

A laboratory setting with a pipette dropping liquid into a test tube labeled 'COVID-19'. The background is a soft-focus image of laboratory glassware, including a pipette and a test tube. The test tube is in the foreground, with the label 'COVID-19' clearly visible. The pipette is positioned above the test tube, and a single drop of liquid is falling into it. The overall color palette is light blue and white, with a dark blue header and footer.

Coronavirus - impact on UK and Ireland injury claims

June 2020

To put it mildly, COVID-19 has been a game-changer in the personal injury sector. That includes the scope of purchased insurance products and their coverage. The game has also been changed through the role of technology. Tech now provides for the possibility of an ever-more efficient, more transparent, confidence-inspiring and more consistent claims handling framework across the UK.

The debate about the impact of the outbreak will continue for some time through various contexts. Such debate will need to be viewed through the lens of the UK political landscape. How will COVID-19 alter the government's legislative priorities? How will our environment be affected by broader social and political changes more widely?

As the London Market will undoubtedly increase its focus on digital trading platforms, we also expect to see an increased call for clarity around the government-led plans for broader court modernisation, including moving towards a 'true' online court rather than simply being satisfied with supplementary telephone and video hearings.

Whilst technology will have to improve and be delivered quickly to meet the anticipated shifts in the litigation landscape, attitudes to the possibilities of a true online court will also need to evolve rapidly. Revisions to the Civil Procedure Rules will need to be contemplated and insurers may have to revise their policies to allow for more rapid digital dispute resolution.

Of course, certain lines of business, such as cyber risks, will be more affected than others. With the whole country having changed the way it is working and with the prospect of increased agile working and use of personal devices (even when we can

safely return to offices), will claims arising from cyber attacks represent an area of vulnerability for insurers? How can their policyholders be encouraged to ensure better levels of protection and to deploy mitigation strategies in order to deal with breaches rapidly as they occur?

In the employment space - will wearable tech become compulsory for employees? Who will supply it? What obligation will such provision create over and above current legislative frameworks? Will contact tracing and the ensuring of social distancing raise fresh challenges around the collection and use of personal data of employees and visitors to policyholders' premises?

And in the claims space - which is the focus of this report - will we see more or fewer claims for compensation as a result of the pandemic? Our early data analysis of MoJ portal claims shows that CNF's referring to COVID-19 are already being submitted.

Our analysis of limited company incorporation data between February and March from Companies House also reveals that 45 newly incorporated limited companies contain the words 'corona' or 'COVID' as part of their company name. Some appear to be claims management companies (CMCs). How will the insurance industry respond to such a trend?

We are yet to see a significant move into social media advertising targeted at the public in relation to coronavirus-related claims, but the early signs are there. We have identified a number of law firms updating their websites to include specific coronavirus compensation sections, focusing on challenging insurers whose policies are not reacting to claims.

We fully expect claims farming to continue its evolution into more types of claims. COVID-19 presents a new frontier for claims and claim behaviours. Following declining claim numbers in areas such as motor, EL and PL personal injury, COVID-19 opens new and potential opportunities for CMCs.

Overall, we expect there to be a lag in COVID-19 related personal injury claims, which will take various forms as new areas of duty, breach and loss are explored.

In the meantime, there are numerous practical considerations to liability claims. What we offer here are our thoughts on just that - from motor to catastrophic injury claims; from workplace to local authority claims, as well as jurisdictional issues. In

addition to the 'here and now' implications, we provide our ideas about the future impacts that all those with a claims handling role should be alive to.

I hope you enjoy what follows and encourage feedback. I also encourage you to enjoy and use our thinking into the issues more widely that we are continuing to explore on our [COVID-19 focus area](#).

Richard West
Partner

Motor liability

The COVID-19 pandemic has had significant implications for the court system in England and Wales, with resultant practical issues for the management of RTA litigation.

