



# **Specimen coursework assignment**

## **M94 – Motor Insurance**

The following is a specimen coursework assignment including questions and indicative answers.

It provides guidance to the style and format of coursework questions that will be asked and indicates the length and breadth of answers sought by markers. The answers given are not intended to be the definitive answers; well-reasoned alternative answers will also gain marks.

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## **Coursework submission rules and important notes**

Before commencing work on, or submitting, your coursework assignment it is essential that you fully familiarise yourself with the content of *Mixed Assessment Candidate Guidelines*. This includes the following information:

- Answers to a coursework assignment should be between 5,000 and 10,000 words in total depending on your writing style.
- Arial font and size 11 to be used in your answers.
- Important rules relating to referencing all sources including the study text, regulations and citing statute and case law.
- Penalties for contravention of the rules relating to plagiarism and collaboration.
- Six month deadline from enrolment date for the submission of coursework answers.
- The total marks available are 200. You need to obtain 120 marks to pass this assignment.
- Do not include your name or CII PIN anywhere in your answers.

## **Top tips for answering coursework questions**

- Read the Learning Outcome(s) and related study text for each question before answering it.
- Ensure your answer reflects the context of the question. Your answer must be based on the figures and/or information used in the question.
- Ensure you answer all questions.
- Address all the issues raised in each question.
- Do not group question parts together in your answer. If there are parts (a) and (b), answer them separately.
- Where a question requires you to address several items, the marks available for each item are equally weighted. For example, if 4 items are required and the question is worth 12 marks, each item is worth 3 marks.
- Ensure that the length and breadth of each answer matches the maximum marks available. For example, a 30 mark question requires more breadth than a 10 or 20 mark question.

The coursework questions link to the Learning Outcomes shown on the M94 syllabus as follows:

Question	Learning Outcome(s)	Chapter(s) in the Study Text	Maximum marks per answer
1	Learning Outcome 1	Chapters 1 & 2	10 marks
2	Learning Outcome 2	Chapter 3	10 marks
3	Learning Outcome 2	Chapter 3	20 marks
4	Learning Outcome 3	Chapter 4	20 marks
5	Learning Outcome 4	Chapters 5 & 6	10 marks
6	Learning Outcome 4	Chapters 5 & 6	30 marks
7	Learning Outcome 5	Chapters 7 & 8	20 marks
8	Across more than one Learning Outcome	Across more than one chapter	30 marks
9	Across more than one Learning Outcome	Across more than one chapter	30 marks
10	Across more than one Learning Outcome	Across more than one chapter	20 marks

## M94 specimen coursework questions and answers

### Question 1 - Learning Outcome 1 (10 marks)

A motor trader, specialising in agricultural vehicles, lent one of their tractors to an agricultural sub-contractor. The sub-contractor was driving the tractor, in the UK, to a farm on a route which took him both on roads and on farm tracks.

During this journey, the sub-contractor was involved in an accident with a third party vehicle. Subsequently, it is discovered that the tractor had defective brakes at the time of the accident. The motor trader submitted a claim to its motor insurer for the damage to the tractor and the damage to the third party vehicle.

- (a) Identify **two** important considerations that the motor insurer will take into account when considering its liability. (2)
- (b) Explain the rationale for the **two** considerations that you have chosen above. (8)

### Answer to question 1 (Learning Outcome 1)

(a) Two important considerations are:

- Whether the insurer will offer indemnity to the motor trader on the basis that the tractor is found to have defective brakes following an accident.

- Whether the insurer is obliged to pick up the third party claim as either RTA insurer or Article 75 Insurer, and is the farm track deemed a 'road or other public place' under the Road Traffic Act 1988.
- (b) The fact that the tractor has been found to have defective brakes following the accident is an important consideration. Part VI Third Party Liabilities, Section 148 of the Road Traffic Act 1988 (RTA) provides that certain conditions and restrictions shall be of no effect for the purposes of the insurer's RTA liability. Subsection (b) of these prohibited conditions and restrictions is 'the condition of the vehicle'.

The motor insurer can reject the claim submitted by the motor trader for own damage to the tractor, as the defective brakes to the vehicle contravene a policy condition which places a duty on the policyholder to keep the insured vehicle in a roadworthy condition. However, this does not mean that the insurer can escape its RTA liability in respect of the damage sustained to the third party vehicle. It appears that the sub-contractor is negligent for the accident, as the motor trader has submitted the costs for the third party vehicle to its insurer. In considering whether the insurer has an RTA liability we need to establish whether the farm track on which the accident occurred is deemed a "road or other public place" as defined by S.192(1) of the RTA. This definition is described as 'a highway or any other road to which the public has access and includes bridges over which a road passes'.

If the farm track is deemed a road then the Insurer will have a RTA liability and will have to settle the third party claim subject to the limits required by legislation, which is unlimited damages for third party death and bodily injury and £1m damages for third party property damage. However, the fact that a third party vehicle was even on this farm track could mean that it is seen to be a 'road or other public place'. Refer **Cutter v Eagle Star (1998)** (M94/P94 Motor insurance, 2016-17 p1/15). Should the insurer have an RTA insurer liability, it can then seek to be reimbursed by the motor trader for any monies paid out to the third party, the driver or user of the vehicle as permitted under subsections 3 & 4 of Section 148 of the RTA. The most appropriate party to reimburse the insurer would appear to be their policyholder, the motor trader.

If the farm track is deemed to not be a road or other public place as defined under the RTA, it is therefore the case that indemnity can be declined by the insurer and the motor trader would be left to deal with the third party claim himself, as his insurer would have no involvement under the RTA.

## Question 2 - Learning Outcome 2 (10 marks)

A comprehensive motor insurance policy was issued to Miss Jones for her car by HJ plc, a motor insurer. The policy includes various claim settlement options for loss of or damage to the insured vehicle and its contents.

Miss Jones reports to HJ plc a claim which arose from an electrical fault in the car's engine. The fault caused a fire which significantly damaged the car and its contents.

Identify, with justification, **five** considerations, including policy wording conditions, that HJ plc may take into account in deciding how to settle the claim.

(10)

## Answer to Question 2 (Learning Outcome 2)

Five considerations with justification are as follows:

- The comprehensive policy may specifically exclude mechanical, electrical, and electronic or computer breakdown, but any resultant fire damage to the car from this electrical failure would be covered. This means that the engine fault itself which caused the fire would not be covered. However the resultant fire damage to the car would be provided reasonable steps have been taken by Miss Jones to maintain the vehicle. The cost of repairing or replacing the electrical fault needs to be identified by the insurer and deducted from the cost of the fire damage claim settlement.
- The insurer's engineer would have reported on whether the car is repairable or uneconomical to repair, as a total loss. The insurer will clearly state in the operative clause of the policy that they will at their option, pay for the damage to be repaired, repair or replace what is stolen or damaged or pay the amount of the loss or the damage. They will also state that they will not pay any more than the market value of the car, immediately prior to the fire. If the car is not repairable and is subject to a hire purchase or leasing agreement, then the insurer would need to make a payment to the hire purchase or leasing company. This payment would be up to the market value, less the excluded damage and any excess, of any outstanding amount to the hire purchase or leasing company. Any balance left, after paying the hire purchase or leasing company, is payable to the insured. If the car is repairable then it would be taken to the repairing garage, where Miss Jones will have to pay for the cost of repairing or replacing the electrical fault, with the insurer paying for the remainder of the damage, subject to any relevant excess.

