

# ODR and Third Party Injury Claims Processing

Stewart McCulloch\*

I will be speaking in a moment about our vision for the future of insurance third-party injury claims processing. But first a little about our company and why we are here. More to the point why we have an opinion on all the change that we believe is ahead of us.

My background is that of a personal injury solicitor where I have acted on both sides of the claimant/insurer equation. I think that I have probably seen all the things that go on. Some good things are good, but others are not so good. And it was with those not so good things in mind that I was looking for a new, simpler and technology-based way to deal with third-party injury claims. That is how I became involved in NuvaLaw.

What is NuvaLaw? NuvaLaw designs *and* implements inter-party negotiation and adjudication platforms. Those platforms bring together tools processes and services to reduce *the* time and cost of settling claims. NuvaLaw is completely independent and seeks to facilitate claims resolution in a neutral way. Learning from our experiences in South Africa, we are preparing to launch NuvaLaw in the United Kingdom for settling personal injury claims.

So, what does an old battle-hardened litigator like me think about the future of injury claims? First of all, it needs to be understood that I am talking about the situation where one driver has suffered an injury and wishes to make a claim on another driver’s policy. It can be a very contentious and adversarial environment.

Is it being suggested that we carry on with what is an old ‘them and us approach’ to claims and stir in a bit of technology? Absolutely not. Reimagining how we process claims, and collaboration, are core values at NuvaLaw.

There are usually two sides in these claims. One is the insurer and the other is the claimant’s solicitor. Right now, they battle it out using email and letters (I gather some still use faxes!) It’s a big effort to work like that, and it costs a lot of money. So, there is a need to break down traditional barriers and work together. That requires commitment from both sides of the industry. I am hoping that the word ‘sides’ will one day disappear from all conversations.

So, let’s take a lighthearted, but serious, look at what we are all doing now.

**Tabel 1** Cases Registered to CRU

2017	853,615
2016	978,816
2015	981,324
2014	998,359

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The problem in the industry is that it has to deal with just under a million personal injury claims every year. And there are plenty more to deal with without injury. Dealing with claims is an intensive activity. If an insurer lets down his or her guard, someone will get one past them. Sadly, there are people who believe that large insurance companies are fair game. They make exaggerated claims. Others are just plain stupid. But, a million personal injury claims?

The number has gone down a bit this last year, but it's still a massive undertaking to deal with them all. Even if everyone could be trusted, the problems caused by sheer numbers are still there. What are those problems?

Despite access to the Motor Insurance Database, players often start off by not being able to find each other. Letters, emails and (possibly) faxes go to the wrong place. There is delay. Delay costs money and increases claim values. To keep costs down, repairs need to be authorized. Temporary replacement cars need to be hired out.

When they do make contact, the recovery and negotiation processes take too long.

The Ministry of Justice provides a portal for dealing with injury claims with a value of £25,000. The portal sets a target of sorting out liability (or not) within 15 days and a strict 35 days settlement period after disclosure of documents. But there is a problem. If liability is in dispute (who caused the road accident), then the cases have to be removed from the portal. And the bit in between the 15 days for admission of liability and the 35 days for negotiation is not regulated. I hear reports from insurers of an average 250 days between those two points. Insurers are left not knowing where they are. Knowing the value of each claim as soon as possible is vital for an insurer's business because it has a bearing on the amount of regulatory capital the insurer has to put to one side and also on his or her ability to write new business.

So, knowing early and then settling outstanding claims is vital for the insurance world. It's also vital for the claimant's lawyers in terms of meeting service standards. What if a case falls out of the Ministry of Justice Portal? It's a bit like the Wild West with everyone running to different rules and no structure around what is done. And then we move into the horrors of litigation.

Some members of the legal profession (not all of them) often appear to have arrived here from Planet Dickensian. I should know – I was one of them. It's not that they are bad people. It's just that they are trained to be risk averse in an adversarial system. It's often a lethal mix. No matter what the economics is, the current litigation process encourages parties to cover every angle. But the system itself as it is now, is archaic and clunky. It consumes tonnes of time and paper. Litigation is always drawn out and then there is the cost.

UK insurers spend 63% of all operating expenditure on dealing with claims. Since the global financial crisis, insurers have found things difficult. The old model of taking premiums and investing them to gain a return before claims are made has been in difficulty. The investment returns are simply not there any longer. Margins are tight. So, it's important to consider very carefully other ways of balancing the books. Driving down the cost of claims is now key. What is the solution then?

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A legal information superhighway. It's being built now here in the United Kingdom. It is underpinned by a simple straightforward protocol that is designed to support personal injury claims by ensuring the earliest possible disclosure of information and data. The platform connects all the parties together to allow them to share information. And the best type of information is data – not long-winded reports about this and that. From all *of* that, we lead on to structured negotiation supported by facilitation in the background and assisting parties to take informed decisions about compromise, and yes sometimes asking them to take the pain in equal measure. But always with both parties enjoying significant costs savings. For those few cases that cannot be sorted out, we have the recycling centre.

