

# Motor Trade and Fleet Newsletter

Client Edition

March 2016

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## Railway Bridge Strikes

Bridge strikes – vehicles colliding with railway bearing or over-track bridges – are a significant issue. After being struck, bridge and track checks are required before trains can re-use the line. This often causes costly delays and disruptions to passengers and train operating companies (TOCs), structural repair requirements for rail authorities and potential fatalities for drivers and road users.





### Minor bridge strikes might result in major claims

Over the past few years, there have been several legal cases and decisions on the matter. Following these, the Courts have made it clear that where a negligent motorist causes damage, Network Rail can recover from negligent parties compensation to cover the amount it is contractually obliged to pay TOCs.

#### Conarken v Network Rail

In 2011, the Court of Appeal considered this case. Damage caused to a Network Rail bridge by a negligent motorist meant the track across the bridge was temporarily closed. Network Rail was contractually obliged to compensate the TOCs for the resultant financial loss due to schedule disruption. The compensation amount was calculated using a formula detailed in the 'track access agreements' between Network Rail and TOCs.



Network Rail brought a claim against the negligent motorist. The motorist denied liability to pay Network Rail damages for the disruption compensation, arguing it was pure economic loss and therefore not recoverable. The Court of Appeal disagreed, finding that the loss of income following damage to revenue generating property is a recoverable loss. The measure of damages depends on what is reasonable. In this instance, the Court found that the formula contained in the agreements was reasonable. The claim therefore succeeded.

#### Network Rail Infrastructure Ltd v Handy

The decision in Conarken was further confirmed in this similar case, reiterating that Network Rail can recover from negligent parties the compensation that it is contractually obliged to pay to TOCs.

### Consequences in Practice

The outcome for fleet operators and motor insurers can therefore be significant. Where a bridge strike has occurred, Network Rail will need to assess the extent of it and undertake repairs, probably necessitating line closures. When that happens, the cost of the claim can be disproportionate to the damage caused. Here are two examples:

1. Mercedes Sprinter impacted with a bridge. Cost of repairs totalled £2,937. The claim for disruption was £283,747.
2. A DAF 18T Tipper hit a bridge. Repairs totalled £6,542. The claim for disruption was £149,408.

### Preventative Action

There is no one solution to address and prevent bridge strikes but it is important to increase driver awareness and understanding of the issue. For example, there is no legislation on the height of permissible vehicles on UK roads, so careful route planning is needed to avoid low bridges and other overhead structures such as cables, walkways and pipelines.

Other actions that can be taken include:

- All vehicles and any drawn trailer, which has a maximum height of more than three metres (ten feet), must have a visual warning device. The visual warning device will alert the driver when the vehicle approaches an obstruction such as a low bridge.
- All double and triple-decker transporters must be fitted with an electronic low height-warning device and there are a number of devices available on the market.

For transport managers and professional drivers, the Department for Transport (DfT) has developed a series of good practice guides, in conjunction with freight and passenger transport industry bodies. These are designed to raise the awareness of the risks and consequences of bridge strikes. They also give guidance on how they can be prevented.



The four guides are available from the [Department for Transport website](#) and include:

- [Transport managers guide\\*](#)
- [Professional drivers of passenger vehicles guide](#)
- [Guide for passenger vehicle operational staff \\*](#)
- [Professional drivers' guide](#)

\*Endorsed by the Parliamentary Under Secretary of State for Transport.



## Stricter Sentencing Guidelines

Are you aware of the stricter sentencing guidelines that have been applied to offences under the Health and Safety at Work Act? Health and Safety offences sentenced from 1 February will receive substantially higher fines, with large organisations looking at fines exceeding £1million for relatively minor breaches.



The changes are potentially one of the most significant developments in health and safety law in 40 years. They are to ensure that a consistent, fair and comprehensive approach will be introduced when sentencing organisations or individuals convicted of offences under the Health and Safety at Work Act.