Immediate implications

- Following the implementation of social distancing measures, technology has enabled a number of remote hearings to take place, however an ever-increasing backlog of cases appears inevitable.
- There is some general consistency among the courts in terms of their approach. However, there are local variations: some courts are conducting all hearings by audio or video. Other courts are only adopting this approach for interim hearings.
- The absence of specific rule amendments (or guidance on how each hearing should take place) has essentially resulted in local practice directions being made by Designated Civil Judges (DCJs), district by district. However, it is also clear that the DCJs have attempted to coordinate their approach between themselves.
- A delay of at least six months is envisaged in contentious cases which need to be tried.
- Social distancing measures and prioritising delivery of healthcare over medico-legal work, has understandably resulted in the cancellation of medico-legal appointments.
- Remote/virtual examination is not always feasible. Cancellations and postponements will inevitably impact upon the life cycle of many cases.
- Indications are that claimant's may seek to issue on 'sub-prime' cases which they might otherwise not have done so previously. For example, where at best from their viewpoint liability is arguably 50:50, or where there has been little action taken for months or years.

- Traffic levels have reduced significantly during lockdown but are now beginning to rise as the lockdown is relaxed. Consequently, accident and claims frequency has fallen significantly, though some analysis suggests driving is at higher speeds and has resulted in more serious collisions. The Metropolitan Police reports an eight fold increase in speeding fines for the same period in 2019, and reports speed as the major factor in a number of fatal accidents during lockdown.
- With reduced frequency, hire claims are down in volume, but the period of hire has extended resulting in an increase in value of hire claims.
- New hazards include drivers returning to driving after many weeks are "out of practice", an increase in pedestrians walking in the roads as they practice distancing; and a significant increase in cyclists on the roads.

Future considerations

- Whilst there is evidence of greater collaboration in dealing with court timetables, some claimant firms are pursuing disproportionate and premature action, such as pre-action disclosure applications or immediate enforcement actions.
- The Association of British Insurers (ABI) has led, with input from various claimant firms, a consensual extension to the personal injury protocol which took effect from 24 March.
- It is worth noting that not all insurers have followed this proposal, or followed it absolutely, and some are still interrogating requests for extensions to limitation in the forensic context of the conduct of the claimant representatives to date, how long the claim has already been presented in pre-litigation and so forth.
- More recently the Association of Consumer Support Organisations (ACSO) and ABI statement of intent has led to a number of insurers and claimant law firms adopting the approach or the spirit of the approach within bilateral agreements.
- Careful consideration must be given on a case by case basis before agreeing to 'virtual' examinations by telephone or video call. A physical examination at a later date may still be required, increasing costs.
- Examinations in person may be preferable where credibility is potentially an issue, or where the injuries or the individual's circumstances, do not lend themselves to remote examination.
- Increased prevalence of fraudulent claims should be considered, in the context of an economic downturn with a potential increase in staged/contrived accidents and exaggerated personal injury claims.

- The pandemic has provided further evidence of just how necessary the current £1 billion HMCTS court modernisation reform programme is.
- It seems likely that more hearings will be conducted remotely once the pandemic is over, and as courts are necessarily better resourced to cope with remote hearings. MoJ Stage 3 hearings being an obvious and sensible body of cases to be heard remotely.

Practical tips

- Tracking the different approaches by the courts, as well as claimant firms will enable insurers to adapt accordingly to maximise speedy resolutions. Know your opponent and know your court strategies arguably become more important.
- 'Sub-prime' type cases may well be issued on limitation and need to be monitored. It is possible to raise powerful costs and conduct arguments on such cases and this can encourage earlier and more discounted settlements.
- When in litigation and faced with potentially months or even years of delay with postponed medical appointments, re-extended court deadlines, repeat hearings and repeat trials, insurers and those advising them are often rightly taking a more pragmatic and commercial view of claims.

And finally

- Although implementation of the game-changing whiplash reforms have now been pushed back to April 2021, insurers will be mindful they are coming and, with them, an online dispute resolution system for volume claims in the near future. Some commentators have suggested that the further delay may see the reforms shelved altogether.
- Important [changes to the Civil Procedure Rules](#) (including Part 36 offers, mitigation of loss, and witness statements) brought in on 6 April must also be kept in mind.

Contacts: Ian Davies, Niall Edwards and Jennifer Harris

Related items:

- [COVID-19: the civil court system and practical implications for road traffic accident litigation](#)
- [COVID-19 claims farming, risk level: high](#)



Repair delay and credit hire

Whilst the full extent of the impact of COVID-19 on the motor industry is not yet known, we are already seeing several impacts on the market. However, the balance to this is that claims frequency has plummeted since the lockdown as the statistics on travel as part of the government COBRA briefings illustrate.

