

SALES OF SPARES TO AMERICA - THE TROC POSITION EXPLAINED

By Roger Stone and John Bath

At our AGM on Sunday 21st March, an American member (for whom the meeting started at 4am - commendable commitment!) raised again the inability of TROC to sell spares in America or Canada. He had a positive suggestion for how we might achieve an improvement. This document lays out the background to this situation, records the actions we have taken, and the circumstances which constrain our attempts.

Firstly, we should be clear that the Club exists to support Razoredge owners everywhere, through community news in the newsletter, through social events and activities, through the sourcing and selling of spare parts, and through providing technical expertise and advice. Those are the aims of the Club in our constitution, and they apply to our members in the USA and Canada as much as to any other part of the world. That is what we aim to do.

In order to perform our spares function, the Club has formed a limited liability company, so that in addition to selling original Triumph spares which we have acquired over the years, we can have some parts re-manufactured to the original specifications, for sale to members. As with any organisation making and selling items, it is necessary for the Club to have Products Liability insurance, so that if any claim should be made involving an alleged fault with our items resulting in an accident causing third party injury (or damage to their property), then the claimant could be paid the award the courts decide is appropriate (or which might be agreed between the insurance company and the claimant).

Note that this award will not necessarily bear any relationship to the value of the item sold, and it may not even involve the person to whom we sold the item who would be making the claim. Many components of cars are safety-critical, and if one should fail, resulting in a car crashing, it is the people who might be injured, or other property which might be damaged, which could lead to a claim being lodged.

The likely size of claims (and therefore the amount of insurance required) varies around the world. Britain is relatively expensive in terms of possible claims: for serious injuries, (the most expensive involve loss of earnings, or injuries which will require long-term medical care) courts in the UK may award an appropriate amount to reflect that “future financial loss”.

Our “Policy indemnity limit” of £5M is generally regarded as a reasonable level for a voluntary organisation like a Car Club to be covered, as most claims will be less than this sum. That “indemnity limit” will represent the **maximum total payout by Insurers of all Products Liability claims** in any one insurance period for Insurers – then “we are on our own”. However legal defence costs are also covered **in addition** to that chosen Indemnity limit, which is a very helpful bonus.

But this “extra cover” would **not** apply for North American claims – the indemnity limit must be sufficient cover the Award (to the claimant) **AND** all legal defence costs as well. Note that this is a material **reduction in cover** effectively, as US lawyers are generally not poorly remunerated.

So how does this affect our sales of spare parts to members in other countries?

Our insurers will tend to quote us a premium which reflects the risk they are covering for us. These are set by historic UK levels of actual claims, and since in most of the rest of the world awards are likely to be in line or smaller than in the UK, (outside North America) they are able to cover these risks at “standard rates”. In North America, however, the situation is very different. It has a much more litigious culture: when accidents happen, it is much more likely that any injured party - or party who can claim to be injured - will claim.

The awards made by American courts are always going to be significantly higher than in the UK, so the premium will be correspondingly greater – and this should be borne in mind when we can only purchase the somewhat “inferior protection” as outlined above.

There is also the possibility of punitive damages being awarded - hopefully not, since we are not likely to be thought of as having deliberately or recklessly engineered any mishap, but stranger things have happened - and you cannot insure against punitive damages awards.

Because of this, when we have asked in the past about insurance cover for sales to the USA, the premiums demanded have been very high; I remember one quote at £7,000 above what we would have been paying for UK and rest-of-world cover excluding America and Canada. That is a figure which could not possibly be justified by likely sales of spares to American members, and was indeed about twice our total annual income from member subscriptions, at that time.

More recently, our current Insurance Brokers - Peter James - have been able to secure a quote at a much more reasonable figure for whole-world cover including USA, with legal defence costs... BUT. There's always a 'but'; in this case there are two, and they are deal-breakers.