**Jonathan Dye, Head of Motor Insurance, Allianz Commercial backs the increased focus on managing risk and explains:**

“The new guidelines for tougher sentencing reflect how serious health and safety offences are, including those whilst driving at work. The changes are an important reminder of the potentially devastating consequences for both businesses and individuals if they fail to meet the required standards. Brokers and insurers have an important role to play by ensuring clients are fully aware of their health and safety responsibilities and have adequate risk prevention measures in place.

The introduction of the guidelines means that in some cases, offenders will receive higher penalties. In particular, for large organisations committing serious offences, these fines could be in excess of £1m, as the organisation’s turnover will determine a proportionate level of fine.”

**He added:** “We would urge our policyholders to continue to review risk assessments, ensure that health and safety practices are audited and that all risk prevention systems are functional.”

The levels of sentence will also be retrospectively applied for offences that have already been committed and have not yet come up for sentencing.

## DVLA Guidelines from the General Medical Council



**Doctors have been told that they must inform the DVLA or DVA (Northern Ireland), if a patient continues to drive against medical advice and fails to notify the agency.**

This guidance is part of a public consultation on the General Medical Council’s guidance on confidentiality. It provides extra clarity that where a patient poses a risk of serious harm to the public, by continuing to drive when they are not fit to do so, the doctor should contact the DVLA or DVA, even if they do not have the patients consent to do so.

These steps aim to help doctors balance their legal and ethical duties of confidentiality with their wider public protection duties. They should only be taken as a final measure, if all other efforts to encourage the patient to act responsibly fail.

## Lightfoot® - technology that understands driver psychology to reduce risk



**lightfoot**

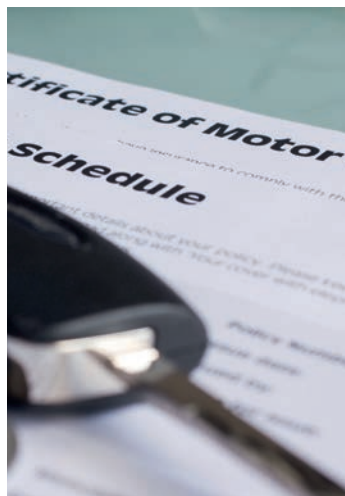
While safety advancements have helped to almost half the number of road fatalities since 2000, the motor industry is constantly looking at ways to reduce these figures further. One option is in-cab coaching technology. Designed to reduce driver risk, this uses F1 telematics technology combined with an understanding of driver psychology to change driver behaviour.

Lightfoot® understands how to talk to drivers at the time it matters and in a way that compels them to change even the most ingrained bad habits. It’s a personal in-cab coach, gently guiding drivers when they need to make an adjustment.

The outcome is more efficient driving, lower fuel consumption (typically 15%) and reduced accident rates (up to 60%) reported by fleet customers.

**To enable our customers to benefit from this type of technology, Allianz has partnered with Lightfoot® to offer its in-cab coaching technology to Allianz Commercial motor trade and motor fleet customers at an exclusively discounted rate. To see Lightfoot® in action, organise a trial, or for more information on how the product could benefit you please speak to your insurance intermediary.**

## Return of Motor Insurance Certificates



On 30 June 2015, the Deregulation Act 2015 came into effect to simplify the regulatory process. From a Motor Insurance perspective, it changed the Road Traffic Act (RTA) 1988 requirements concerning policy cancellation in that a policyholder would no longer have a legal obligation to return or surrender the certificate of Motor Insurance or make a statutory declaration that the certificate has been lost or destroyed. As the Deregulation Act only applies in respect of policy cancellation, the return of a certificate in respect of a mid-term adjustment was still required to remove the potential RTA responsibility in the event of an accident if the certificate was not returned, for example;

- **when a specified certificate is issued and a vehicle is deleted**
- **when a named driver is removed or replaced by another**

Following a review of market practice and feedback from brokers and policyholders; we no longer require policyholders to return their certificate(s) in respect of mid-term adjustments. Any obsolete certificates should be destroyed to avoid potential RTA responsibilities in the event of an accident.