- A further consideration would be the accessories and spare parts fitted to the car. This would include anything that would normally be sold with the car such as a spare wheel and jack, but also permanently fitted stereo and audio equipment. The insurer will not usually pay any more than £500. This will be payable if the car is repairable. If the car is a total loss, then this cost is usually calculated within the market value of the car.
- A further consideration is to deduct any fire excess or other compulsory/voluntary excesses applicable from the settlement figure. Most policies are subject to an excess. Where Miss Jones has opted for a voluntary excess, in return for a reduction in premium, in addition to the standard compulsory excess, these excesses will be cumulative.
- It is not clear here whether the car is repairable or not, but the insurer would normally look to reimburse any damaged personal effects, especially under a comprehensive policy, which were in the car and damaged as a result of the fire, subject to a usual limit of around £100 - £150. This will cover items such as coats, spectacles and CDs, etc. but will normally exclude money, stamps, tickets and the like. If a child seat was damaged in the car, the insurer would normally state in the policy that they will contribute up to £100 per child seat even if there is no apparent damage. This complies with legislation introduced in 2006 following the European Directive 2003.

If this is a new car the insurer may also have a new car replacement option in the policy. This option provides the insured, in the event of a total loss claim, with a new car of the same make and model. If the fire can be attributed to a manufacturing defect, the insurer may look to make a recovery from the manufacturer under the tort of negligence.

### Question 3 - Learning Outcome 2 (20 marks)

Mr Rogers, an employee of XYZ plc, has a car provided by XYZ plc. As the car provided by XYZ plc has broken down, Mr Rogers decides to use his private car to travel to a business meeting at a client's premises.

Both the XYZ plc car and Mr Rogers' private car are comprehensively insured.

Whilst driving to the business meeting, Mr Rogers causes a collision with a third party vehicle, insured on a comprehensive motor policy, which is driven by Miss Smith. Both cars are damaged in the collision. Miss Smith's motor insurer seeks compensation from XYZ plc and Mr Rogers for the damage to her car.

- (a) Explain the extent of third party cover which can be available under XYZ plc's motor fleet policy in respect of a claim made by Miss Smith's motor insurer. (8)
- (b) Explain the extent of third party cover which can be available under Mr Rogers' private car policy in respect of a claim made by Miss Smith's motor insurer. (8)
- (c) Explain the extent of cover available under Mr Rogers' private car policy for the damage to his car. (4)

### Answer to Question 3 (Learning Outcome 2)

- (a) XYZ's motor fleet policy will likely provide some contingent liability cover as this is common in the market.

It is not known whether XYZ sanctioned the use of the private motor vehicle. If they did, XYZ can incur vicarious liability (one party becomes liable for the actions of another) for allowing an employee to use their own vehicle for XYZ's business purposes.

Contingent liability cover can also provide for situations where one party, XYZ, relies on another, Mr Rogers, to arrange insurance where subsequently that cover is inoperative. For example Mr Rogers's policy may only cover social domestic and pleasure use, thereby excluding business use. Protection for vicarious liability, provided under the personal policy extension of indemnity, to the employer would fail should Mr Rogers's policy be invalid. Therefore, without contingent liability cover, XYZ would be exposed to a claim from Miss Smith's motor insurer, without the benefit of being able to seek indemnity from an insurer.

With the motor fleet contingent liability cover in place, XYZ's insurer would look to deal with the claim. Note that the contingent liability cover does not extend to indemnify Mr Rogers, should Miss Smith's insurers take action against him, as it only protects XYZ.

The motor fleet policy may also provide an occasional business use extension. This would provide for those occasions where an employee's own car needs to be insured for business use but the employee's own policy does not cover such use, or where it's impracticable to be arranged. For example, Mr Rogers may not have been able to extend his own policy to cover the business trip. This extension is limited solely to the business of XYZ, as it excludes social domestic and pleasure, and would be inoperative if there were any other policy covering the loss/liability. This cover does indemnify both XYZ and Mr Rogers, the latter at XYZ's request. It is not a contingent cover but a primary cover. If the extension were on a comprehensive basis it would extend to the damage to Mr Rogers's car, in addition to Miss Smith's insurer's claim. There will be a certificate of motor insurance issued to XYZ in respect of this cover.

- (b) Mr Rogers' personal private car policy will contain a schedule and certificate of motor insurance detailing the use of the car and restrictions applicable. Many policies are restricted to 'Use for social domestic & pleasure purposes excluding use for any business purposes'. There will be an exception contained within the policy wording that 'the policy does not provide insurance where any car covered is being used for purposes that are not permitted by your certificate of motor insurance'. Should Mr Rogers's certificate contain the above restriction of use there will be no cover under the policy for travel to a business meeting. The policy would not respond to any claim from Miss Smith's insurer as under the Road Traffic Act (1988) a restriction on 'use of a vehicle' is not one of those prohibited restrictions, set out in Section 148, in respect of third party liability.

As Mr Rogers would thus be uninsured, the Motor Insurers' Bureau (MIB) would be the next consideration with possible liability under The Domestic Regulations, Article 75 (M94/P94 Motor insurance, 2016-17 p2/3). However, the Uninsured Drivers' Agreement does not apply to subrogated claims where an insurer has indemnified their insured for their own damage repairs and then seeks recovery of their outlay. In this circumstance Miss Smith's insurer would look to Mr Rogers for recovery.

The policy may, however, have been extended to include 'personal business use' (often known as Class 1 cover), i.e. use by the policyholder in person in connection with the policyholder's business excluding commercial travelling, or for any purpose in connection with the motor trade. If this is the case and XYZ's business is not motor trading, and Mr Rogers was not 'commercial travelling', then his insurer should meet the claim.

This would apply if Miss Smith's insurer sought indemnity, utilising the subrogation clause in her policy to take over her rights against either Mr Rogers or XYZ.

Mr Rogers's policy will include an extension of cover and provide indemnity to 'the employer of any person using any vehicle for which cover is provided while the vehicle is being used for business purposes permitted by your certificate of insurance' (M94/P94 Motor insurance, 2016 - 17).

Note that Mr Rogers's policy use may have been extended further to cover what is often known as Class 3 which does not exclude commercial travelling or use in connection with the motor trade.

- (c) Mr Rogers' comprehensive policy will provide cover for damage to his own car (subject to use being included as detailed above). There will generally be an own damage excess applicable (compulsory, voluntary or both) which Mr Rogers will have to meet.

Mr Rogers is entitled to be indemnified, i.e. placed in the same position that existed immediately prior to the loss, but the insurer can choose to do this by:

- i. Paying for the damage to be repaired
- ii. Repair or replace what is damaged.
- iii. Paying the amount of the loss or damage.

His insurer will not pay more than the market value of the car at the time of the loss, neither will they pay any costs which increase the market value of the car. If the car is subject to a hire purchase or leasing agreement, his insurer will make any payment for the total loss of his car to the hire purchase or leasing company.

Should the insurer make a payment for either own or third party damage the no claims bonus will be lost. Alternatively, if the policy has a no claim discount protection in force, then the terms of that protection, in context of the claims history, will either see the no claim discount left in place or scaled back according to the insurer's no claim discount structure.

Should the use of the car not be insured then Mr Rogers will receive no indemnity for his own car's damage under his private car policy.

## Question 4 - Learning Outcome 3 (20 marks)

You are an underwriter for an insurer who is targeting new drivers as potential customers. In order to create a policy which will appeal to these customers, the insurer is considering the automation of its motor insurance processes. This automation will dispense with paper based documentation and replace it with electronically issued documentation. This will include dispensing with proposal forms and replacing them with statements of fact.

