

NMDA Newsletter November 2020



Lexmoto LXR 125 SY 125-10 - the highest registering model in the Supersport category in October

MOTORCYCLE MARKET

The motorcycle market performed well in November, up by a significant 24.3%, testament to dealers' robustness and ability to react to the increasing demand. As we are at the beginning of a new period of uncertainty, we want to highlight the passion, the perseverance and the determination that our members have shown throughout this tremendously difficult year. Your performance has shone through again and we are exceptionally proud to represent you.

'HANDS-ON' GUIDES

We have launched a new series of 'hands-on' guides to provide you with user-friendly, easy-to-digest guidance to support you with the day-to-day operational issues facing your business. The first guide is on 'Distance Selling' and we also have member guidance available on online sales, please find further information in the newsletter.

SAFE ACCESS TO MOTORCYCLING

Following the announcement of the four-week lockdown in England, we have written to the Department for Transport (DfT) calling on the Government to provide 'safe access to motorcycling during the lockdown, following this up by contacting some bike-friendly MPs to help spread the word in parliament. Find more details below.

NMDA is your trade body and here to help and advise you on regulatory and operational issues facing your business. If there are issues that we have not covered, or you have concerns about, please do contact us on the NMDA helpline 01788 538303.

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NMDA DEALER ATTITUDE SURVEY: RESULTS OUT MONDAY 23 NOVEMBER

The results of the latest NMDA Autumn Dealer Attitude Survey will be published on Monday 23 November. We will give an overview of the findings at our next (virtual) member meeting on 24 November. Thank you to all of you that took the time to fill this in.

MOTORCYCLE SALES FIGURES SHOW 'IMPRESSIVE' DEALERS' PERFORMANCE

The October motorcycle market showed a significant 24.3% increase over this time last year, testament to the robustness and ability of our dealers to react to the increasing demand

The motorcycle market showed a significant 24.3% increase in October over this time last year, from 7,126 units to 8,856, according to the latest MCIA figures.

Notably, Scooters and Mopeds saw an increase in registrations from last year, as new and old riders alike, continue to take to PTWs. The increase in home deliveries of foods has contributed hugely to this sector, taking the 0-50cc bracket up by 16.2% and the 51-125cc up by 9.9% from 2019's numbers.

These low powered scooters and motorcycles can be ridden upon completion of a day's Compulsory Basic Training (CBT) course, with no test required, making the transition to powered two wheels from cars an exceptionally accessible option. NMDA is lobbying on members' behalf to try to reopen CBT and further license training as soon as possible

Larger motorcycles also saw great levels of growth from last year, with the Adventure, Naked, Supersport and Trail/Enduro categories all experiencing more than double-digit progress. Only Customs and Touring bikes saw a slight decline year on year, but the actual numbers were minimal.

Honda still tops the manufacturers listing with 1,271 registrations with Lexmoto bounding into second place, mostly thanks to the Echo 50 which was also the highest registering scooter. The stalwart Honda PCX remains at the top of the model list, although time will tell if it can remain there, with reports of supply issues as we head towards the Euro changes in 2021.

Despite all the challenges we have faced and the new lockdown in England, we are yet to feel the effects that this may have on what has been a strong year to date. Considering that we are comparing this year's results to 2019 when there were no lockdowns and no threats to the economy at the level of the pandemic, it is impressive that dealers have managed to grow the marketplace.

As we are at the beginning of a new period of uncertainty, we must highlight the passion, the perseverance and the determination that our members have shown throughout this tremendously difficult year. Dealers' performance has shone through again and we are exceptionally proud to represent our NMDA members.

NMDA LAUNCHES 'HANDS-ON' GUIDES TO SUPPORT MOTORCYCLE DEALERS

NMDA has launched a new series of 'hands-on' guides to provide motorcycle dealers with user-friendly, easy to digest guidance aimed at supporting you with the day-to-day operational issues facing your business.