## Hybrid and Electric Vehicle Tracking



Since the introduction of CAT5 tracking systems in 2006, they have become a requirement by many insurers on high risk/high value vehicles. A CAT5 product will not only track and locate a vehicle, but also raise an alert when the vehicle is driven away by a thief due to the theft of the vehicles keys and the driver ID tag not being present. A CAT5 system also has the ability to remotely immobilise a vehicle once the ignition has been turned off. This is carried out via a crank inhibit that prevents the car being re-started and therefore driven off again.

**Thatcham have identified that the crank inhibit may not prevent an electric hybrid or pure electric vehicle (EV) from being driven under the power of its electric battery as the inhibit function only stops the crank from turning on the internal combustion engine. In light of feedback from insurers Thatcham are in the process of reviewing their security products.**

# Working to protect our customers' premiums

Commercial motor insurance premiums can be a significant cost to a business. By taking proactive action, we can ensure our policyholders' claims costs are contained at every stage of the claims process – helping them to manage their insurance costs better.

## Compensation culture

Many of us will have read about and experienced the compensation culture in this country; cold calls from claims management companies, no-win no-fee lawyer's advertisements and regular press articles. The effect of this is that the number of whiplash claims made in 2015 increased by 5%. That's approximately 43,000 extra claims.

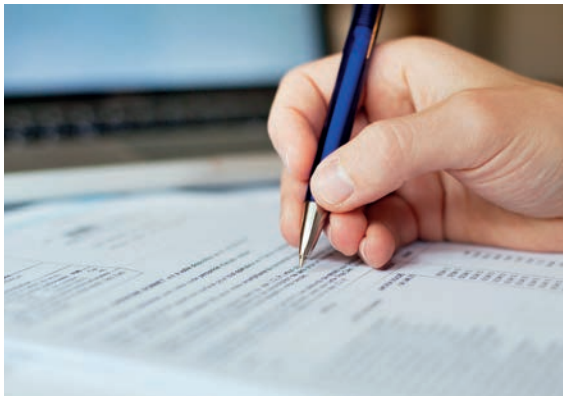
The recovering economy means that more cars are being sold and a four year low in fuel prices has resulted in more vehicles on the road doing more mileage. Using a car is getting cheaper whilst other forms of transport are becoming more expensive. Subsequently, the frequency of injury claims may continue to increase unless checked by reform.

  
**448**

In 2015 we had  
**448 trial wins and discontinued cases**

## Combating claims costs

Increased frequency of injury equates to increased injury spend for motor insurers. To tackle this, we employ experienced, highly trained claims handlers, who use effective fraud screening tactics, and apply the best indemnity spend controls.



