

## NMDA Newsletter October 2021



Dear NMDA member,

PTWs continued their upward trend with 13,425 registrations in September, traditionally a high-volume month as customers have opted to wait to obtain the latest registration plate on their new machine. Whilst the market was still down -7.5% compared to September 2020, it is important to note that last September the industry was responding to the pent-up demand after a series of lockdowns. See full comment in this month's news.

### Guidance & Contact

As your trade body, the NMDA continues to work hard to support you and your businesses. Please do get in touch with us - If you have any legal, employment or questions concerning business advice please contact our helpline on 01788 538303 or email me directly. NMDA has engaged with Motorcycle News (MCN) in a way that could help promote member businesses to the public. Please refer to page 6 and take action today!

*We are your trade body, 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.*

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### Your Monthly Note from PHILIP YOULES, NMDA Chairman

Gosh the months are flying by! Once we get into October, we certainly get that Autumnal feeling. The leaves are turning, and the conker season is upon us. My inner ten-year-old really comes out when a game of conkers is in the offing!! But the turn in weather generally marks a turn in trade, particularly when the clocks go back and the evening draw in. This does, however, give us time to address some of the ongoing jobs in our dealerships that need doing. Staff training can be brought up to date along with a whole host of general housekeeping activities that require our attention.



This year we have the return of the major trade shows with the NEC and EICMA taking place. Many of our customers and of course the dealers, will attend these shows as they look for next year's purchases. Well... in theory that's how it works but in practice, things might not go as traditionally planned. I'm sure you are all aware that it will be the manufacturers who get stock to their dealers in time for next season, that will undoubtedly be the winners of next year's sales charts.

There is going to be a shortage of stock due to global supply chains creaking under both the strong demand and the re-starting of the global economy. It will be very interesting to see how our manufacturer partners respond to this challenge. How will they ensure that their dealer partners have a viable business model, allowing for a level of profitability that enables the standards they require to be met. That is also not to mention the important aspect of supplying our customers with the bikes they want, at the right time.

Most industries seem to have lured themselves into a false sense of security. Covid didn't really bring about a culling of the weaker businesses that many expected. However, now that furlough is finished and business rates are due to be re-introduced, maybe the proactive players in all industries will emerge as the real winners?

Various trade bodies are putting pressure on government in respect of the re-introduction of business rates in the retail sector. The NMDA continues to work with the NFDA by putting pressure onto Government, to realign high street rates. Like many sectors, ours has been affected by the continued growth in online retailers and the decreased footfall into our showrooms. In my opinion, business rates are tantamount to extortion, and I have difficulty seeing that the extra revenue is spent in a meaningful way. But that's just my personal thought. The important thing here is that as a trade association, we are putting a strong, collective opinion forward to represent the whole automotive retail industry.

And do not forget to complete your Dealer Attitude Survey! It is your voice; it is confidential, and it is your opportunity to review your manufacturer. They do take note and it is important to give your honest feedback.

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## **Plate change drives motorcycle registrations in September**

PTWs continued their upward trend with 13,425 registrations in September, traditionally a high-volume month as customers have opted to wait to obtain the latest registration plate on their new machine.

Whilst the market was still down -7.5% compared to September 2020, it is important to note that last September the industry was responding to the pent-up demand after a series of lockdowns. There were also fewer issues with supply. When compared to a more 'normal' period of trading in September 2019, we saw 12,978 registrations. 2021 figures show a 3% growth compared to then.

Sales of Electric Powered Two-Wheeled Vehicles (ePTWs) continued to perform well – especially in the low powered segment, with an increase of 97.1% (619 units), both overachieving year on year and adding to the 4,467 registrations year to date for 2021.

Larger capacity, leisure bikes registrations remain reasonably strong, and dealers look towards better supply as we exit the normal seasonal cycle of our marketplace. Half of the highest registering motorcycle models within each style, are made up of 125cc PTWs. The Honda PCX came out on top of all engine sizes with 557 units, equating to almost 1 in 5 (19.5%) of every scooter registered for the month. Honda remain the highest registering brand (2602 units) almost doubling those of BMW in second place (1312 units).

As we now enter the final quarter of 2021, the NMDA is optimistic that the market going forward will remain steady for the remainder of the year, notwithstanding the various issues across the entire supply chain.

The NMDA continues to encourage members to join our quarterly NMDA meetings to share experiences of all the support that NMDA membership can offer, and to get behind the #DestinationDealer campaign. This initiative is to help dealers reconnect with their customers and remind them that motorcycle and scooter showrooms are not just a place to transact, they are also a place to chat, have a coffee, look at the new products and meet up with like-minded people.

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## **NMDA comments on Government's Net Zero Strategy**

Government gave clear support in their decarbonisation strategy where they considered Electric-Power Two Wheelers as a viable, green solution in urban areas for last mile delivery.

This transition will no doubt have a positive commercial effect for NMDA dealer members. It is imperative to remember however, that a majority of motorcyclists are loyal hobbyists and enthusiasts.

The strategy outlines plans to consult on the 2035 phase out date on the sale of new non-zero emission powered two and three wheelers (and other L category vehicles). If a faster transition appears feasible, the date will be moved to earlier.

The NMDA will continue to engage with Government, and we will respond to all relevant consultations over the coming months.

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## NMDA and NMC Announce Partnership on Motorcycling Issues

The NMDA and The National Motorcyclists Council (NMC) have announced a new partnership on matters relating to motorcycling campaigning and government policy issues.

There are several issues relating to government policy towards motorcycling where the interests of both dealers and riders align. In particular, how motorcycling is treated in core transport and road safety policy.