After analysing daily legal enquiry reports, NMDA has launched a new series of operational guides covering some of the key areas which have been of particular concern to members. The objective is to understand some of the issues members are facing and to produce straightforward guides, offering fundamental information about the legal requirements in the motorcycle industry.



The first guide focuses on **‘Distance Selling’**, an issue which is currently of particular relevance as motorcycle dealerships must remain shut during the lockdown. Over the coming months, NMDA members will have access to a series of ‘Hands-On Guides’ covering key areas such as General Data Protection Regulations (GDPR) as well as HR issues.

The guides are broken down into the following sections:

- What the issue is
- What businesses need to do
- What happens if businesses do not follow the guidance
- Summary and conclusions
- Helpful terms
- Links to additional guidance available online

NMDA understands that not all motorcycle dealers may have the time or the trained staff to follow the extensive legal updates in the sector, as a result, we are breaking down the information available, offering the most significant parts to our members in a simple, user-friendly format.

Whilst the guides are designed for the easy access of dealers, NMDA offers additional, detailed guidance and case studies through a dedicated member area on the website as well as regular, member bulletins.

We want to remind NMDA members of their access to our free legal helpline, as well as a number of industry experts they can contact whenever they require further assistance or information. We continue to encourage our members to get in touch with us directly with any queries they may have.

[Visit our website to download the NMDA Hands-on Guide on Distance Selling](#)

NMDA URGES GOVERNMENT TO GRANT ‘SAFE ACCESS TO MOTORCYCLING’ DURING LOCKDOWN

The NMDA has written to the Department for Transport (DfT) calling on the Government to provide ‘safe access to motorcycling during the lockdown’.

During the pandemic, the number of powered two-wheelers (PTWs) on the road has increased significantly; however, new restrictions for England are currently set to close motorcycle dealerships entirely.

In our letter to the DfT we outlined that since restrictions were lifted in June, sales of motorcycles have grown significantly. The steep increase in new riders was boosted by those choosing motorcycles as an ideal option to commute, especially, after the Government advised people to avoid public transport to limit the spread of the virus.

We pointed out that many key workers were amongst those who started riding during the pandemic.

As a result, it is very important that CBT Training and license testing remain operative over the coming weeks to allow new, potential and existing riders to continue to train.

Following our first letter, we also wrote to a number of MPs to highlight the problem of CBT coming to a halt. In addition to the increase in sales and the increase in key workers using motorcycles to commute, we drew attention to the fact that part of the demand came from also those who are seeking employment with last-mile delivery services, many of whom may be furloughed or recently made redundant.

“Although click & collect sales of scooters can continue, the suspension of the CBT and further licensing means that they are not available to new riders”, our letter said.

Motorcycle dealerships are also retailers of Personal Protective Equipment (PPE) including helmets, gloves and high-visibility clothing. These are essential items for public safety and NMDA believes the sale of this equipment in dealerships remains reasonable in necessary circumstances.

NMDA is concerned that the new restrictions could jeopardise people's ability to ride and we are calling on the Government to listen to our suggestions and ensure safe access to motorcycling over the coming weeks.

We will continue to lobby Government on behalf of motorcycle dealers and keep you updated.

MEMBER GUIDANCE ON ONLINE SALES, DELIVERY AND 'CLICK & COLLECT'

Following the latest Government guidance stating that all non-essential physical retail including motorcycle dealerships are to close during the four-week lockdown in England, we have produced guidance on the online sales of vehicles and the implications for delivery and 'click & collect'.

The briefing document has been prepared by TLT Solicitors to cover a number of aspects that are relevant to dealers, particularly where the Government guidelines may be open to different interpretations by enforcement authorities.

The document is intended to clarify as far as possible the current position surrounding requirements and restrictions relating to vehicle selling, transportation and distribution in England.

The briefing document provides advice to dealers and outlines the implications for businesses in the following areas:

- Vehicle sales and repairs
- Remote purchasing of vehicles: delivery and 'click & collect'
- Part exchanges
- Suggested hygiene and social distancing measures

If you are an NMDA member and have not yet received our guidance, please contact us.