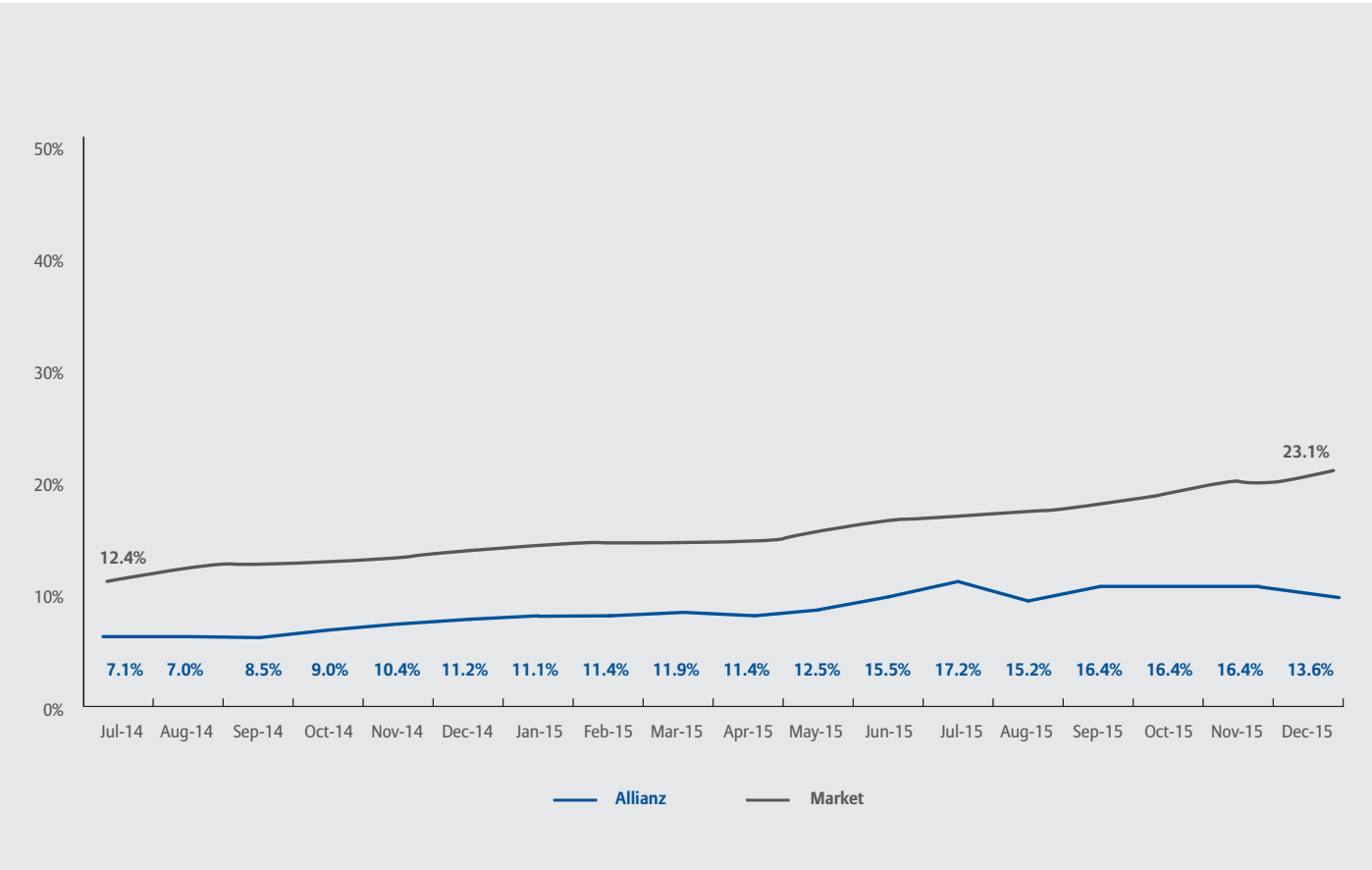
## Know your opponent

We've developed tools to track the behaviours of claimant representatives. We're aware of the aggressive firms that take any opportunity to litigate to the detriment of their client. When dealing with these companies our claims handlers adapt their approach accordingly. By doing this we have reduced the proportion of low value injury claims that go to Stage 3 of the Ministry of Justice (MoJ) process, which adds an additional £1,000 to the cost of a claim.

## We'll fight when it's right

When the circumstances are right we will fight claims in court. Our preference is to persuade a claimant to drop their claim but that isn't always possible. When a trial is necessary, we invest in lawyers such as; DAC Beachcrofts, Berrymans Lace Mawer (BLM) and Keoghs, to deliver the best prospect for success.

How Allianz compares to the market – Frequency of MoJ claims reaching stage 3 of the process





> £1m



We saved >£1m of our customers' premiums through avoided credit hire cost.