- (a) Explain, with justification, **five** implications of automating the motor insurance processes. (15)
- (b) Identify, with justification, **one** potential ethical issue that might arise from automating the motor insurance processes. (5)

## Answer to Question 4 (Learning Outcome 3)

- (a) Five implications of automating the motor Insurance policy, to support the engagement with new drivers many of whom will be relatively young and likely to be technically proficient in e-commerce, will be:
- i. Documents issued electronically offer a speedier means of access and delivery which benefits the policyholder, who does not need to receive them by post. This means that the policyholder is in possession of the policy booklet, schedule and Insurance certificate within a very short time frame and in whatever location they happen to be in at the time. Automating the motor policy will benefit the younger target audience, who will likely store and access their documents on a variety of devices, including tablets and their mobile phone, so that they are available immediately whenever they are required.
  - ii. Automated documentation also reduces paper, printing and postage costs. The younger target audience tend to be very environmentally conscious. The reduction in paper, printing and postage will also increase the profitability, productivity and consistency of the motor insurer allowing them to reduce the cost of insurance for their target audience. Automation can also provide an excellent audit trail, showing where and when information is provided.
  - iii. It is advantageous to the customer as they can access their policy documentation in a portal. Younger people often tend to prefer communication by electronic means and therefore completion of forms online will appeal. It also makes the delivery and surrendering of certificates of motor insurance easier for the policyholder, encouraging compliance by this younger audience.

However, with the introduction of the Deregulation Act in 2015, it is no longer a legal requirement to return the certificate of motor insurance in the event of mid-term cancellation.

- iv. Replacing a paper based proposal form with a statement of facts serves to promote consistency. This consistency arises as answers to the insurer's questions are given by electronic means or over the telephone. This will assist the younger audience who may be less familiar with the insurance process. On the other hand, insurers must ensure transparency in their communications and will need to incorporate a helpline/chatline on their website.
  - v. Automating the policy process ensures compliance, security, an audit trail and better data analysis. By ensuring the insurer's system automatically diarises documents, cover notes will be automatically renewed as necessary and there is less reliance on human intervention to chase up outstanding documents. Electronically issued documents, unlike paper-based documents, if suitably managed cannot be mishandled, lost, stolen or copied and shared with unauthorised individuals.
- (b) One potential ethical issue if we choose to issue certificates of motor insurance by electronic transmission (attachment to an email or through access to our website) is that the policyholder must agree to receive the certificates electronically and we will need to ensure that it is delivered to the electronic address identified by the customer. Our customers' sensitive personal data must continue to be protected in accordance with The Data Protection Act 1998. If issued by access to the website the certificate of motor insurance must be available there and we must tell the customer where it is and how to access it. It must remain available there until the policyholder has no legal need for it and we must take steps to ensure the website remains available.

The system must be password protected to ensure the policyholder's records cannot be accessed by unauthorised persons. However, as the target audience are new drivers, and the majority will be young, they will likely be comfortable with the technology.

## Question 5 - Learning Outcome 4 (10 marks)

You are an underwriter working for QWR plc, a motor insurer. A motor trade policyholder is considering offering a self-drive hire facility. The motor trader will have 25 vehicles available for self-drive hire. The motor trade policyholder contacts you to cover this self-drive facility.

- (a) Identify, with justification, **one** rating method you would use in pricing insurance for this self-drive facility. (4)
- (b) Identify, with justification, **three** disadvantages for QWR plc of the rating method chosen above. (6)

## Answer to Question 5 (Learning Outcome 4)

- (a) Rating for a 25 vehicle fleet of self-drive hire vehicles will require prior research given that this will, effectively, be a new venture for the motor trader and there is no relevant past experience for this particular risk. Writing self-drive hire risks is particularly difficult as the insurer has no knowledge at inception of the drivers, including usage and mileage, who may seek to hire a vehicle.

The rating method I consider most appropriate is one where each vehicle to be insured under the policy is listed in a schedule and is subject to an annual flat rate charge. The flat rate per vehicle is dependent on the vehicle type, e.g. small private car, executive car, multi-seater vehicle with up to 8 seats or small commercial vehicle.

The motor trader should also consider insuring the vehicles under the motor trade policy for the times they are laid-up and/or are being driven by the motor-trade employees unless we decide to add this cover to the self-drive hire insurance policy.

This per vehicle methodology is more suitable for a fleet with a small number of vehicles, rather than using a turnover rating method. It is unusual in the market to find turnover based quotations for the newer small self-drive hire fleets as the rate % of turnover is better suited to larger established risks, with claims experience and hiring experience to assist in rating. It would also be difficult for the client to estimate accurately his turnover in the first year of operation. Turnover rating requires careful consideration of the rate, dependent of the make-up of the fleet and also rating for the contingency risk taken when the client hires vehicles out using the customer's own insurance policy.

There are some policies offered in the market with a daily hire premium rate but with 25 vehicles I would be reluctant to work on this basis as we would have a lot of

administration and document issues, such as the issue of numerous cover notes, for

both the client and ourselves. This system works better for the motor trader with only a few vehicles and should be computer-based for ease of operation.

- (b) There are disadvantages for QWR plc arising out of the per vehicle rating methodology:
- i. The rate would be set at inception of the policy based on assessment of the risk presented. If QWR was to find that vehicles spent more time laid-up than being hired they would be paying the same premium for a reduced risk. The daily rate or turnover methodologies both vary premiums (above a minimum/deposit) with hire usage. Also should the QWR customer need to arrange cover under his own motor policy (perhaps due to his accident or conviction record excluding him from the annual policy) this would not be taken into account in the flat rate method of rating.
  - ii. As vehicles are specified in the policy documentation, all changes will need to be notified and amendment documentation issued. This would prevent the client swapping and changing vehicles easily. As a motor trader, QWR may wish to utilise vehicles they have taken in part-exchange, for temporary inclusion in the self-drive hire fleet, so that when sales are slow the stock still generates an income. This is made more difficult by the specified vehicle rating method.
  - iii. QWR will need to have trained staff who can ensure that the vehicle hire and insurance documentation is completed for each hirer and driver/s. This will often take the form of a short application form and the operator must examine the hirer's drivers licence by way of the DVLA's 'View Driving Licence' portal. ([www.gov.uk/view-driving-licence](http://www.gov.uk/view-driving-licence)). The staff must check that each driver complies with the terms and restrictions of the policy and that the business usage required is acceptable. The terms will have been set by me in the insurance arrangements however may decide to be stricter in order to control the risk still further. For example, the policy may say no driver with more than 6 conviction points in the last 3 years but QWR may choose only to provide vehicles to drivers with 3 or less points. The insurer will, from time to time, audit the motor trader's self-hire documentation to ensure if it is being correctly and fully completed. A turnover based policy will often dispense with the requirement for the forms to be submitted to the insurer, although they should be retained in case of an incident as I may request a sample for checking from time to time.

## Question 6 - Learning Outcome 4 (20 marks)

You are an underwriter for a motor insurer. A direct client, Mr and Mrs Davis, have approached you to review their motor insurance arrangements.

Mr and Mrs Davis are the directors and owners of a catering business which has five permanent employees; and it often uses temporary employees depending on the size of an individual event. They specialise in events such as weddings, funerals and parties. These events take place within a 30-mile radius of their home which is in a major city.

The business is based in an outbuilding which is situated alongside their home where they live with their children.

The catering business owns a number of vehicles which include two cars for their personal use, two vans for use in catering, a motorcycle for quick deliveries and two cars for the use of their children who are aged 19 and 25 years respectively. In addition, Mrs Davis owns a high performance convertible sports car which is only used during the summer. Apart from the convertible sports car which is garaged, all vehicles are kept in the open at the premises overnight.

Currently, all the vehicles are comprehensively insured on a motor fleet basis with open driving, except for the convertible sports car which is limited to drivers aged 25 years and above.

One of the permanent employees had two speeding convictions last year, for which they received a total of 6 endorsement points on their driving licence.

An employee, who is regularly employed on a temporary basis, has a diagnosis of epilepsy.

