

Client Alert

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Monitoring Your Own Behaviour – Guidance for Insurers on the Use of Telematics

By Sue McLean and Emma Muncey

As businesses across the economic spectrum seek to develop personalized pricing strategies, the insurance sector continues to lead the way with renewed impetus behind telematics-based insurance offerings.

As telematics-based insurance products grow in popularity, the trade association for the UK insurance industry – the Association of British Insurers (ABI) – has issued a good practice guide on the use and implementation of telematics technology in vehicle insurance products. The guide aims to ensure that insurers providing telematics-based policies treat customers fairly and protect their data. Although the guide is primarily aimed at insurers, it is also likely to be of interest to the various related parties involved in a telematics-based insurance offering such as brokers, distributors, telematics infrastructure/service providers and third party data processors.

WHAT IS TELEMATICS?

Telematics motor insurance is the concept of directly monitoring a driver's behaviour via a telematics device (traditionally via a black box installed in the policyholder vehicle, but these days also potentially via a smartphone app). Telematics can be used to monitor drivers in a corporate fleet, provide post-accident information and enable the insurer to base a premium on genuine risk factors, rather than relying on general factors such as gender or age. The variables monitored by the telematics device tend to include distance, behaviour, speed, nature of road travelled, vehicle diagnostics and driving conditions and are intended to produce more accurate information on which to base insurance premiums.

The ABI recognises that telematics has the potential to effect dramatic changes in the vehicle insurance market. For insurers, the technology allows the management of policies on a more individual basis than has previously been possible and enables new tools to reduce costs and prevent fraud. New technology also gives insurers the opportunity to provide new products and services to consumers, while also providing a means of reducing the cost of accessing insurance.

Although telematics motor insurance is far from new (it was first touted as the next big thing in the early 2000s and has been adopted by a number of UK insurers to date), its adoption is now increasing rapidly. Last year, research from Allied Business Intelligence indicated that Europe is now leading the way in telematics motor insurance and estimated that there will be 44 million European telematics motor insurance policyholders by 2017, with an estimated 89 million worldwide policyholders. Since 2009, the number of consumers with telematics policies in the UK has increased significantly, as has the number of insurers and brokers offering such policies.

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This increase in telematics motor insurance is due to various factors such as:

- (i) technological developments resulting in reduced infrastructure costs;
- (ii) the high cost of driving and escalating costs of motor insurance;
- (iii) consumers' (particularly young consumers') increased comfort with the sharing of their personal information; and
- (iv) the inability of European insurers to discriminate in the prices and benefits offered to consumers on the grounds of gender since 21 December 2012 as a result of the ruling by the European Court of Justice in *Association belge des Consommateurs Test-Achats and others*. (Indeed, some within the insurance industry argue that telematics provides a way of pseudo-gender rating for insurance because it is considered that women tend to display safer driving patterns than men. There is even a telematics insurance provider (Insure The Box Limited) providing telematics-based motor insurance under the brand "Drive Like a Girl").

ABI GUIDANCE

In the UK, the offering of telematics motor insurance is subject to regulation by the Financial Conduct Authority (FCA), and data that is collected via a telematics device is subject to the provisions of the Data Protection Act 1998 and regulation by the Information Commissioner's Office (ICO).

Personalised Pricing

Telematics-based motor insurance is just one example of personalised pricing. With the rise of "Big Data" technologies that can collect, harness and analyse more data than ever before, businesses are increasingly able to offer pricing that is specific to a particular customer. For example, smart meters (high-tech electricity and gas meters for the home) that monitor energy consumption in real time are to be rolled out nationally in the UK starting in autumn 2015 as a result of European legislation. Moreover, in the highly competitive retail sector, organisations are increasingly considering how they can come up with dynamic, personalised pricing.

Although personalised pricing often leads to lower prices (e.g., customer loyalty being rewarded with discounted pricing), there have been concerns that differentiated pricing can also result in customers being charged higher prices based on factors that are not considered fair (e.g., based on data collected about a consumer that identifies or infers the consumer's wealth or interests and in turn their willingness to pay). In response to such concerns, the UK Office of Fair Trading (OFT) launched an investigation into personalised pricing in November 2012 and, on 17 May 2013, published a report that looked at whether businesses were acting fairly and legally in terms of personalised pricing.