As rider facing businesses, motorcycle dealers are aware of many issues that affect their motorcycling customers. As the dealer's representative body, the NMDA is largely able to support the NMC approach. Likewise, the NMDA operates a strong lobbying stance on several issues which are supported by the NMC.

The NMC's member organisations represent a motorcycling public which has regular contact with dealers and the trade, meaning that the new partnership will help foster good relations between the trade and motorcycling groups through the exchange of information and views on various motorcycling public policy and consumer topics.

Patrick O'Connell, Head of the NMDA said: "The rider is at the very core of NMDA member businesses. Our partnership with the NMC highlights the understanding that our sector is rider focussed and that there are far more issues that unite us than divide us. The relationship will strengthen our collective voice in government and reinforce our member relationships with the general public, bringing benefit to the whole sector".

Craig Carey-Clinch, the NMC's Executive Director added: "The NMC is delighted about this new partnership. Given the direct interface that dealers and the wider trade have with motorcyclists, NMDA members have an understanding of many of the issues that face motorcyclists in the UK. There are several rider issues where the NMDA and NMC have common interests and the new partnership can only strengthen the cohesiveness and authority of motorcyclists voice to government".

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## NMDA - MOT class 1 & 2 motorcycles training



The RMI Academy of Automotive Skills has opened a new training facility in Lincoln, broadening the reach of its high-quality automotive training, including MOT class 1 and 2 motorcycle training.

The NMDA is a federated association of The Retail Motor Industry Federation (RMI).

The new site joins three existing locations in Southam, Runcorn and Winchester, and is the first of several additional academies planned as part of the trade body's wider strategy to provide training for garages on a more local basis.

The opening of the fourth training academy is part of the RMI mission to provide affordable, high-quality training for the automotive sector, including the motorcycle industry.

The expansion of the RMI training facilities in the UK is positive news and will be of benefit to NMDA members and all of those in the region that require Class 1 & 2 motorcycle MOT training.”

Call 01788 538 399 to enquire or book a course, or visit [RMItrainingAcademy.co.uk](http://RMItrainingAcademy.co.uk) for course details.



## The UK's largest MOT training provider

The RMI Academy of Automotive Skills provides all the training you need to run your MOT station effectively. We deliver high quality, cost effective training across the country at prices that cannot be beaten. All sites are COVID-Secure and strict social distancing and hygiene measures are in place.

- MOT Tester Training Class 4 & 7
- MOT Tester Training Class 5
- Motorcycle Tester Training
- MOT Centre Management
- Vehicle Technician Accredited Assessment
- Refrigerant Handling (F-Gas)
- MOT Annual Training
- ADAS Training
- Hybrid/Electric Training
- Technical Training



**BOOK A COURSE** with our friendly team on **01788 538 399**  
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## MILS Legal Update: Employment status and the 'right of substitution'



**When considering whether a person is an employee, worker, or subcontractor, one aspect of the test is whether the person concerned has to undertake the work personally or whether they can appoint someone else to do it (a right of substitution).**

In *Stuart Delivery Ltd v Augustine*, the Employment Tribunal was asked to consider the case where a courier company had developed a technology platform to allocate delivery slots. In it couriers opted to take 'ad hoc' or 'slot' deliveries. Where a courier committed to undertake 'slot' deliveries they were required to be available in a set place at a set time in return for a fee. Once committed to a slot, a courier was required to be available unless someone else agreed to take it from them. When Augustine (A) sought to bring a case against SD Ltd, the Tribunal had to consider whether this represented an obligation to perform services personally, as required for 'worker' status under S.230(3)(b) ERA.

The Tribunal found that the release procedure did not amount to an unfettered right of substitution, as A would only be released from his obligation to undertake the slot if another courier signed up and he had no control over whether this happened. The Tribunal concluded that this was in the fifth category of substitution identified by Sir Terence Etherton MR in the Court of Appeal in *Pimlico Plumbers Ltd and anor v Smith*, i.e. 'a right to substitute only with the consent of another person who has an absolute and unqualified discretion to withhold consent', which is consistent with personal performance.

On appeal, the EAT agreed with the Tribunal's analysis. On the facts, the Tribunal was right to find that there was no right of substitution, or, in the alternative, there was a limited right falling within the fifth category. SD Ltd appealed to the Court of Appeal on the question of A's right of substitution.

In dismissing the appeal, the Court of Appeal confirmed that the issue for a Tribunal is whether a claimant is under an obligation personally to perform the work or provide the services. It is to be noted that the categories identified in *Pimlico Plumbers Ltd* are a summary of the principles to be drawn from and not a rigid classification to be strictly followed. The Court of Appeal noted that, in any event, the Supreme Court had subsequently reviewed the correct approach to determining whether a person is a worker in some detail in *Uber BV and ors v Aslam and ors*.

### **In Conclusion**

Going forward, it is unlikely that a simple right to substitute another approved person will not be enough to avoid the definition of a worker where the person remains liable to perform the role if no alternate is found.

A limited right or ability to notify other employees/workers/sub-contractors that a person wishes to be released from an obligation will, in reality, be an insufficient right of substitution to remove from him that obligation to perform his work personally.

As always, this advice is general in nature and will need to be tailored to any one particular situation. As an RMI member you have access to the RMI Legal advice line, as well as a number of industry experts for your assistance. Should you find yourself in the situation above, contact us at any stage for advice and assistance as appropriate.

Motor Industry Legal Services

Motor Industry Legal Services (MILS Solicitors) 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.

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### 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/manufacturer 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](mailto:ed.buckley@rmif.co.uk).

