supply chain pressures and disruptions resulting in a shortage in construction materials. This has caused the cost of construction materials to skyrocket. Examples include the price of fabricated steel increasing by 66% and oriented strand board increasing by an eye-watering 500%. These dramatic price hikes are having a major effect on the contract value project budgets and the cost of claims.

New challenges, such as an increase in government-led infrastructure activity requiring materials, plant and equipment of which there is a current shortage, are placing additional burdens on pricing. Rising fuel prices due to the Russia-Ukraine crisis are also putting more pressure on contractors' budgets given the many pieces of essential heavy equipment required in each project.

Analysis has found that the Russia-Ukraine crisis is single-handedly responsible for adding a further 3-5% to the costs of most construction projects and, on some projects, the costs will increase by at least 10%.

> The cost of living crisis is the latest in a long line of challenges faced by the construction sector and we are likely to see the onset of a hardening market. To reduce underinsurance disputes, insurers will need to work regularly with policy holders and encourage more reviews of asset values as well as explore all risk mitigation strategies.
>
> Iain Corbett, Partner, London

## Labour impacts

The construction workforce is shrinking as an ageing cohort of skilled workers are reaching retirement age, taking early retirement due to COVID-19 or have returned to their European homeland following Brexit. At the same time, fewer younger workers are joining the construction industry to replace those leaving. As wages can account for over 50% of the overall construction costs, the impact of increased labour pricing as a result of labour shortages can have an acute influence on the profitability of a project.

Contractors and developers have no option but to absorb these increased costs, eating into already slim margins and affecting their liquidity. These steep price increases are also impacting the bidding and tender process and making it extremely difficult to estimate future costs which may be several times the original estimates by the time work commences, and more still by completion. In addition, delays in getting materials on site due to supply chain challenges mean that the timeline for completion is often unclear. Such delays on project timelines will impact Delay in Start Up (DSU) policies and clauses in Construction All Risks (CAR) policies.

## Pricing models

Failing to accurately price a tender bid (by not factoring increasing inflation rates) can have catastrophic effects on contractor budgets, particularly those that operate on a fixed price contract basis. Consequently, contractors are increasingly reluctant to provide a fixed price and are adding contingencies into the pricing models to cater for future price uncertainties and increased costs. Some are drafting fluctuation clauses in contracts, a practice not used for many years.

Others have reverted to using indices, a practice which has not been used for 40 years. Index linking is being applied again to calculate the difference between the sum insured and the rebuild value to ensure the costs are in line with inflation. However, very few contractors today have experience in using such indices and, as such, errors are likely to arise which could result in incorrect build and rebuild figures, and instances of underinsurance.

In addition, some contractors commence with a letter of intent but fail to crystalise these into a formal agreement. The failure to take into account increased, inflated material costs and wages will impact the final contract sum and could lead to potential claims.

## Professional services fees

Costs inflation can also be exacerbated by professional services spend such as expert fees, legal and auditing rates, which have generally increased by 6-10%. This is as a result of a combination of factors, including a reduced number of skilled professionals available, and the increase in costs associated with additional regulatory and technological requirements.

Front-loading of costs also remains a concern, with some claimant law firms seeking to build costs on mid to high value claims via the investigation of novel heads of loss and speculative instruction of experts.

## Risks to insurers

Soaring claims and social inflation will raise the risk of underinsurance for companies and mis-declared values at the proposal and renewal stage for CAR and professional indemnity insurers which lead to under-pricing exposures. The market is already seeing claims with a significant gap between the insured’s declared value and the replacement value paid by insurers due to lengthy rebuild and claims periods. The declared value of the rebuild at the start of a two-year project is now 50% lower than current replacement values paid out.

To ensure adequate product pricing and the setting of realistic claims reserves, insurers are looking to put in place the steps outlined in our introduction section and are assisting policyholders to mitigate the risk of underinsurance currently faced.

# The rise of group actions

Group actions, or ‘class’ or ‘collective’ actions as they are often described, are procedural mechanisms that enable a group of individuals to bring claims against one or multiple defendants.