In its report, the OFT concluded that it had not uncovered any evidence to show that data collected online is being used to set higher prices for goods and services. Rather, the available evidence shows that data is being used to offer personalised discounts and refine pricing strategies. Nonetheless, the OFT intends to keep under review whether businesses are sufficiently transparent about personalised pricing activities and whether they are offering consumers a choice about being exposed to them. The OFT will consider taking enforcement action against any firm if it finds evidence of misleading or unfair practices. Based on its findings, the OFT has warned businesses to be much more transparent about the way that they collect and use data about consumers.

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The ABI has recently published a voluntary good practice guide which seeks to complement and reinforce insurers' responsibilities under the relevant law and regulation, focusing specifically on retail telematics motor insurance products.

Although the guide is primarily aimed at insurers, it is also likely to be of interest to the various related parties that are often involved in a telematics motor insurance offering such as brokers, distributors, telematics infrastructure/service providers and third party data processors. In particular, the guidance relating to data protection may be of key interest to telematics infrastructure/service providers because, in certain circumstances, both the telematics infrastructure/service provider and the insurer are likely to be considered data controllers under the Data Protection Act 1998.

Some of the key points to note in the guidance are as follows:

1. Data Protection

- (a) Consumers should be given clear and comprehensive information about:
 - (i) how data will be collected from the telematics device and used;
 - (ii) who will have access to the data; and
 - (iii) what their rights are with respect to the data.
- (b) Insurers should only collect and retain data that is necessary for the purposes for which it is being collected and to which consumers have consented.
- (c) Insurers should take reasonable steps to ensure that data is accurate, and should delete, aggregate or anonymise any data when there is no clear business need to retain it.
- (d) Insurers should make consumers aware of their right to request copies of their data.
- (e) Where there are named drivers in addition to the policyholder, there will be multiple data subjects. Accordingly, insurers should take reasonable steps to provide aggregated data or obtain explicit consent to the disclosure of all recorded data to from data subjects. Similarly, when a data subject access request is received from a policyholder or named driver, insurers should obtain consents from all relevant data subjects to disclosure of their data.
- (f) Insurers should ensure that consumers actively have to opt in to (rather than opt out of) the sharing of data with non-essential third parties.
- (g) Insurers should ensure that data subjects know who to contact about their data.

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- (h) Insurers should have in place a clearly documented procedure for disclosing data to the police and other authorities and make clear to consumers in what circumstances data will be disclosed to the authorities.
- (i) When a policy is terminated, the black box device should be removed from the vehicle or app deleted to ensure that data is no longer accessed. Where this is not possible, data should no longer be transmitted or, at the very least, no longer accessible to the insurer or any related third party.

2. Policy Terms and Conditions

In terms of the relevant insurance policy itself, insurers must ensure that the policy documents are designed to help consumers make an informed decision. For example, documentation should clearly state:

- (a) that premiums might fluctuate as a result of data collected, indicating at what points fluctuations might occur;
- (b) the range of possible premiums (minimum to maximum);
- (c) what driving behaviour will lead to increased and reduced premiums;
- (d) how premium adjustments will be made;
- (e) any additional charges, unusual benefits and exclusions;
- (f) what happens to the telematics device if a policy ends; and
- (g) how data will be used by the insurer in the event of a claim.

3. Policy Management

In terms of managing telematics motor insurance policies, insurers need to treat consumers fairly. This treatment includes:

- (a) explaining policy features clearly to the consumer up-front to ensure that the consumer can make an informed decision during the legally required cooling-off period;
- (b) giving consumers as much advance notice as possible if their driving behaviour will lead to (c) providing consumers with an explanation for any premium adjustments made; and
- (d) providing consumers with an opportunity to challenge any premium adjustments and informing them of this opportunity up-front.