### Credit hire

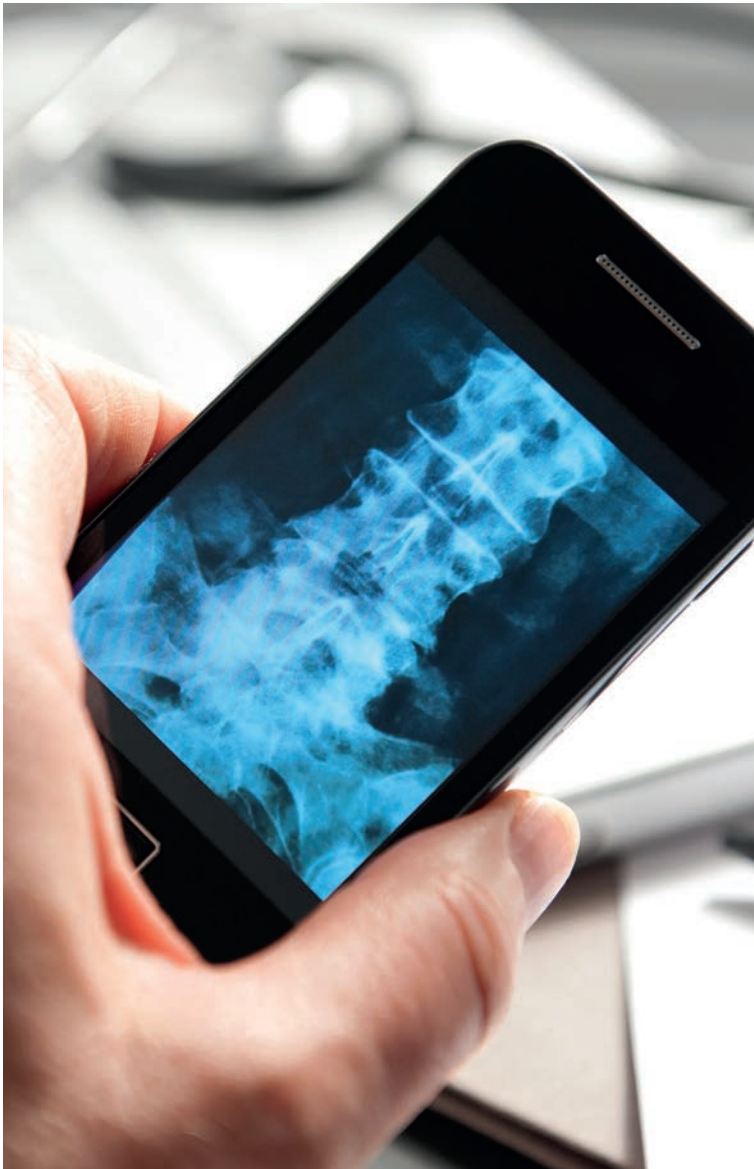
Credit hire referral fees generate substantial income for claims management companies and specialist personal injury solicitors. Consequently, a claimant is more likely to be steered towards costly credit hire arrangements by these companies.

In response to this trend, we doubled the size of our credit hire team in 2015 and have adopted a 'know your opponent' strategy. We now perform targeted audits on specific credit hire operators in order to fully understand their practices. We have also developed tactics to counter them, such as having claims handlers aligned to high cost credit hire operators.

Within a fortnight of the Court of Appeal's decision in *Stevens v Equity Syndicate Management Ltd*\* we executed a plan to reduce claims costs. As a result, we saved £1.2m of our customers' premiums through avoided credit hire cost alone.

Some credit hire companies want to work with insurers and adopt a reasonable approach to claims.

**We now have 60% of our credit hire with such companies, which costs us approximately 40% of our total credit hire spend.**




### Whiplash Case Study – 2015

Allianz policyholder's lorry was travelling in one direction when it hit the side window of a coach travelling in the opposite direction. 14 whiplash claims were made, stating the cause was due to the coach braking sharply.

Due to the expertise of our claims handlers we knew that the forces exerted by such an accident would not normally cause injury. We successfully defended the matter to trial and all the claims failed.

Here's what one of our customers had to say about our whiplash approach: "Without the diligent and unfaltering work of Allianz the claimant, and his family, would have succeeded in defrauding not only you but general common sense and honesty."



The consultation paper will not be published until March/April this year and it's yet to be determined what 'minor soft tissue' will mean. However, we believe the reforms are likely to be introduced in April 2017. That would ensure that motor insurance consumers, and voters, will see any benefit by 2020.

With any reform, there's a risk of unintended consequences. The previous reforms show that we cannot be sure it will be successful. However, we can guarantee that claimant representatives will aggressively claims farm and stockpile work in the interim.

We are playing a pivotal role to secure the best outcome for our customers, influencing, tracking emerging news, and taking action when needed. In the mean-time, we will continue to take proactive measures to tackle the compensation culture, therefore protecting our customers' premiums.