Immediate implications

- The closure of factories throughout China has impacted the global motor parts supply chain. Whilst factories in China have reopened, it is likely to take several months before production returns to previous levels.
- Together with staff shortages and business closures, we are likely to see a significant increase in the average repair period until normal supply resumes, even for straight-forward and low value repairs.
- Alongside this, whilst there is currently less call for credit hire it is likely the number of credit hire claims will return to usual levels once the lockdown restrictions are eased or lifted entirely.
- The impact on the parts supply chain could cost insurers significant sums through extended hire periods. The focus should therefore be on mitigating delays, and promoting early resolution of hire claims where reasonable.

Future considerations

- We may see a more robust approach to negotiation and litigation, depending on the individual credit hire organisation's (CHO) position. Alternatively, the focus may be on cash flow and potential volume agreements.
- Another possibility is CHOs and their legal representatives seeking to advance 'sub-prime' credit hire claims. Older credit hire claims, perhaps rebuffed successfully before, may be recycled and presented again within the six year limitation period. The age of the hire claim presented is a potential warning flag.
- Since 6 April CHOs and their solicitors are required to plead more substantively and positively on impecuniosity and the need for hire, at a time when they are also struggling to obtain proper instructions or even a retainer from the hirer claimants.
- A number of insurers have agreed a litigation standstill agreement in relation to subrogated recovery claims in particular. However, on a cautionary note, the volume of claims is still there and steps should be taken to resolve these,

where possible. Generic agreements pose increased uncertainty and potential risk, and any standstill agreements should be considered on a case-by-case basis.

- Potential for fraudulent claims should be considered, in light of reduced need for hire; an absence of staff at hire companies to collect hire vehicles; and where there is no response to a request to inspect the damaged vehicle.

Practical tips

- Intervention and third party capture may assist in mitigating delay by enabling insurers to be directly involved and kept up-to-date on the repair process.
- Use of a dedicated or preferred repair network, may facilitate priority repairs to be dealt with more quickly. In addition, approved repairers/ 'main dealers' with greater weight in the market may have better access to the availability of parts. Any increased costs potentially mitigated by shorter repair periods.
- Basic hire rates evidence remains available with surveyors still operating remotely and this is a good opportunity to obtain such evidence to challenge rates.
- However, litigation delays may mean that any highly contentious rates arguments are unresolved for some time. It is also often possible to get an indication of reasonable basic hire rates online before incurring the costs of using surveyors.
- Robust intervention offers remain advisable, where possible, or offers based upon intervention rates where claimants are already in hire, where there is the facility to do so.
- Many insurers are again seizing on this environment to again take a commercial view and to negotiate or re-negotiate bilateral agreements with CHOs and to bulk-settle their backlogs of hire claims rather than face these claims months or maybe years later now.

Contacts: Ian Davies, Niall Edwards and Graham Thompson

Related items:

- [COVID-19: mitigating against repair delays and extended credit hire periods in RTA claims](#)
- [New rules: pleading specific issues in relation to the hire of replacement vehicles](#)

Catastrophic injury

The developing coronavirus pandemic will disrupt the usual processes of serious injury claims handling to an extent not encountered for several generations.

Immediate implications

- Social distancing will impede rehabilitation. Tele-medicine offers various practical solutions for service continuity and geographical coverage.
- The quarantine measures and infection risks could trigger further psychological harm in claimants already dealing with the mental health consequences of a traumatic accident.
- Medico-legal experts will need to develop new virus protocols and re-engineer the traditional models of physical examination or face-to-face interviews.
- Disruptions to care supply could lead to care claim fluctuations, such as inflation where agency cover replaces family or directly employed carers, or deflation where family steps in, or where vulnerable claimants turn to 'healthtech' solutions to minimise visitors.
- There will be inevitable impact on other heads of loss, such as reduced loss of earnings where employment would have been disrupted in any event, or no holiday claims due to travel restrictions.
- There will be compliance challenges with deadlines, where businesses are closed and unable to provide timely or adequate disclosure, witnesses are unavailable through poor health, and experts are unable to examine claimants.
- Current policies on social distancing will require remote alternatives to joint settlement meetings.

Future considerations

- An expected generational shift in the way serious injury claims are managed with the adoption of modern solutions, including online courts and referrals to independent extra-judicial evaluation schemes where HMCS capacity is insufficient.
- Stock market repercussions could lead to a short-term preference for periodical payments over lump sums and affect the next statutory review of the personal injury discount rate.
- The lessons learned by clinicians during the pandemic, and the research that will inevitably follow, could usher in new treatment pathways.