MILS LEGAL UPDATE

Can a failure to return to work constitute acceptance of a breach of contract (for the purposes of a constructive unfair dismissal claim)?

Constructive Unfair Dismissal can be claimed by employees with over two years' service where they resign in response to an alleged fundamental breach of contract by the employer.

A common question in law however, is whether, in order to bring the contract to an end, one party has to communicate to the other the acceptance of what it deems to be the other party's fundamental breach(es)?

If such communication is not present, then as a matter of law, it can be argued that there is no termination of contract and therefore an employee's claim in such circumstances could fail.

The Employment Appeal Tribunal (EAT) has recently considered this matter in Chemcem Scotland Limited v URE.

Facts



The facts are complicated involving a family business, but essentially the Claimant was on maternity leave and argued that the Respondent employer committed various repudiatory breaches throughout her maternity leave and had shown an unwelcome/hostile view about her employment during her maternity leave.

Rather than expressing to the employer her acceptance of what she deemed to be those fundamental breaches of the contract, the employee simply failed to return to work following her maternity leave.

The original Tribunal found that her 'no show' and failure to return was sufficient to communicate her acceptance of the employer's breach and that she could claim constructive unfair dismissal. The company appealed, arguing that as the Claimant had failed to communicate her acceptance of the repudiation by the employer, then as a matter of law, it could not be a termination of contract so the claim must fail.

The EAT dismissed the employer's appeal and agreed with the employee. They found effectively that it was for the Tribunal, on the facts of any individual case, to make an assessment whether such a failure to return to work constituted an implied acceptance of a repudiatory breach. It commented that in "normal circumstances" a failure to return to work might not constitute such acceptance of the breach of contract, but on the facts here, the Tribunal was entitled to find that her conduct in not returning was such acceptance.

Comments

The case should serve as a note to employers in similar circumstances. If an employee simply disappears from work, this could still constitute an acceptance of an alleged breach of contract by the employer. The employer might not be in receipt of a formal written or oral notification that such a position was taken by the employee.

Motor Industry Legal Services Limited

Motor Industry Legal Services Limited provides fully comprehensive legal advice and representation to UK motor retailers for one annual fee. It is the only law firm in the UK which specialises in motor law and motor trade law. MILS currently advises over 1,000 individual businesses within the sector as well as the Retail Motor Industry Federation (RMI) and its members.

DVSA Confirms "MOT garages can remain open"

In light of upcoming national restrictions in England, the Driver and Vehicle Standards Agency (DVSA) confirmed that "MOT garages can remain open" during the lockdown.

The DVSA also reminded testers to ensure they follow **guidance for MOT testers** during the Coronavirus outbreak.

POLICY UPDATE

Please find below the latest information on the national restrictions across the UK (10.11.2020).

ENGLAND

Businesses and venues which must close

Among the list of non-essential retail premises to close are:

- Vehicle showrooms (other than for rental)
- Auction houses

Businesses and venues which can remain open

Among the other businesses permitted to stay open, following Covid secure guidelines, are:

- Petrol stations
- Car repair and MOT services
- Vehicle hire businesses

Click & collect and delivery

As of 05.11.2020, the Government guidance on the national restrictions for England currently reads as follows:

- Non-essential retail, such as clothing and homeware stores, vehicle showrooms (other than for rental), betting shops, tailors, tobacco and vape shops, electronic goods and mobile phone shops, and market stalls selling non-essential goods. These venues can continue to be able to operate click-and-collect (where goods are pre-ordered and collected off the premises) and delivery services

UK Government guidance – [New national restrictions from 5 November](#)

WALES

Following the end of the firebreak period in Wales at 12:01am Monday 9 November, a new set of national restrictions for Wales are in place.

Under these restrictions “all retail shops can open, if they can comply with the [duty to take reasonable measures to minimise the risk of exposure to and prevent the spread of coronavirus](#) in Welsh law. People should avoid unnecessary travel and avoid crowded spaces, particularly indoors.”

Please see the Welsh Government [guidance for retailers](#) for more information.