CONCLUSION

Telematics infrastructure is increasingly being used to assist in the area of road safety; not only indirectly via data analysis of driving patterns, behaviour and traffic flows, etc., but more directly in connection with traffic accidents.

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In Europe, as part of the EU's framework for the deployment of Intelligent Transport Systems to improve road transportation safety, there is a proposed requirement that, from 2015, all new cars should be fitted with a tracking device that will automatically alert the emergency services in the event of an accident (the "e-call system"). Although most EU member states have signed up for the initiative, the UK has so far stated that it is not willing to make the e-call system a mandatory requirement in the UK on the basis of the UK's generally good road safety record and cost concerns. Nonetheless, many UK telematics motor insurance policies already offer accident alerts as a standard part of their offering.

In addition, the increasing integration of social media in vehicles and the potential for socially inspired mobility services is likely to further drive up demand for telematics products. (Speaking of which, in May 2013, some Kansas City high school students engineered a car that was billed as being entirely powered by social media interactions via Twitter, Instagram, Facebook and YouTube. Now, that's a truly 'social' car!)

Implementing Telematics

If you are an insurer considering rolling out a telematics motor insurance offering, the following are some of the legal issues that you will need to consider.

- *Third Party Provider Service Arrangements* – Typically, insurers will use a variety of third party providers to support their telematics motor insurance products. These may include, for example, providers of: (i) telematics infrastructure and services; (ii) data processing services; (iii) data storage; and (iv) data analytics services. Appropriate vendors will need to be selected and appropriate contracts will need to be put in place with each vendor and managed to mitigate any applicable risks.
- *Data Protection and Security* – Insurers will need to consider a wide set of protection and security issues, including data ownership, access, transfer and security issues; putting in place appropriate intra-group and third party data processing arrangements (particularly where cross-border transfers will take place); including appropriate data protection terms in customer policies and implementing appropriate privacy policies and procedures including in terms of compliance with subject access requests and disclosure requests from police and other authorities.
- *Regulatory Compliance* – Insurers will need to ensure compliance with applicable financial rules and regulations (which, in the UK, will include ensuring compliance with the applicable outsourcing rules and guidance issued by the Financial Conduct Authority (FCA) where any third party services arrangements are material).
- *Customer Policies* – Insurers will need to ensure that both policy wording and policy management comply with applicable law and regulation. Note that, depending on the nature of the proposed telematics insurance product, policy wording and policy management may need to be different. For example, if the insurer is offering a telematics motor insurance to corporate clients in respect of employee drivers, customer policies and management will need to be tailored appropriately to take into account any issues that are relevant to fleet motor insurance.
- *Promotions and Marketing* – Insurers will need to ensure that any marketing and promotions (whether traditional or new media) relating to their telematics motor insurance products comply with applicable law and regulation (which, in the UK, will include the rules regarding communications and promotions contained in the FCA Handbook).
- *Claims Management* – Insurers will need to put in place policies and procedures in terms of how telematics data will be used in connection with motor insurance claims.
- *Patent Infringement* – Insurers will need to verify that their proposed processes relating to telematics motor insurance do not infringe any existing patents relating to telematics motor insurance.

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Given the explosion of “Big Data” analytics, the more extensive and varied data that can be collected via a telematics device, the more potentially valuable that data will be to insurers and third parties and the more complex compliance issues may be. It will continue to be vital for firms to treat telematics data and consumers carefully in order to ensure compliance with applicable laws and maintain consumer confidence.

The potential range of telematics-based products and services continues to be significant. The insurance sector is seeing renewed growth in telematics-based insurance offerings because of the combination of, on the one hand, “Big Data” analytics technologies that allow more data to be manipulated more quickly and, on the other hand, legal rulings in Europe that prevent insurers from pricing insurance based on gender. It’s a good example of the law of unintended consequences that, in an effort to not discriminate, insurance companies are going to end up collecting far more detailed information about each policyholder.

Contact:

Susan McLean

44 20 7920 4045

smclean@mofo.com

Emma Muncey

44 20 7920 4165

emuncey@mofo.com

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