### Whiplash

We have reviewed and refreshed our approach to low speed whiplash claims. We have a national network of specialist handlers who can identify and manage these claims to deliver the best commercial outcome - which doesn't always result in a trial. More often than not, the claimant withdraws their claim. However, when this doesn't happen, and the circumstances are right, we have no reservation about defending a claim in court.

### Chancellor targets whiplash

In his Autumn Statement, George Osborne announced that the Government will implement measures to reduce the costs from unnecessary whiplash claims, and expects average savings of £40 to £50 per vehicle to be passed onto customers, including:

- removing the right to general damages for minor soft tissue injuries
- removing legal costs by transferring personal injury claims of up to £5,000 to the small claims court.<sup>1</sup>

For further information about our claims proposition please speak to your insurance intermediary.

\* The Court of Appeal decision provides sensible and straightforward guidance to defendants on the calculation of the Basic Hire Rate

<sup>1</sup> Gov.uk, 25 November 2015, "Chancellor George Osborne's Spending Review and Autumn Statement 2015 speech", Available at: <https://www.gov.uk/government/speeches/chancellor-george-osbornes-spending-review-and-autumn-statement-2015-speech>, 12.02.16

£2m interim payments made by the end of January

Up to a **100% spike** in daily call volumes during December as a result of floods

**700+** of commercial claims were flood claims

**1000+** commercial claims during storm Desmond and Eva

Open longer hours, **including weekends** to ensure turnaround times were met

Over **95%** of customers were contacted within two hours by our loss adjustors

# Floods

The UK is certainly no stranger to experiencing wet weather; however December 2015 and January 2016 has seen storms Desmond, Eva, Frank and Gertrude cause devastating disruption to thousands of homes and businesses in the North of England and South of Scotland.

Allianz UK’s claims handlers experienced a 100% increase in commercial claims calls for Storm Desmond alone.

As soon as the news reported storms, Allianz Motor Engineer teams in affected areas were put on ‘alert’ and visited known Motor Trade customer locations to monitor any potential claims and provide any assistance needed by our clients. In addition, our First Notification of Loss team advised us as claims were reported, and Engineers were dispatched to assess the extent of damage and plan for the removal of affected vehicles.

During this challenging time Allianz Motor Engineers have been supported by our in-house teams and salvage contractor, who has gone to tremendous lengths to remove flooded vehicles, allowing customers to start the process of returning their sites to operational status.

Whilst no-one can predict the weather, reviewing risks and planning for disaster are paramount to all businesses. Our Allianz Flood Risk Management Guide contains immediate and effective actions that can be taken to minimise the impact of flooding.



## Broker feedback:

“I just wanted to thank you for all your help yesterday - all vehicles that were affected by the flood have now been inspected and uplifted. Yesterday my customer didn’t really see a light at the end of the tunnel given that his premises is now unfit for purpose and 15 of his vehicles are written off. When I spoke with him this morning, he seemed upbeat and happy with how quickly things have progressed.

In a time of crisis what a policyholder will remember is how their insurer acted and supported them through it; this claim is a good example of that support.”

## Client feedback:

“We would like to take this opportunity to thank you for your superb levels of customer service following the devastating Boxing Day floods. As you are fully aware we lost what amounted to virtually our entire vehicle hire fleet, our offices and workshops. This was a very distressing period for us but once you became involved then we could see some light at the end of a very long and dark tunnel.

The speed of response took me by complete surprise in the time it took for you to physically come out and appraise our damaged fleet, to put accurate values on the fleet, and then to arrange collection and removal of the vehicles and finally to pay out for the vehicles was unbelievable.

We are now very slowly re-building the business, this process would certainly have been even more difficult if hadn’t been for the excellent response and levels of service from yourselves.”



# Driverless vehicles get the **green** light

With appearances in films such as Blade Runner, autonomous vehicles were long considered pure science fiction. But with trials taking place around the world and the UK government pumping millions into this new technology, they're fast becoming a reality.