One of the vans has a two-year no claims discount (NCD) entitlement and one of the cars has a three-year NCD. All other vehicles have no NCD, due to a number of minor own damage claims.

- (a) Describe, with justification, **five** significant rating factors you would take into account, for the scenario above. (15)
- (b) Identify, with justification, **five** underwriting recommendations which would make the insurance risk more attractive to you. (15)

## Answer to Question 6 (Learning Outcome 4)

- (a) Five significant ratings that an insurer would take into account when determining, acceptance, premium and policy terms and conditions are:

- **District of garaging or use** – If the vehicle is being used in an area of high traffic density (like a city) there is likely to be a higher frequency of claims. In addition, urban areas experience more crime rates than rural areas (motor theft and vandalism). Areas prone to flooding can be identified by geographical area. Some cities in the UK are fraud hotspots and some motor insurers do not insure at all in these areas, whilst other insurers may charge relatively high premiums. I know that Mr and Mrs Davies live in a major city and therefore the premium will reflect this. All events for their business take place within a 30-mile radius of their home and so the district of use is quite small but probably with high traffic density, especially for the vehicles used directly for their business such as the vans and motorcycle. However, insurers tend to take account of districts when rating and this is usually the area in which the vehicle is garaged or kept, even though the radius for the business use vehicles is very small.

The post coding of addresses offers insurers a convenient way of identifying addresses by relatively small geographical areas, which allows them to group into rating districts risks which comprise similar risk profiles. Insurers may have up to 50 rating districts but goods carrying vehicles will be rated on fewer districts, reflecting the likely wider geographical nature of their movements. This is a disadvantage for Mr and Mrs Davies due to the small radius that their business vehicles cover. Perhaps their broker can look at a 'pay as you drive' policy, especially for the commercial vehicles.

- **Drivers** – The age of the driver is a significant rating factor in motor insurance and can have a very significant influence on the premium. Young drivers, due to their overall high accident frequency, are usually analysed in two categories, 17-20 years and 21-24 years. Also drivers past middle age will see a trend of their premium rising as they reach old age, to reflect the increased risk. Mr & Mrs Davies have two children who are 19 and 25 years old. The younger child will therefore incur a higher premium and a young drivers excess likely to be in the region of £250 in the event of having an accident. However, the 25-year-old is likely to escape having a young driver's excess applied. The age of the driver also encompasses past accident and conviction history. While the Equality Act 2010 prohibits age discrimination, there is an exception with insurers who can continue to use age as a factor in assessing risk. The drivers' conviction history and physical and mental condition are also rating factors. One of the employees has two recent speeding convictions for which he received 6 endorsement points on his licence. Neither of these convictions are classed as 'spent'" under the Rehabilitation of Offenders Act 1974 and this would be viewed as a moral hazard and rated accordingly.

Another of the employees, who drives on a temporary basis, has a diagnosis of epilepsy. The Equality Act 2010 prohibits an insurer from discriminating in respect of disabilities, unless they can prove that there is an increased risk associated with the condition. In practice, most insurers will be satisfied provided that any notifiable disability has been notified to the DVLA and a licence has been issued.

- **Classification of Vehicle** – The type and classification of vehicle is important as it is the subject matter of the insurance. Each individual vehicle is assessed according to a number of factors, rating performance and anticipated repair costs, and allocated to a specific group. Other factors in deciding on a group are the new car price, vehicle performance and cost of replacement parts. Insurers would pay particular attention to the high performance convertible sports car when deciding on acceptance of the risk, premium and terms and conditions. In addition, Mr & Mrs Davies have a motor cycle that is part of the business and used for quick deliveries for their catering business. Motorcycles, due to their physical size, are also more vulnerable to theft and have greater vulnerability for passenger death and injury, although it's likely that as the motorcycle is used for business purposes, it may exclude the carrying of passengers. Motorcycles are classified in a similar way to cars but have their own grouping methods. Mr & Mrs Davies also have two vans used for commercial purposes which we assume are both small goods vehicles, as their business is a catering business. Small goods vehicles can be rated very similarly to motor cars especially if they are not considered medium or long distance haulage vehicles (which are usually rated by adding the carrying capacity to the basis of vehicle rating). As Mr & Mrs Davies' events tend to take place within a 30 miles radius we would assume that both vans would be viewed as small goods vehicles.
- **Driving limitation** – the trend is towards restricting driving for motor car policies and increasing numbers of policyholders are accepting restriction to insured only or named persons, in return for a reduced premium. Mrs Davies' high performance convertible sports car has been restricted to drivers aged 25 years and above. The rest of the vehicles are insured on an open driving basis. This is far more beneficial for the two vans and the motorcycle used for business. Although Mr and Mrs Davies have five permanent employees they often use temporary employees, depending on the size of the individual event, so the drivers of the vehicles are likely to change frequently and the business needs the flexibility that open driving cover provides.
- **Class of Use** – For motor vehicles, these are rated in ascending order, social domestic and pleasure (SDP) (excluding commuting), SDP (Including commuting), Class A, Class B1 and Class B2. Two cars, and we assume the high performance sports car, are available for Mr & Mrs Davies' personal use and as their business is also at their home address in an outbuilding, they will only need SDP (excluding

commuting) for these vehicles. We are not told whether their two children work at the business and if they do then they will also require this use. However, if they intend to commute to and from their work address they will need SDP (including commuting). Obviously, if both children are using their vehicles in connection with their business, we will need to assess whether Class A, Class B1 or Class B2 will be necessary. The two vans and the motorcycle used for the business will need to be rated accordingly, excluding cover for hire and reward which is unnecessary in the circumstances stated in the assignment.

(b) Five recommendations which would make the insurance risk more attractive to insurers are:

- **Increase the security on the vehicles or keep them in a garage (if spare garages on the premises are available)** – We are not told how many garages Mr & Mrs Davies have at their premises so can only assume they have the one, which houses the high performance convertible sports car. In the absence of there being any other garages at the premises, to house the other vehicles to reduce the risk, increasing the security of the other vehicles will lessen the risk for the insurer. We are told that all other vehicles, except the sports car, are kept in the open on the premises overnight. I would therefore assume they are not left on the road within the boundary of the premises.

As their property would appear to be large and situated in a city, it may well attract thieves. I would suggest that all vehicles are alarmed and the motorcycle has a steering lock fitted to improve the risk. Consideration could be given to tracking devices being fitted in all vehicles, whereby an electronic chip within the vehicle can be activated and remotely monitored where necessary, if any vehicle is ever stolen.

- **Change the high performance convertible sports car to named driver only** – As Mr Davies is the only one who drives the sports car in the summer it would make the risk more attractive to insurers to just have him named in the policy to drive this vehicle. Perhaps as Mr & Mrs Davies have such few employees, they could change the open driving on the other vehicles to any drivers over 25 years with the option to declare and add any temporary employees under this age. This does make the cover less flexible but as they have five permanent employees and only hire temporary staff as and when needed, this could be administratively achievable and make the risk more inviting to insurers.
- **Car laid up section of the policy** – This is a benefit whereby cover can be suspended under the policy if the vehicle is undergoing restoration or repair. Policies tend to stipulate that the vehicle must be kept in a locked garage if this

benefit is used. As Mr Davies only uses the high performance sports car in summer and it is kept in a locked garage when not used, it may be possible to apply this premium reduction option. As the risk is then reduced for the insurer, a credit is then calculated at 75% of the pro-rata premium because the vehicle remains on cover with the insurer but for a much lower risk than when the vehicle is on the road. The suspension of all cover does mean that the third party section of the policy becomes inoperative and so it would be necessary for Mr Davies to make a SORN to comply with continuous insurance requirements which came into effect in 2011.