Welsh Government guidance: [Coronavirus regulations: frequently asked questions](#)

SCOTLAND

The Scottish Government introduced its local COVID alert level system on Monday 2 November. The levels range from zero to four.

Under level four, which is the highest alert level, non-essential retail will be required to close. The guidance currently states that click and collect and outdoor retail would be permitted under level four.

Non-essential retail is permitted to remain open in all other alert levels. Offices and call centres are advised to work from home, as well as other workplaces where home working is possible.

Scottish Government guidance: [local protection levels](#)

NORTHERN IRELAND

Additional restrictions are currently in place in Northern Ireland, beginning on 16 October 2020 and lasting for four weeks. The retail sector remains open at this time.

NI Government guidance: [what the restrictions mean for you](#)

‘IT’S COVID SAFE TO RIDE



With recent changes to tiering systems and local lockdowns, NMDA continues to support dealers with the ‘Safe to Ride’ campaign promoting the use of motorcycles as an ‘ideal alternative to public transport’.

Powered Two Wheelers (PTWs) are not only a great way to keep ‘COVID safe’, they offer the public much more:

- **Safe to ride:** social distancing and 'face coverings' are always required
- **Affordable ownership with very low running costs**
- **Quicker journey times:** avoid traffic jams*
- **Parking made easy and often free**
- **Low emissions combined with incredible fuel economy**
- **Freedom and fun**

It could not be easier to get onto a PTW and out on the road. With just a single day of CBT Training, anyone from the age of 16 (with at least a provisional license) can be out and riding at least a 50cc/4kw moped.

PTWs are “Safe to Ride” but we all still need to ride safe. Under current regulations helmets are compulsory BUT protective jackets, gloves and footwear are ALWAYS advised.

Motorcycles represent the best option for those who want to avoid public transport and with just a single day of Compulsory Basic Training needed, the transition to Power Two Wheelers is very easy.

Motorcycles offer a ‘COVID-safe’ way to get from A to B, they are cheap to run, environmentally friendly, easy to park and, being able to avoid traffic jams, they give you freedom and a fun way to travel or commute.

NMDA will continue to work with dealers to encourage more people into the motorcycle world.

*In some cities and towns PTWs are permitted to use bus lanes. Riders should check with their local authority before setting out.

Click [NMDA Safe to Ride images.zip](#) for further graphics which you can use to support the campaign

WHAT YOU GET FOR YOUR MEMBERSHIP FEE

- **Legal services** – Free legal advice from in-house lawyers
- **HR & Employment advice** – Resources for providing HR documentation
- **Trading Standards** – Guidance advice handling legislation
- **MOT Training** – Training centres to update and instruct MOT testers
- **Conciliation & Arbitration** – Resolving trade and consumer disputes
- **Government Lobbying** – Ensuring we are in consultation over law changes
- **FCA Advice** – Keeping up to date with F&I knowledge
- **DVLA Partner** – Working with DVLA to assist future projects
- **DVSA Advisor** – Advising on MOT test requirements
- **Utility packages** – Reviewing potential on saving energy costs
- **Banking & Credit Cards** – Possible savings on banking charges
- **Business advice** – On call to assist dealers with day-to-day issues
- **BDN EXPO Trade Show** – Attend the annual motorcycle trade show
- **Monthly Sales Report** – Review of monthly motorcycle registrations
- **Monthly Newsletter** – Updating on issues, trends & results affecting your business
- **Quarterly member meeting** – Reviewing issues affecting the industry
- **Biannual Attitude Survey** – Monitoring dealer/manufacture relationship
- **NMDA Website** – Easy way to check on updates



For more information, please contact Ed Buckley (Membership Manager) on 07919576306 mobile or email ed.buckley@rmif.co.uk.

NMDA MEMBER MEETING

The next NMDA member meeting will likely be virtual and take place on 24 November 2020. All members are welcome to attend. Please call Lena on 020 7307 1409 or email lena.patel@rmif.co.uk to confirm your attendance.