No longer just a feature typically associated with US litigation, group actions are increasing in both the UK and the EU as part of a growing, global trend towards mass consumer-led litigation. This is being facilitated by three factors:

- Landmark legislative changes.
- The proliferation of third party litigation funders.
- Experienced US class action law firms entering the EU and UK markets.

Collectively, these factors have resulted in an increased appetite for litigation with a knock-on effect on both the volume and value of claims.

Although an increase in claims volumes naturally correlates with an increased liability risk, this can be particularly challenging in the context of group actions where individual consumer losses may be small but, collectively, can amount to significant sums which often run into many millions of pounds or euros.

> It therefore comes as no surprise that the rise of group actions is seen as a significant driver of social inflation.

### UK position

Whilst the UK has had group action procedures in place for several years, one of the forces behind the recent rise in group litigation in the UK has been the introduction in 2015 of a ‘collective proceedings’ regime in competition claims. This has provided a mechanism for US-style ‘opt-out’ class actions to be brought in the UK’s Competition Appeals Tribunal (CAT).

Opt-out actions encompass the entire class of affected claimants unless they expressly opt-out of the action, giving rise to the potential for actions to be pursued on behalf of millions of claimants.

Following the granting of the first Collective Proceedings Order (CPO) in August 2021 in *Merricks v Mastercard* (a multi-billion-pound action brought by Mr Merricks against Mastercard regarding allegedly unlawful bank charges) several more CPOs have been granted, with more than a dozen cases awaiting certification, indicative of a growing consumer appetite for pursuing such claims.

The introduction and use of this regime has prompted a greater interest generally in group actions in the UK, and the potential to drive attempts at large opt-out group actions in areas other than competition claims.

> Emerging risks that have the capacity to impact thousands, if not millions, of individuals, such as global cybersecurity breaches, chemical contaminants and increased focus on climate and sustainability, will inevitably serve to drive the continued growth of group actions across Europe and the UK. Growing anti-corporate sentiment amidst one of the most significant financial crises of the century is only likely to add fuel to the fire.
>
> Samantha Silver, Partner, London

## EU position

There has been a sharp rise in group litigation in the EU in recent years, mostly owing to the increasing availability of opt-out group action mechanisms and third party litigation funding in certain Member States, such as the Netherlands, which is becoming increasingly renowned for group litigation, particularly in relation to climate and technology claims. This trend is set to continue on an upward trajectory once the Directive on Representative Actions for the Protection of the Collective Interests of Consumers (the Directive) is implemented into national EU laws by the end of 2022 and is due to take effect by June 2023.

The Directive introduces a standardised EU wide legal mechanism by which consumers, who are affected by the same alleged infringements of EU law, can bring a representative action for redress and/or injunctive relief. It is expected to have a significant impact in jurisdictions where there are either no, or some less established, prior existing group action mechanisms, such as Ireland.

## Drivers of group litigation

Certain legal, sectoral and commercial factors giving rise to an increase in group litigation, include:

- The growing influence of consumer action groups and social media through which support is garnered to form large claimant cohorts.
- The activities and actions of companies in certain sectors are conducive to an increased group action risk. Technology giants seeking to develop new products at pace which, for example, involve the use of personal consumer data, are giving rise to claims concerning abuse of market dominance and data privacy breaches. The transport sector continues to face high profile multi-billion pound actions arising from the European Commission's 2016 trucks cartel infringement decision, as well as claims concerning vehicle emissions.
- An increased willingness by courts, including those of the UK and the Netherlands, to hear multi-party claims involving defendant companies located outside of their jurisdictions and/or incidents that have occurred abroad, particularly in an environmental context. With companies focussing on environmental, social and governance (ESG) risks and corporate due diligence, claims in this area are set to increase.


# Social inflation in the United States

> Certain US litigation, such as opioids, sexual abuse and talc, has been greatly impacted by social inflation trends and insurers are facing increased, often immeasurable, risks. We are seeing greater collaboration among the carriers as one way to identify and combat the trends.

Christopher Carroll, Partner, Basking Ridge

## US legal system

Certain aspects of the US legal system, such as punitive damage jury awards and the mechanism for class actions, make it particularly vulnerable to the impact of social inflation trends. Due to the rise in strong public sentiment either towards certain classes of claimant or against particular classes of defendant, the US has seen settlement demands and jury verdicts that are exponentially higher than ordinary economic inflationary increases.