- **Introduce a voluntary excess on the policy** – This will provide a premium discount as Mr and Mrs Davies will agree to bear the first part of any future loss and this will be added to any existing excesses. The risk to the insurer will therefore be reduced as they will be paying less in the event of an own vehicle claim. It will also have the benefit of helping to increase the no claims discount (NCD) on the vehicles which currently hold none, as we are told that the NCD has been lost due to a number of minor own damage claims.
- **Introducing Telematics** – This is a term used to describe exchange of data over a wireless communications network. In recent years this has been used by insurers as a method of calculating premiums for vehicles. ‘Pay as you drive’ is a type of insurance suitable for drivers who rarely travel in the rush hour or late at night and can be particularly attractive to young drivers who otherwise face high premiums.

The premium is initially estimated on a declaration of expected mileage and times of travel and then is adjusted. This type of insurance could definitely benefit Mr & Mrs Davies 19-year-old, and maybe also the 25-year-old child, as the risk would be more attractive for the insurer. The other type of telematics, ‘pay how you drive’, could also lessen the risk. Information is recorded of driver behaviour such as acceleration, deceleration, braking and changes in direction. This could be useful for the two vans and the motorcycle to assist in improving driver behaviour. Employees are, without telematics, known to not look after work vehicles as well as they might do their own vehicles.

## Question 7 - Learning Outcome 5 (20 marks)

Mr Wilkins is the owner of a prestigious car which suffers damage in an accident for which he makes a claim under his comprehensive motor insurance policy. As a result of the accident the car is undriveable. The insurer arranged for their recommended repairer to collect the car from the scene of the accident and take it to their workshop, where the insurer's motor engineer approved the vehicle repair.

Mr Wilkins has received his car back from the approved repairer, but is unhappy with the quality of the repair work carried out. In particular, he feels that the value of his car has been diminished due to poor paint work. Mr Wilkins submits a complaint to the insurer.

- (a) Identify, with justification, **two** options available to the insurer to address the complaint. (8)
- (b) Explain, with justification, **three** options available to Mr Wilkins should his complaint not be resolved to his satisfaction. (12)

## Answer to Question 7 (Learning Outcome 5)

- (a) It is only at the time of a claim when the true value of an insurance contract is realised. The claims department is the 'shop front of the insurer and it is the claims handlers' role to handle claims as smoothly and efficiently as possible. Chapter 8 of ICOBS pertains to claims handling – '*an insurer must handle claims promptly and fairly*' (M94/P94 Motor Insurance 2016-17 p7/6).

Mr Wilkins is an "unsophisticated policyholder" and this motor accident will have been distressing and traumatic.

Mr Wilkins' vehicle has been repaired at a recommended repairer. Recommended repairers are those on a panel created by the insurer. In exchange for being on the panel the recommended repairers will provide the insurer with discounted rates, priority service and, potentially, access to replacement cars for policyholders whilst the repairs take place. Mr Wilkins' insurer had appointed a motor engineer to inspect the vehicle, who has deemed it repairable. The operative clause of the policy states that the insurer will choose the option to repair, replace or pay up to the market value of the vehicle insured. The insurer has exercised their right to repair the vehicle and is therefore responsible for ensuring any deficiencies in the repair are put right as part of their contractual commitment. In this instance Mr Wilkins has received the vehicle back from the recommended repairer and is unhappy at the quality of the work carried out.

He feels that the value of his vehicle has diminished due to poor paint work.

Once the insurer has chosen to undertake the repairs, this becomes a contract of reinstatement and they must put the vehicle back in the same position it was pre-accident. When Mr Wilkins submits a complaint to his insurer, they would likely try to put the issue right for him.

- The first thing the insurer would do is arrange for a motor engineer to re-inspect the repaired vehicle and then, if appropriate, arrange for it to be taken back to the recommended repairer and have them try and rectify the issue with the paintwork. This would normally be done with no extra expense to the insurer by the recommended repairer. If the paintwork is put right, then there will be no diminished value to the vehicle and the insurer will not need to address this aspect.
  - If the issue regarding the paintwork is not able to be resolved, the insurer may want to consider paying for the diminution in value of the vehicle. This is a prestigious vehicle and some vehicles are more susceptible than others to losing their value once repaired. The vehicle would be inspected post-repair and a motor engineer would advise the reduction in lost value suffered. The insurer would then make an offer, based on the motor engineer's advice, to the policyholder.
- (b) If the complaint has not been resolved to Mr Wilkin's satisfaction, the following three options will be open to him:

### Escalating the complaint to the Financial Ombudsman Service (FOS)

Provided all avenues have been exhausted between Mr Wilkin's and his insurer, he may decide to refer the case to the FOS. The FOS is an entirely independent mechanism for resolving disputes. The Ombudsman only deals with disputes from private individuals or micro-enterprises, with a turnover of less than 2 million euros and with fewer than 10 employees. As Mr Wilkins is a private individual he is eligible to take his complaint to the FOS. The first step would be for Mr Wilkins to escalate the complaint to the senior management of his insurer and he would have needed to reject their final decision in order for the FOS to then become involved. The insurer is bound by the FOS's decision, but Mr Wilkins does not have to accept their decision. This is a good option for Mr Wilkins as he does not need to be concerned with the daunting prospect of arbitration.

### Alternative Dispute Resolution (ADR)

This is a method that has been designed as an alternative to arbitration which

lessens the case load of the courts. ADR can be used to assist all manner of disputes, including complaints to insurers. Normally a mediator is appointed to bring about discussion and to arrive at mutual understanding and acceptance. While usually used for commercial policyholders, this could be a good course of action for Mr Wilkins as the mediator will help both him and his insurer to arrive at a mutually agreeable solution. There are various types of ADR however the best options here probably are mediation and conciliation as they are best used in a motor insurance context where there is a dispute as to quantum. However, the parties are not bound by the procedure and can resort to arbitration if necessary.

### Litigation

Mr Wilkins can decide to take court action against his insurers to provide an indemnity and put him back in the same position he was in prior to the loss. This could well be a small claims court action as it would force the insurer's hand to either settle the county court claim form for damages or enter a defence in order for matters to be heard and a decision made in court. Mr Wilkins would be expected to submit supporting evidence and documentation with the County Court claim form.

### **Question 8 – Across more than one Learning Outcome (30 marks)**

KJ plc owns a commercial vehicle which is insured with AB plc, a UK-based motor insurer, on a named basis.

Gary, an employee of KJ plc who is not a named driver, is driving KJ plc's vehicle is overloaded with cargo and crashes into an oncoming vehicle. Both vehicles are damaged beyond economic repair.

The driver of the oncoming vehicle alleges that he has suffered whiplash as a result of the crash. It is subsequently established that he was not wearing a seatbelt at the time of the accident. The insurer of the third party seeks compensation from KJ plc for the vehicle damage and the third party driver also seeks compensation from KJ plc for his personal injury. KJ plc notify AB plc of the accident and submit a claim.

- (a) Explain the position of AB plc under the insurance policy they have issued. (12)
- (b) Explain any recovery rights that AB plc might have against KJ plc. (6)
- (c) Explain, with justification, how AB plc could investigate and handle the third party personal injury claim. (12)

## Answer to Question 8 (Across more than one Learning Outcome)

- (a) Gary is not a named driver under the policy and it is not clear whether KJ plc knew or not that the vehicle was overloaded. In any case this is irrelevant as KJ plc has a vicarious liability on behalf of Gary, due to the relationship of master and servant. KJ plc are, therefore, legally liable for the actions of Gary. The claimant in this case also has the option of bringing the action against the employee or the employer. However, it is usual to choose the employer who would normally have insurance in place or the means to meet the claim.