Practical tips

- Support wellbeing and mitigate potential claims inflation by reviewing caseloads to identify claimants who may be at risk of deterioration during lockdown, and arrange appropriate practical support or remote therapy intervention.
- Seek new remote examination techniques from experts, e.g. reviewing smartphone footage of the claimant undertaking pre-specified exercises or relevant daily activities.
- If there are barriers to medico-legal reporting, such as experts understandably prioritising their clinical responsibilities, the parties could place greater reliance on treating experts instead, especially for urgent rehabilitation decisions.
- Arrange regular road-mapping discussions between the parties to plan around virus contingencies.

Contact: Mark Burton

Related items:

- [Coronavirus: consequences for serious injury claims](#)
- [Psychiatric inflation factors: COVID-19](#)
- [The future of care: is technology the answer?](#)

Workplace injuries

The current coronavirus pandemic has become an issue of unprecedented concern for employers and as it continues to evolve, the impact to businesses will be significant.

Immediate implications

- In addition to the immediate risk of infection, a reduction in staff and re-allocation of work risks psychological and physical injury to those who may become overworked or deployed to an unfamiliar activity.
- An increase in those working from home (WFH) raises the risk of claims for psychological illness in the absence of suitable precautions. There is, in addition the risk of musculo-skeletal injury due to inadequate work stations.

Future implications

- Future claims are likely on the basis of allegedly negligent workplace exposure. Claims could be envisaged from family members infected by employees who were themselves infected at work, particularly where there is no other likely source of infection.

- Damages would include awards for pain, suffering and loss of amenity, which could vary from the trivial to the fatal, plus compensation for a range of past and future losses, such as loss of earnings and care and domestic assistance. We are still learning about the effects of COVID-19 on the respiratory system, with the possibility of long-term health implications for some.
- Vicarious liability claims may arise from the coronavirus outbreak. For example, from those infected as a consequence of the decision of an infected employee to continue interacting with customers, claims relating to negligent actions arising from employee fatigue, and operating vehicles/equipment that an employee is not trained to use due to colleague absence.
- The economic downturn may stimulate claims from disgruntled ex-employees. An uptick in fraudulent/speculative claims might be expected.

Practical tips

- Employers have a regulatory and common law duty to take all reasonably practicable steps to protect the health and safety of their employees. An employer able to prove it has kept abreast of government/HSE advice and that it has interpreted and applied that general advice sensibly, having regard to its own operations and workforce, should be well-placed to defend claims brought subsequently.
- Key considerations when undertaking risk assessment during the COVID-19 outbreak include:
 - Adequate health surveillance and information provided to staff.
 - Assessment and management of workloads in the anticipation of reductions in staff.
 - Consideration of health and safety of home workers and suitable steps to mitigate risks to health.
 - Identification of risks associated with individuals covering for missing colleagues and strategy to mitigate that risk.
 - Identification and provision of suitable PPE where other steps to protect health are insufficient.

Contact: Greg Woods

Related items:

- [Coronavirus and increased homeworking for office jobs the risks](#)
- [Guidance: COVID-19 and employers liability claims](#)

Local authority

All local authorities (LA) will need to demonstrate their awareness of changes made by the Coronavirus Act 2020 in relation to all areas of LA services.

Highways

Immediate consequences

- Reduced traffic usage means less opportunity for highway incidents to occur and so we anticipate a decline in claims during lockdown.
- Quieter roads does, however, provide an opportunity to arrange highway inspections and repairs, although potentially in a different manner, such as walked inspections.
- Urban areas have increased cars parked on streets at all times as households stay home making some inspections difficult.

Future considerations

- If staff were put at risk by being sent out to do driven inspections with another person, this could lead to potential employers liability claims.
- Delays in repairs and maintenance, due to interruptions with the supply of materials and depleted work force, could have a knock on effect with future claims and it may also add pressure on highway inspectors to give evidence on future claims.
- LAs may review current codes of practice in view of lessons learned from COVID-19 and to reconsider how inspections are carried out, i.e. remotely, through the use of drones.