**Recent advances include Daimler's Inspiration Truck gaining clearance to drive on US roads; Google's self-driving car project clocking up more than 1m miles; and, in the Netherlands, the first driverless bus trials taking to the roads this January.**

The UK's also active in the intelligent mobility market with the government keen to ensure the country has a key role to play. Trials to test driverless cars on the streets are taking place in Bristol, Coventry, Milton Keynes and Greenwich and, at the beginning of February, the first £20m of the government's £100m Intelligent Mobility Fund was allocated to eight new projects.

And this interest isn't surprising. The government expects the market to be worth £900bn a year globally by 2025 so securing a slice of this now makes sound business sense.

Autonomous vehicles certainly bring a number of significant benefits. As well as improvements in safety by removing the risks associated with human error, with vehicles able to travel closer together, it could also make traffic jams a thing of the past. These vehicles can be more efficient too as, without a driver, bad habits such as aggressive driving and excessive idling simply won't happen.

There are also broader benefits such as improved mobility for older and disabled people, increased leisure time and greater efficiencies for businesses too.

It's not all positive though. Handing over the steering wheel to technology will inevitably mean job losses and there could also be risks associated with hacking and cyber attacks.

The arrival of autonomous vehicles also has implications for insurance. First, there are several pluses. With drivers no longer behind the wheel, the risk of accidents should fall significantly. Similarly where an accident does happen the availability of data will make it much easier to determine what caused it, thereby reducing the risk of fraudulent claims.

There are also potential downsides. Although the risk of an accident is greatly reduced, the cost of replacing and repairing parts if a crash does occur could be high. For instance Google's self-driving car contains around US\$150,000 of technology.

These vehicles also have the potential to change the face of motor insurance altogether. Under UK law, primary liability rests with the driver of the vehicle and, where an accident occurs as a result of technology failure, the driver and their insurer would seek damages from the manufacturer.

But, with an autonomous vehicle, as control lies with the technology, liability may have to make the same transition too. This could potentially see today's claims handlers having to become product liability specialists.

There are also other areas that will need to be carefully examined before these vehicles become the norm on the UK's roads. For example, through the Association of British Insurers' Automated Driving Insurer Group, which includes a representative from Allianz, the insurance industry is looking at issues including how to cope with vehicles at different levels of automation; how data will be recorded and used to improve safety and clarify liability; and whether there needs to be any changes to existing road traffic laws.

**Although there's still much that needs to be determined, the benefits that autonomous vehicles will bring are too big to ignore. Ensuring the right legislation is in place to support these advances will be critical.**

We are carefully following developments in this space, both independently and through the ABI's Automated Driving Insurer Group.

We have also published a white paper on the [Future of Mobility](#), which looks at how mobility will evolve over the next couple of decades.



# Stolen identity

Recently we've received notification from concerned policyholders receiving parking tickets for vehicles at locations they've never visited. When reviewing CCTV footage, it shows a vehicle without signage which is not the registered vehicle.



Vehicle cloning occurs where a number plate is stolen or replicated and used on an unconnected vehicle; it is likened to personal identity theft, but for vehicles. Increasing numbers of legitimate vehicle owners are reporting receiving fines they never incurred as a result of one of their vehicles being cloned.

Previously vehicles have been cloned to disguise the fact they are stolen, but more commonly criminals are cloning number plates to avoid speeding fines and parking tickets. In some cases, vehicles are even used to commit more serious crimes, enabling them to drive on the roads under the radar of the police.

In order to clone a vehicle, the thief can either steal the number plate of the legitimate car, or more commonly, buy a number plate online. Ideally the thief is looking for a vehicle with same make and model to one which is insured and are turning to company vehicles where number plates can be sourced from the road or company premises.

In a bid to cut down on car cloning, the Government tightened up the laws on the sale of number plates in 2003 so that buyers have to provide proof of identity and ownership. But the rules apply only to UK suppliers and are easy to circumnavigate, particularly online where "show plates" can be brought which can be fitted to the vehicle.

For most victims of vehicle cloning, it's a parking fine from somewhere they have never visited or a speeding ticket issued on a day the car was sitting in the garage that raises the alarm. For others, it can be more extreme with the police turning up at the doorstep, especially if the car has been used to commit a crime.