The vehicle is overloaded, which would contravene a condition under the motor policy. However, under Section 148 of the Road Traffic Act 1988 (RTA) an insurer cannot rely on this policy condition to refute a third party claim.

Gary is not insured to drive this vehicle meaning AB plc have the right to decline the claim and refuse to pay for the accidental damage sustained to KJ plc's vehicle. As the vehicle was a total loss this will leave KJ plc to bear themselves what may be a significant loss.

The vehicle Gary was driving crashed into an oncoming third party vehicle. If any liability attaches to Gary, AB plc would not be able to escape their legal liability under the RTA. As this incident occurred on a public road, AB plc would have a legal liability under the RTA to deal with the third party claim subject to the minimum legal requirements by law. This is currently set at unlimited liability for third party death and bodily injury and £1m in respect of third party property damage. AB plc are considered to be the RTA insurer

- (b) As previously discussed, KJ plc have a vicarious liability in respect of Gary their employee, who was driving the vehicle when he was an unnamed driver, as the relationship is that of master and servant. The fact that the vehicle was overloaded, even if they were unaware of this fact, is irrelevant. This means that they are still legally liable on Gary's behalf. AB plc would be able to seek reimbursement under the RTA of any money they have to pay out in respect of third party damages, back from KJ plc. The wording in the RTA makes provision for this under Section 148, subsections 3 & 4.

In the UK the RTA details these rights under sub-sections 7 & 8 of Section 151, which 'provide the right for the insurer to seek recovery of its RTA outlay against any person who incurred the liability' (M94/P94 Motor insurance, 2016 – 17 p1/43).

This gives AB plc the right to recover from KJ plc who 'caused or permitted the use which gave right to the liability'. There are more likely to be funds available from the plc than from Gary.

- (c) AB plc has several ways of investigating and handling the third party injury claim. They are the RTA insurer as explained above. We are told that both vehicles are a total loss and so the impact was obviously quite substantial and we are not looking at a low velocity impact claim here.

Regarding liability, we are told that Gary crashed into an oncoming third party vehicle. Negligence is defined as the “omission to do something which a reasonable man, guided upon the considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do” (Blyth V Birmingham Waterworks Company (1856)).

It could be that Gary admits liability and AB plc will therefore reimburse 100% of the third party vehicle damage claim submitted by the third party insurer. However, the likely situation is that Gary and the third party are likely to blame each other for the accident. In the absence of any witness evidence or a police report which indicates who is actually responsible for the incident, the claim may be settled on a split liability basis, e.g. 50/50. If the third party is seen to be reckless or negligent then compensation will be reduced accordingly. If a claim is settled on a 50/50 basis, then the claimant’s compensation will be reduced by 50% as they will be seen to be 50% negligent for the accident.

We also have a further issue here that the third party is known to not be wearing their seatbelt at the time of the accident. In accordance with *Froom v Butcher* (1975) damages will be reduced by, potentially, 25% if it is proved that the failure to wear the seatbelt would have caused the injuries sustained.

The third party claim for injury is subject to unlimited liability under the RTA. From April 2010, a system was introduced for the handling of RTA personal injury claims with a value of between £1,000 and £10,000 (increased to £25,000 in 2013). These are referred to as the Ministry of Justice Reforms. The aim was to ensure that claims where liability was admitted were processed quickly and costs were kept to a minimum. There are three stages to the process, the first being that the claim will normally be notified through the Ministry of Justice (MOJ) portal by the claimant solicitors on a claims notification form (CNF). AB plc will then have 15 days from the date of submission to accept liability, admit liability but allege contributory negligence or deny liability altogether. If the insurer fails to respond within 15 working days, the claim will fall out of the process. In this particular instance they are likely to deny liability with a view to investigating the circumstances of the accident. We also have the added issue of failure by the third party to wear a seatbelt which may have contributed to the injury. Upon rejecting a claim from the MOJ portal the claim will exit the process and follow the normal Personal Injury Civil Procedure Rules and Pre-Action Protocol, where AB plc will have 3 months from the date of

acknowledgement of the letter of claim (CNF) to investigate and make a decision on liability. If they fail to do so, then the claimant solicitors are entitled to litigate.

When claims exit from the portal, they are likely to incur far more expensive solicitors' costs and therefore the insurer may consider it to be prudent to keep the claim in the portal, allege contributory negligence and make an offer without prejudice to liability. This means that the action taken cannot be construed as an admission of liability and cannot be produced as evidence in legal proceedings. This would be helpful especially if Gary is pursuing his own personal injury claim against the third party insurer.

AB plc may very well take this action as they realise Gary will be found at least partly responsible for the accident and will want to keep the costs to an absolute minimum rather than risk costly litigation or protracted correspondence. If accepted in the portal the third party claim would go to Stage 2 of the process where the claimant solicitors would proceed to obtain medical evidence. This is then sent to AB plc with a request for an interim payment or a settlement pack. AB plc will have 15 days to respond and make an offer. If this offer is rejected by the claimant solicitors, then they will both have a further 20 days to negotiate settlement. Once settlement is agreed AB plc will have 10 days to pay the third party claim.

If settlement cannot be agreed, then it will proceed to Stage 3 litigation where costs are then paid by the losing party on a fixed scale.

Normally damages are grouped under two headings; general damages and special damages. General damages are those that cannot be immediately quantified such as compensation for pain, suffering and loss of amenity. Special Damages are a quantifiable financial loss such as loss of earnings, hire of an alternative vehicle, medical expenses, etc.

If liability is disputed and the claim has been allowed to exit the MOJ portal then upon receipt of the medical report from a medical expert which will outline the third party injury, AB plc will have 21 days to review and make a Part 36 offer back to the claimant solicitors. A Part 36 offer is made under part 36 of the civil procedure rules and places the other side at risk for interest and costs if it is rejected unreasonably. The Part 36 offer will be in writing and usually expire after 21 days and the claimant solicitors if rejecting the Part 36 offer made, can make a counter-offer back to AB plc. Should an offer not be agreed then the claimant solicitors are entitled to proceed to litigation. It is important that the judge is not made aware of the quantum of this offer.

## **Question 9 - Across more than one Learning Outcome (30 marks)**

Anne is 17 years old and has just passed her vehicle driving test. Her mother, Julie, who owns a vehicle, arranges to have it comprehensively insured with MB plc, a UK-based motor insurer. Julie is shown on the schedule of insurance as the main driver, with Anne as a named driver.

Anne drives the vehicle to work on a daily basis. Whilst Anne is driving the vehicle, she causes an accident involving another vehicle. This accident results in damage to both vehicles and personal injury to the driver of the other vehicle. Julie submits a claim to MB plc, seeking indemnity for the damage to her vehicle. The third party driver also submits a claim to Anne for compensation for the personal injury that they sustained. Anne passes the third party claim to Julie who passes it on to MB plc.

MB plc's motor engineer's report states that Julie's vehicle is beyond economic repair. MB plc learn that the police are to prosecute Anne for exceeding the speed limit at the time of the accident.

- (a) Explain, with justification, the liability of MB plc for the own vehicle damage claim. (15)
- (b) Explain, with justification, the liability of MB plc for the third party damage and personal injury. (15)

## **Answer to question 9 (Across more than one Learning Outcome)**

- (a) Julie appears to be guilty of 'fronting'. Fronting occurs when an older, more experienced, driver falsely insures a vehicle in their own name, suppressing the knowledge that the main driver is a younger, riskier driver. This practice has the result of achieving a lower premium than if the younger riskier driver is declared as the main user of the vehicle. Fronting is illegal and if established can result in the insurer voiding the policy for misrepresentation or non-disclosure, as a breach of utmost good faith.