Practical tips

- Document and retain decision-making processes for any change of highway policy during the outbreak, and ensure highway inspectors and repair operatives know of the changes.
- If highway responsibilities are contracted out, ensure the contractors do not depart from agreed inspection regimes due to COVID-19.
- Ensure workers undertaking repairs adhere to social distancing and provide guidance to highway inspectors in relation to their personal safety when doing walked inspections.

Education

Immediate consequences

- Sadly, many children will be at a greater risk of being abused, exploited or groomed by criminal gangs during lockdown.

- Schools play an important role in safeguarding children. During lockdown very few vulnerable children have been attending school and at the same time referrals to social services of vulnerable children has reduced by half.

Future considerations

- We anticipate there will be an increase in stress claims from staff due to the pressures of working during the COVID-19 crisis. There may also be claims for staff who contracted the coronavirus through pupil exposure, although causation will prove difficult. There could also be occupational liability claims arising from maintenance issues due to inaction during the pandemic.

Practical tips

- Schools should revise their child protection policies, documenting changes made and ensuring staff are fully aware.
- Ensure staff are aware of the updated safeguarding advice.
- We recommend reviewing policies for peer on peer abuse.
- Ensure appropriate guidance is provided for staff personal safety whilst at work, and ensuring pupils stay safe.
- Arrange for enhanced cleaning of school buildings that remain open and ensure that cleaning contractors comply with guidelines to work safely within the current climate.
- Risk assess and document and retain all decision making processes in lockdown, to include:
 - Staffing levels
 - Support for emotional wellbeing of staff
 - Adequacy of environment for both staff and pupils to minimise risk of COVID-19
 - Support provided to pupils with special needs
 - Risk assess any delay in building repairs, etc.

Contacts: Kathryn Oldfield, Helen Snowball and Mandy Williams

Related item: [COVID-19 and its implications on the condition and maintenance of highways in the UK](#)

Celtic

The COVID-19 outbreak has had significant implications for the legal and political systems in Scotland, Northern Ireland and Ireland, with resultant practical issues for the management of claims.

Scotland

Immediate implications

- Litigation of large value claims, in particular employers liability and public liability (EL/PL) claims are being delayed as the courts are only allowing cases close to limitation to be raised. Ongoing cases are having significant delays.
- Although there have been some adjustments, we hope that further new court processes will be introduced which improve the ability to work remotely. For now we are able to use online signatures and submit some documents to the court electronically, although there is inconsistency with how this is being approached by different courts and a backlog of paperwork continues to pile up in closed courts.
- The courts are working towards re-opening with a plan for social distancing for the next 12 months. Some hearings are being carried out remotely and these look likely to continue for some time.

Future considerations

- We anticipate a surge of large value and EL/PL claims to be litigated when the courts re-open for 'normal' business. However, issues during lockdown, including the challenges in obtaining medical reports, will continue to delay the progress of matters for some time to come.
- Whilst changes in working practices look likely, it may take many months for court processes to get back up to speed.
- Claimant firms will be under pressure to generate fees and we anticipate claims being raised and pressed to litigation. Some claimant firms may close and their cases may pass over to different firms, which will bring an additional complication with a change of agent.
- The Scottish Government is working on a financial redress scheme for historic child abuse. This process has not officially been delayed but there may be a delay in that procedure as they focus on managing the COVID-19 outbreak.

Northern Ireland

Immediate implications

- Some remote hearings are taking place, but generally only urgent matters are being dealt with. Some applications before the Master in the High Court are being dealt with on the papers. The Commercial Court has signalled that it will hear remote hearings and administrative reviews are being undertaken by the judges. At present the courts are essentially in lockdown. As a result, we are seeing parties trying to agree

amended directions and many interlocutory applications are being adjourned with no listing date until September.

- As such, there are significant delays, especially for large value claims, as trials are being postponed, medical assessments are being cancelled and applications for interim payments pending as High Court Masters are self-isolating.
- Effective closure of the courts (save for urgent matters e.g. injunctions) is, however, providing opportunities for settlement with claimant solicitors more amenable to reasonable offers to bring swift resolution of cases.