The consequences are severe. Motorists who unknowingly buy a stolen vehicle that has been given a false identity can lose both the car and their money. It's therefore important to reduce the risk;

- When purchasing a vehicle, always ask the seller for the registration number, make and model of the vehicle before you see it. These details can then be verified on the DVLA's free, online vehicle enquiry service.
- When you view the vehicle, check the log book or V5C vehicle registration certificate. Make sure it has a 'DVL' watermark, and the serial number isn't between BG8229501 to BG9999030, or BI2305501 to BI2800000. If it is, the V5C might be stolen.
- Check that the details on the V5C match the details given to you by the owner.
- Insist on viewing the vehicle at the address on the log book. Don't meet in a car park or motorway service station.
- Look for the vehicle's identification number (VIN) and check that it corresponds with the details in the log book. The VIN can usually be found on a metal plate under the bonnet.
- If the vehicle is on the market for less than 70% of its typical value, then the old rule "if a deal is too good to be true, it probably is" usually applies.

**If a cloned vehicle is discovered, owners need to notify both the police and the DVLA. If any fines or tickets have been received, the relevant paperwork should be returned, together with any evidence to prove that the registered vehicle wasn't present at the time of the incident.**



Further information on car cloning can be found in the [Governments' vehicle registration numbers and number plates leaflet](#).





# Watch out for the hi-tech car thieves

**Technology has made vehicles safer and more efficient but thieves are exploiting weaknesses in the latest systems to compromise security and steal high-performance cars to order.**

One of the most common hi-tech thefts, widely known as car hacking, targets vehicles with keyless ignition systems. With this the thieves use a hand-held radio jammer to block the signal to remote locking car keys. This renders them useless and, although the driver will think they have locked their vehicle, it will remain unlocked.

The thieves are then able to gain access to the vehicle and, within minutes, can re-programme a blank electronic key to start and steal the vehicle. Even where the vehicle has a more traditional key-operated ignition, the thieves are still able to gain access to the vehicle and steal any valuables.

The latest potential threat is even more sinister. This exploits the infotainment systems that are becoming increasingly popular in vehicles. These systems allow drivers to play music, make phone calls and view vehicle information but technology security experts have demonstrated that it is possible to hack into them by sending data through the digital audio broadcasting (DAB) radio signals.

This is particularly concerning as these infotainment systems are often connected to the same computer systems that manage the vehicle's steering and braking. This means a hacker could take control of a vehicle and potentially put the occupants' lives in danger. Further, security experts have also demonstrated that, with a strong enough transmitter, it could be possible to hack many vehicles at the same time.

One high profile example saw two US security researchers hack into a vehicle, a Jeep Cherokee, being driven by a journalist from Wired magazine. Once hooked up to its computers, they were able to take control of the radio, air conditioning and the windscreen wipers.

Understandably, the vehicle manufacturers are taking these threats seriously and are looking at ways to improve security and deter the criminals. For example, after its Jeep Cherokee was hacked, Chrysler issued a security patch to secure any vulnerabilities in its systems.

In the UK, the motor insurers' automotive research centre, Thatcham Research, is also looking at ways to combat these hi-tech forms of vehicle crime. As well as using its position to influence vehicle and product manufacturers to take a coordinated approach to developing security solutions, it is also a member of the Cyber Security Consortium for Connected Vehicles.

**Through this it is looking to develop new standards around cyber security to promote consumer confidence.**

Reviving some of the security measures that were commonplace in the 1990s will also help to reduce the risk of theft from car hacking.

"Park vehicles in a secure, well-lit area," explains Mark Ashwood, Motor Trade Underwriting Account Manager, "preferably in a locked garage or compound if possible. A range of security devices are also available to deter thieves. These include alarms, immobilisers and tracking devices as well as steering wheel locks and locking wheel nuts."

If you are unsure about how to improve security arrangements in this area, Allianz can help. Our experience and insight into the types of losses affecting other businesses, enables us to provide risk management advice on how to safeguard vehicles effectively. We can also provide access to a range of security devices and services at preferential rates. **Please speak to your insurance intermediary for further information**