We know that Julie's daughter Anne is the main user of the vehicle as she uses the vehicle on a daily basis to drive to work. In addition, Anne is just 17 years old and as a young driver who has only just passed her test we know that if the policy was rated on her being the main driver it would likely be a high premium.

Any claim involving Anne as the driver would be subject to both a young driver's excess and an inexperienced driver's excess. It would appear that Julie is guilty of misrepresentation and has not been honest with the insurer, MB plc, when

the policy was taken out. As this is a consumer policy the Consumer Insurance (Disclosure and Representation) Act 2012 will apply. This Act abolishes the former duty imposed on consumers to volunteer material facts and consumers are instead required to take reasonable care not to make a misrepresentation. The remedy MB plc can take depends on the nature of the misrepresentation. If it is honest and reasonable the Insurer must pay the claim. If it is careless then the insurer has a compensatory remedy based on what it would have done had the consumer answered the question accurately. If the representation was deliberate or reckless then the insurer is entitled to treat the policy as void and may decline all claims.

In this instance I believe that Julie will be found guilty of either careless or deliberate misrepresentation. It depends what explanation she gives to MB plc. For instance, she may say as the owner of the vehicle she believed she was the main user and not her daughter. However, it's difficult to see how she could really believe this to be true when her daughter uses the vehicle to travel to and from work on a daily basis.

If MB plc decides to void the policy for deliberate misrepresentation, the premium will be returned and MB plc will not deal with the accidental damage claim for Julie's vehicle.

If MB plc decides not to void the policy on the basis that the misrepresentation has been careless, and charge an additional premium, Julie would be expected to pay the additional premium before the accidental damage claim is dealt with by the insurer. Alternatively, the insurer can also opt to deduct the amount owed in premium from the claim.

Alternatively, the insurer can take a 'proportional' view and offer to pay an amount proportionate to the actual premium paid in relation to the correct premium had the policyholder not made the misrepresentation. In this case, if it was decided that Julie had paid half of the true premium, they could offer to settle the claim based on half of the value of the claim. We are told that the insured vehicle is a total loss and so the MB plc would appoint a motor engineer to inspect the vehicle and then await receipt of the inspection report which would describe the condition and mileage of the vehicle, together with the pre-accident market value and salvage value.

Total loss claims are divided between actual or constructive. An actual total loss is when the vehicle is destroyed completely beyond repair.

A constructive total loss is where it is uneconomical to repair so the cost to repair exceeds the market value of the vehicle. MB plc would then register the vehicle on MIAFTR2 and make checks to see if there is any hire purchase on the vehicle. MIAFTR2 was created to prevent fraud by keeping a register of all vehicles which are subject to a total loss claim or where the vehicle had been stolen and not recovered.

If anyone else has a financial interest in the vehicle, then this amount owing to them will need to be paid before any remaining money is paid to Julie as the policyholder. The insurer will make an offer which will be the market value of the vehicle, less any excess. We know that Anne is both a young driver and an inexperienced driver, having only recently passed her test, and so these excesses will be cumulative and deducted from the market value. The insurer will, usually, retain the salvage and sell it after the claim is settled, normally via a salvage agent, and retain any salvage value. Sometimes the insurer will allow the policyholder to retain the salvage but this will only be agreed if the category of salvage is such that the vehicle will be allowed back on the road once repaired (Category C - where the vehicle is repairable but costs exceed the market value or Category D – all other repairable vehicles) Category A is scrap only and Category B must not go back on the road either and can only be broken down for spare parts.

We suspect that Anne is liable for the accident as the insurer is aware of the pending police prosecution. Although there is no duty to disclose any conviction mid-term (unless it involves a ban from driving), however, any conviction will need to be disclosed at the next renewal which will likely affect the premium, depending on the conviction code. Normally one SP30 (conviction code for speeding) will not have any premium effect.

- (b) If the insurer decides that the misrepresentation has been careless and then decides to charge the additional premium appropriate to have Anne as the main user of the vehicle. Once this additional premium is paid the cover will be in place in respect of liability for the third party injury and for third party property damage. The insurer will pay for both the third party damage and the third party injury claim subject to any relevant financial limits.

However, if the insurer decides that the misrepresentation made by Julie is careless or reckless, then as previously discussed they are entitled to void the policy. By voiding the policy for misrepresentation or non-disclosure they do not have an RTA liability. However, they would have an Article 75 liability, according to the Memorandum and Articles of Association of the Motor Insurers' Bureau. The Domestic Regulations, Article 75, require insurers to meet certain liabilities which arise from the use of a vehicle where there is evidence of insurance being provided by the insurer in the broadest sense, whilst outside their strict contractual RTA liabilities. The insurer will therefore in this case be required to handle and pay the particular uninsured case on behalf of the Motor Insurers' Bureau. However, Article 75 Insurers have no liability for subrogated claims. Therefore, if the insurer of the third party approaches MB plc for reimbursement of the third party vehicle damage, MB plc are not obliged under Article 75 to reimburse their outlay. However, if the third party comes to MB plc direct to request reimbursement for the damage to the vehicle then MB plc is obliged to pay subject to the minimum limit of £1m for property damage.

We are told however, that the third party approaches MB plc direct for compensation for their injuries sustained and MB plc would be obliged to deal with their claim for both special and general damages, subject to unlimited liability under the Article.

MB plc are entitled to look to Julie for reimbursement of any monies paid out under Article 75.

## **Question 10 - Across more than one Learning Outcome (20 marks)**

SR plc, a motor insurer, insures motor risks in the two distinct markets of private cars and private hire taxis. It obtains new business proposals for both classes of business. SR plc, as part of its fraud investigations, has identified a high level of misrepresentations of material facts in private car proposal forms and a high level of non-disclosures made by private hire taxi proprietors.

These misrepresentations and non-disclosures result in SR plc issuing motor insurance policies to customers who are outside its risk appetite. These policies create an additional cost in claims handling. They require more detailed investigation to establish what information should have been disclosed to SR plc at policy inception to determine the extent of SR plc's liability for claims.

- (a) Explain and analyse how the duty of disclosure differs between these two distinct markets. (10)
- (b) Explain the options available to SR plc with regard to claims where there has been non-disclosure in **each** of these two distinct markets. (10)

## **Answer to Question 10 (Across more than one Learning Outcome)**

- (a) The law relating to the duty of disclosure differs between consumer contracts and non-consumer contracts. Private car business typically falls into the former and private hire taxi business the latter. Most private car policies are taken out by individuals who enter into the contract 'wholly or mainly for purposes unrelated to their trade business or profession' – this being the definition of a consumer insurance contract under the Consumer Insurance (Disclosure and Representations) Act 2012 (CIDRA). Whilst such policies can include business use and/or commuting social, domestic and pleasure purposes will normally be the prevalent use. Conversely, under private hire taxi insurance, whilst the policy can include social, domestic and pleasure use, the predominant use will be for business purposes, namely the carriage of passengers for hire or reward.

Under consumer insurance contracts, following implementation of the above Act, there is no specific duty on the consumer to volunteer material facts. Instead, the proposer must take reasonable care not to make a misrepresentation. The onus is therefore on the insurer to ask the correct and pertinent questions within their proposal forms/websites/telephone scripts. If the insurer is getting high levels of misrepresentation, this might indicate proposers are being 'economical with the truth' when it comes to answering those questions, indicating a need to review their question set and/or the wordings of those questions when asked verbally.

Private hire taxi proposers will be subject to the rules of disclosure as set out in the Insurance Act 2015. That is to say, and notwithstanding any question asked by the insurer of the proposer, there is a duty on the proposer to make a fair presentation of the risk. The insurer's possible remedies, should the proposer fail to make a fair presentation, will depend on whether the breach was deliberate or reckless (M94/P94 Motor insurance, 2016 – page 3/3).