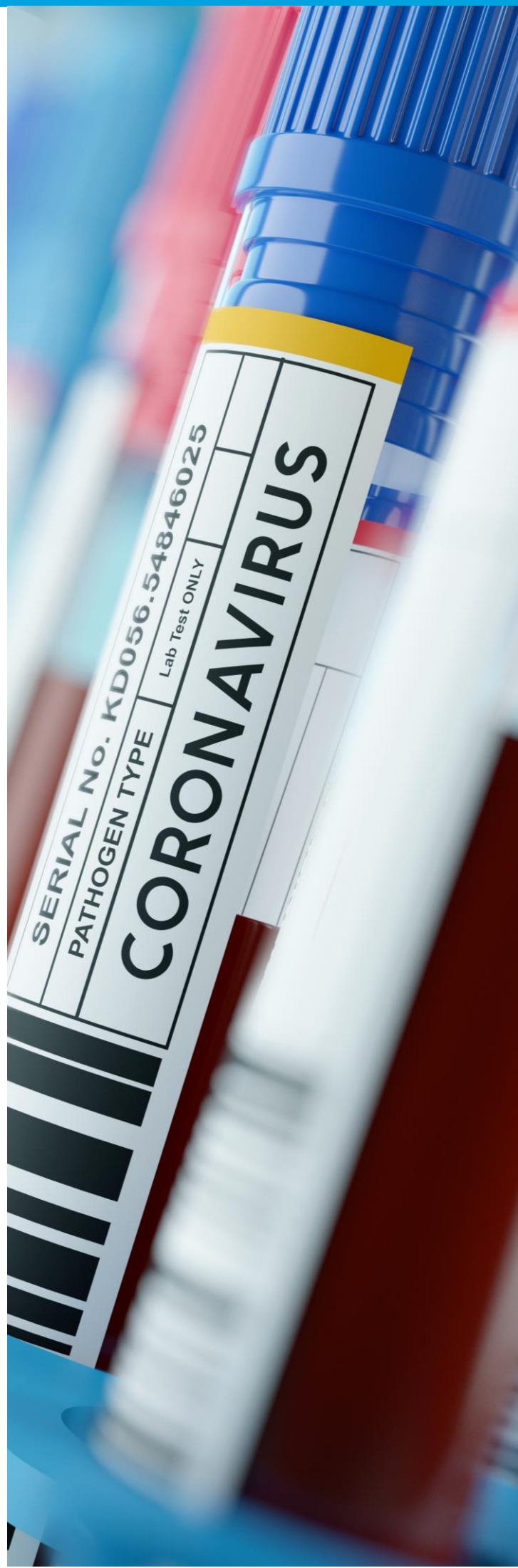
Future considerations

- In large value claims we anticipate increased applications by claimants for split trials and/or interim payments.
- We also expect a rise in EL/PL claims from food manufacturers, supermarket employees, cleaners, temporary staff and any other manual handling workers.
- There will be an unprecedented backlog of hearings, as in addition to the lockdown, the High Court goes into summer recess over July and August.
- Against the background of having been without a government since January 2017 until January of this year, the civil and family justice reforms led by Lord Gillen are expected to continue to be delayed.
- A potential knock-on effect of the delays could see more matters not being decided until a change in discount rate, which is expected to be -1.75%.

Ireland

Immediate implications

- As with elsewhere, there are significant delays with the progression of claims. The courts will, however, still hear 'urgent' applications and remote hearings have now commenced by way of video link in the Court of Appeal and Supreme Court.
- The High Court has also commenced remote hearings from the 18 May concerning non witness actions only. Three court rooms have been made available for remote hearings and seven others for physical hearings daily.
- The Circuit Court has announced that hearing dates will be allocated and all trials and motions will be on a staggered time slot basis.



- The Personal Injuries Assessment Board (PIAB) have waived the requirement for applicants to submit a medical report. Instead the PIAB require a letter confirming that a medical report has been commissioned.

Future considerations

- The President of the Law Society in Ireland has proposed a change to the rules to allow affidavits to be sworn remotely.
- There is currently a travel restriction limited to five kilometres from every individuals' home. As such, there are significantly fewer cars on the road and subsequently fewer collisions, and an inevitable reduction in the number of claims arising from road traffic accidents (RTAs).

- Once travel restrictions ease, RTA levels will normalise, or we may even see an initial increase where people choose their own vehicles over public transport for fear of contracting the coronavirus, and as such we may see a spike in RTAs.

Contacts: Rory Jackson, Amanda Wylie, Joanne O'Sullivan, David Strahan and Vanessa Davidson

Related item: [Proposed changes to Northern Ireland discount-rate expected](#)

Further information

To find out more about our services and expertise, and key contacts, go to: kennedyslaw.com

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