## Drivers of social inflation

In the United States, various elemental aspects of the legal system have been considered to be drivers of social inflation, including, among other things: the allowance of punitive damages awards, the procedural vehicles of class action and multidistrict litigation; the disparity in venue-related risk factors; and the use of contingent fees to drive higher case resolutions. Social inflation is also impacted by newer and ever-evolving factors, such as:

- Litigation funding which allows for longer, more expensive litigation.
- Public sentiment favours and sympathises with victims, providing victims with a belief that they can pursue claims through the legal system rather than accepting early settlement.
- Negative public sentiment toward businesses and corporations resulting in larger jury awards (known as ‘nuclear verdicts’).
- Injured parties and juries believe that they are entitled to larger judgment amounts, leading to a further desensitisation to large jury awards.
- The erosion of tort reform, such that historical efforts by states to reform tort laws to limit the amount of punitive or non-economic damages that may be awarded have been more recently successfully challenged as unconstitutional.

## Litigation trends

Recent years have seen an increase in litigation across a variety of areas which have been directly impacted by social inflation trends, such as:

- Pharmaceuticals, including the opioid crisis.
- Sexual assault and abuse, driven by the #MeToo movement and reviver statutes, which have reopened the statute of limitations and allowed for historical abuse claims to be brought.
- Cyber breach and data privacy issues.
- Mass shootings.
- COVID-19.
- Climate change and pollution-related litigation.

## Examples of nuclear verdicts

Between 2003 and 2016, the median cost of a single fatality varied between US$1.5 million - US$2.8 million. This jumped dramatically in subsequent years to US$3.6 million (2017), US$4.4 million (2018) and US$5.1 million (2019). More recent injury awards continue to demonstrate how high damages can be in this category of case:

- *Cruz v Willis & Allied Aviation Fuelling Co. of Houston, Inc.* [25.10.21]
  - Plaintiff's injuries: paraplegia
  - Total award: US$352.8 million
- *Ramsey v Landstar Ranger, Inc.* [22.11.21]
  - 73-year-old woman fatally injured
  - Damages awarded: US$730 million

In other types of litigation, billion-dollar awards are no longer exceptional, as US insurers are increasingly finding out:

- US$9 billion Actos verdict against Takeda Pharmaceutical and Eli Lilly & Co. [2014].
- US$2.055 billion toxic exposure verdict against Monsanto [2019].
- US$2 billion RoundUp verdict against Bayer/Monsanto [2019].
- US$2.175 billion patent infringement jury verdict against Intel Corp. [2021].
- US$2 billion verdict against a software company relating to its corporate espionage of another's trade secrets [May 2022].
- US$460 million verdict (including US$400 million in punitive damages) against two California energy providers relating to workplace retaliation [June 2022].
- US$7.375 billion verdict against an internet provider relating to a stabbing death by one of its internet installers [July 2022].
- US$650 million damages ruling against three retail pharmacies for their opioid liability [August 2022].

Not only has US litigation resulted in heightened and in some cases nuclear jury verdicts; settlement values are also on the rise. For instance, recently in June 2022, a Florida court approved a US$1.02 billion settlement resulting from the collapse of a condominium building in Miami. Earlier in the year, various opioid distributors resolved their liabilities in over 3,000 lawsuits brought by various governmental entities for a total of US$26 billion, payable over several years.

## Insurer impact

Social inflation is a challenge for insurers because, unlike economic claims inflation, it is often based on immeasurable variables and unquantifiable perceptions regarding liability and damages. Trial outcomes and potential losses are more difficult to predict, making it more difficult to manage risk.

As the US has experienced social inflation trends for several years now, the legal profession has developed tactics to combat the associated risks. Insurers and their legal representatives are adopting an increasingly more coordinated approach, particularly around group actions. Common interest strategies resulting in a uniformity in defence are being agreed and experts shared.

Increased collaboration, adopting a more flexible strategic approach and early litigation planning should assist insurers in identifying – and then countering - the risks posed by social inflation trends.

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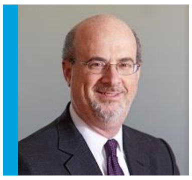

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