The common factor to the two types of contract is the consideration of whether the information provided or withheld induced the insurer to write the risk.

Following the implementation of CIDRA and the Insurance Act 2015, the respective actions of the insurer, in the even non-disclosure are different between consumer and non-consumer customers.

- (b) The insurer will be mindful that a decision to reduce payment under a claim, or decline a claim, carries the risk of potential referral by the policyholder, to the Financial Ombudsman Service (FOS). This arises as many private hire businesses may well meet the size criteria of 'micro enterprises' whose claim disputes with insurers are within the remit of the FOS.

There is also the relevance of the FCA ICOBS rules which effectively constrain an insurer's actions where non-disclosure is non-negligent and/or non-fraudulent. Whilst these rules are applicable to retail customers, as codified within CIDRA, the insurer might, via its 'claims philosophies and standards', adopt a more lenient strategy with regard to non-consumer non-fraudulent non-disclosure based on the consumer approach. This could entail applying:

- (1) retrospective premium adjustments, or
- (2) proportionate settlement offers.

In the case of (1) the insurer would make an offer to the policyholder based on retrospective payment of the premium shortfall as determined by the correct underwriting information. If the policyholder accepts and pays the premium, the claim will be dealt with in full. This assumes, of course, that the non-disclosure was not

sufficiently serious that the underwriting action would have been, had the disclosure been made at quotation stage, to decline to quote for the business.

For (2) it would be a case of the claim offer being proportionately reduced based on the premium shortfall. So, for example if the policyholder would have paid double the premium based on the correct underwriting information, then only 50% of the claim would be met.

It should be noted that a proportionate reduction would only normally be applied to an own damage related claim. The Insurance Act, whilst codifying proportionate remedies, makes it clear that RTA obligations to third parties are unchanged.

For non-disclosure, which is identified as being fraudulent, the insurer is likely to consider the voidance option, whilst being mindful of its obligations under RTA. Voidance doesn't mean that they can alleviate themselves of financial responsibility to indemnify third parties in circumstances where their policyholder was legally liable for the accident. By adopting a tough line the insurer will however send out a message to its private hire taxi policyholders that fraud will not to be tolerated. In this context therefore, in determining their approach they will also implement a consistent strategy in terms of whether or not to seek court declarations in those circumstances where they void a policy.

The final consideration and distinguishing feature in the actions to be taken relates to premium refunds. Where the non-disclosure is fraudulent it will be usual practice to retain the premium paid. For non-fraudulent non-disclosures in circumstances where a decision is taken to void, the premium will typically be refunded so as to avoid what could be otherwise construed as accepting the risk and affirming the contract.

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## **Question deconstruction and answer planning**

The following three plans are based on 10, 20 and 30 mark questions respectively.

### **Question 1 - Learning Outcome 1 (10 marks)**

TC plc, a UK-based commercial property owner, has a portfolio of small offices in the UK, which are insured on a traditional risk transfer basis. TC plc is currently negotiating to purchase a high value office block in the UK. TC plc's UK-based insurance broker needs to place the high value office block with a suitable insurance organisation.

**Explain, with justification, two** types of insurance organisation that the insurance broker might consider suitable to cover this risk. (10)

### **Question deconstruction**

- Review learning outcome 1 in the course material and the relevant information in the study text.
- Highlight the instructions within the question (which are circled in red above).
- What is the context? UK-based and high value office block.
- The question asks for two types of insurance organisations. This means that you should spend an equal amount of time and effort in your answer in relation to each type of insurance organisation.

### **Answer plan**

- Explain your two likely organisations. For example, a proprietary insurer who has or can get reinsurance and a Lloyd's syndicate who can share the risk if appropriate.
- Discuss each organisation and how they would each be able to cover the risk.
- As this is a 10 mark question, your answer should be shorter than the answers to either a 20 or 30 mark question.

## Question 2 - Learning Outcome 2 (20 marks)

SD plc, a UK-based insurer, has offices located in twelve countries. Its innovative approach and exceptionally good performance has led to rapid expansion.

Competitors are now targeting SD plc's customers and this has led to a reduction in SD plc's operating performance. SD plc has recognised this competitive environment and has therefore decided to recruit a new Chief Executive Officer (CEO) to drive the business forward.

- (a) Identify, with justification, the most appropriate management style the new CEO, of SD plc, might use. (5)
- (b) Analyse **two** advantages and **three** disadvantages of the style that you have identified for SD plc, given the scenario above. (15)

### Question deconstruction

- Review learning outcome 2 in the course material and the relevant information in the study text.
- Highlight the instructions within the question (which are circled in red above).
- Consider the context which includes the planned appointment of a new CEO, historic innovation and growth; and recent competition.
- The 15 marks in part (b) are awarded for relevant advantages and disadvantages which are clearly linked to the chosen management style.

### Answer plan

- Part (a): You need to **identify** and **justify** the most appropriate style. This needs to be linked to the scenario so that the style chosen is appropriate for SD plc.
- Part (b): For the style listed above you now need to analyse in depth two advantages and three disadvantages. You must make reference to the scenario when looking at these. Marks are allocated for the advantages and disadvantages (which are justified), followed by a brief conclusion.

As this is a 20 mark question, your answer should be longer than the answer to a 10 mark question but shorter than the answer to a 30 mark question.

## Question 5 - Learning Outcome 5 (30 marks)

CG plc, a UK-based insurance broker, is evaluating a manufacturing company as a potential long-term customer, using the manufacturing company's financial statements for last year. This evaluation is focused on the income statement/profit and loss account, balance sheet and cash flow statement.

The manufacturing company reported an annual profit of £400 million in 2015, with a net cash outflow of £250 million in the same period. The company has expanded its business in the last six months, in an environment where products become obsolete quickly. It responded to this fast changing environment, by acquiring £150 million of new production machinery in 2015. The company gives its customers considerable time to pay their bills.

- (a) **Analyse** the potential risks to CG plc if the manufacturing company becomes their customer, based on the above information. (20)
- (b) **Identify**, with **justification**, **five** additional items of financial information that CG plc would find helpful in arriving at a final decision. (10)

### Question deconstruction

Review learning outcome 5 in the course material and the relevant information in the study text.

- Highlight the instructions within the question (which are circled in red above).
- Consideration of the context which is the long-term financial viability of a potential customer. The scenario also tells you the following limited information relating to 2015:
  - Profit of £400m in 2015.
  - Cash outflow of £250m in 2015.
  - Expanded business in the last 6 months, but products becoming obsolete quickly.
  - Acquired £150m of new production machinery in 2015.
  - Customers have considerable time to pay bills.

## Answer plan

- Part (a) is worth 20 marks and part (b) is worth 10 marks, so each needs to be answered accordingly in length and depth.  
In part (a) each of the profit, cash outflow, expanded business, new machinery acquisition and customers' bill payment needs to be analysed in detail. Make conclusions about the potential risks.
- In part (b) identify with justification the additional financial information required. There should be a sentence or two for each justification. The financial information should fill the gaps from the scenario.  
As this is a 30 mark question, your answer should be longer than the answers to 10 and 20 mark questions.

## Glossary of key words

### Analyse

Find the relevant facts and examine these in depth. Examine the relationship between various facts and make conclusions or recommendations.

### Describe

Give an account in words of (someone or something) including all relevant, characteristics, qualities or events.

### Discuss

To consider something in detail; examining the different ideas and opinions about something, for example to weigh up alternative views.

### Explain

To make something clear and easy to understand with reasoning and/or justification.

### Identify

Recognise and name.

### Justify

Support an argument or conclusion. Prove or show grounds for a decision.

### Recommend with reasons

Provide reasons in favour.

### State

Express main points in brief, clear form.