The platform has a seamless route through into arbitration to sort out those difficult cases. Arbitration is much better than going to court, as many of us in the audience will know. It's legally binding. By using technology that is available now, it is possible to resolve disputes cheaper and faster than 'normal' court-based litigation. And I fail to see anything that is normal about litigation.

So, in simple terms, we capture data in one place, use data to determine settlement amounts, engage in structured negotiation with facilitation and refer seamlessly to arbitration.

We should not ignore the products and services that are already feeding the industry.

There are some very good applications and services out there now which for example detect fraud, support medical reporting, provide CCTV and automatic number plate recognition (ANPR) data and telematics analysis with video analysis. We bring all those systems inside an integration layer – like a virtual shopping mall. That makes these services available to platform users at lower cost due to aggregation. We will then have a complete ecosystem.

It will be the 'go to place' for resolving motor insurance claims fairly and accurately. Users will also have a much better idea of what each claim will cost or will pay at a much earlier stage. Once in use the ecosystem will grow exponentially. Industry costs will be slashed. As you would expect, I have already done a lot of careful testing and analysis with colleagues.

The time taken to settle claims will reduce dramatically as you can see from the slide on the screen. The top line is our end-to-end platform service covering data upload, negotiation, facilitation and arbitration. But with a platform like that, simple no-frills ODR (online dispute resolution) can also be accessed for existing cases that had not been through that end-to-end process.

Final cases to determine damages are obvious candidates. Improved timings for those cases appear in the lower line.

The court process is over 240 days or more, but platform-based arbitration is less than 37 days. By cutting unnecessary procedures designed by the courts to cover all types of cases, our injury-claim-specific protocol and platform provides an average saving of £558 in court costs against an original figure of £1279. This is the platform economy at its simplest and most obvious in terms of financial savings. The benefit to the whole industry is startling. Claimants get paid earlier. Lawyers' working capital will reduce. Insurers' reserves are cleared at lightning

speed, meaning better returns to shareholders or more underwriting capacity or both – just as they choose.

So, is that it? Well, no, actually it isn't. Not at all because that is the easy part. The next bit is the exciting bit. We apply the latest emerging technology.

First of all – *Deploy Blockchain*. It gives us immutable data It's the Holy Grail in the insurance industry – One Version of the Truth. And as an application for sharing data to combat fraud, it's unbeatable. It helps catch the crooks, and the good people get a good customer journey without being asked embarrassing questions. The insurance industry just has to make sure that data is shared and that it doesn't get screwed up by General Data Protection Regulation.

*Next in the technology stakes is Predictive Analysis*: Collect up data relating to cases processed; Get medical opinions into data format and look at the outcomes; Begin to build up a profile of what will happen in any given situation and compare to current cases as they move along. The machine starts to understand what is likely to happen as an outcome and tells one or both of the parties. That leads to improved decision support. And in time the machine will tell both parties at the same time and suggest settlement. The savings in case handling costs, reduced head counts and touches are enormous.

*Then stir in the artificial intelligence*. Get the machines to understand what is going on as well as how to resolve it. The possibilities are almost endless. Medical evidence can be read and values put on the size of a claim.

We will reach the point in the very near future where some decisions will be taken by the machines without any need for human intervention other than authorizing data uploads. I quite like machines running artificial intelligence because they do a good job and never answer back, hardly ever go off sick (unless there is a power cut) and never ask for holidays.

So, where does it all get to? By creating a complete ecosystem where everyone plays, supported by all the latest technology and service providers, costs are slashed and customer journeys across the insurance claims industry are very much improved. The key to all of these innovations is collaboration.

As I said at the start, *there is a need to break down traditional barriers and work together*. Collaboration is required to make this work. The ecosystem will work only if all stakeholders in the claims process recognize that the old ways are costly and can no longer be justified. Collaboration is not just relevant at the outset of these changes but will be part of the lifeblood of the complete claims ecosystem.

I accept that some of this is a vision for the future. But a lot of it is ready now. Platform-based business models are already disrupting revenue and customer engagement all over the globe and in every industry. The insurance claims industry will be the next beneficiary.

There is every reason why, in my view, the whole industry needs to take this leap of faith by sharing data and collaborating in claims settlement and resolution on a platform-based system now, and it is going to around for a long time in the future.

As we heard from Tim Wallis yesterday, some reform within the insurance claims industry is about to be imposed by government. Settlement amounts and allowable costs will be vastly reduced. But the claims will still be there. With

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smaller payments, the margins will be smaller also, so there will be an even greater need to mechanize the claims process.

Platform-based claims resolution will enable claimants to continue to be represented but at low cost. That will avoid having DIY claimants wildly roaming the ether with their own ideas about how claims should be processed. If we fail to deal with that issue, there will be chaos. That is why far-thinking lawyers and insurers are already preparing to engage with each other on this platform. They intend to remain in business, turning over higher volumes whilst at the same time focusing on improved customer journeys and lower costs.

That is the future of insurance claims processing as we at NuvaLaw see it.