The amount of excess which would be payable by TROC Ltd in the event of a claim under this policy would be £5000 *per claim including legal defence costs*. That's how their Insurers have been able to get the actual premium to an acceptable level. We know actual claims are perhaps unlikely, but having to provide for a suitable sum like that to be available, and bearing in mind that one accident could well result in two or three claims - it would hamstring our ability to use the spares fund for re-manufactures.

The second problem is that for insurance of this kind, you have to be insured at the time the item is sold - fair enough - but you must **also** be insured *at the time the accident that led to the claim (or allegation of a claim) actually occurs*. If we were to take out this insurance, and we sell items to American members this year, and in three or five years' time a crash happens, and a claim is made, we have to be still insured at that point, (and cough up our £5,000 excess for each claim) for our insurer then to defend the case, or come to a settlement.

This means that once we take out the insurance, we are in effect committed to keep up the insurance in order to remain protected - no matter what the level of premiums, and the amount of excess, might become in future years.

In the aftermath of Covid and the business consequences which are only beginning to work their way through the system, who can predict reliably what is going to happen to insurance premiums here, and awards in the USA? It would mean taking on an open-ended commitment, at a time of financial turbulence and unpredictability.

With regret, it's simply not on.

Is there no way around this?

It is often suggested that the American buyer could sign a waiver, declining any come-back on the Club. However, it wouldn't necessarily be the buyer of the parts who would be making a claim; if there is a crash and a third party is injured, they or their lawyers could still claim against the Club. Nothing signed by the American Razoredge owner could take away their right to pursue a settlement, so waivers just don't work.

If a private individual sells a part to someone in America - let's say you saw Kerry Carr's appeal for TDC push-button door handles in the February Globe, and you have some spare: can you help him out and obtain a few pounds in the process? Yes. As a private person who has something to sell - provided it's not prohibited goods like knives or guns - you can sell them, but you could still be held liable as an individual even if, unknown to you, a handle is faulty and someone gets hurt.

As a Club, we are more expected to have the expertise to know if our items are safe, and we take the responsibility.

The aim of US Courts is to make sure that a claimant is "financially indemnified" after an accident where they have been the "victim", sometimes in ways that might seem unfair to us, as evidenced by certain judgements made in certain high-profile cases involving, for example, motor vehicle accidents.

So could a UK member buy items from the club and sell them to an American Razoredge owner? If an American Razoredge owner (whether a Club member or not) contacted a UK member today and asked them to buy something for them and send it on - that still would not solve the potential supply problem.

American lawyers have been known to track the supply route of the alleged faulty part or product and it does not seem to cost much more for the claimant to sue all relevant parties where the potential award is

going to be large – for instance, a serious personal injury claim or death arising from an alleged faulty part. Therefore, you might well see a long list of defendants in such cases.

And at times leading up to US Courts' decisions, it is clear that there can be almost a "reverse onus of proof" demanded from defendants – the requirement to prove that you as supplier of the alleged faulty part were NOT responsible for the fault, a much more difficult hurdle to clear in reality.

Therefore TROC Ltd does not allow this practice: there can be no 'turning a blind eye' in order to circumvent our responsibilities. When we sell you items, Club to Member, it is expressly something for you and your car. We have to be careful to ensure this is the case. So there is no back-door work-around solution there without the possible risk of bringing you, the individual member as a "supplier" into the "chain of responsibility."

So, with genuine regret, we have to conclude reluctantly that the American legal system, and our small-club resources and finances, are incompatible.

The Way Forward

What our American member was suggesting at the AGM is that we could maintain a list of possible sources outside the Club which American members could turn to as alternative suppliers. The Historic Morgan Club, part of the Morgan Sports Car Club, does this, and it's what gave our American member the idea.

These sources might be the re-manufacturers we use to supply us; or parts intended for other cars which we know match the Standard/Triumph ones. This we can probably do, and the Club has taken up the suggestion and will see what is possible. It's not likely to lead to any huge breakthrough, and organisations like the Triumph Register in the USA probably already have information in this category - but if there is some way we can assist, we shall pursue it. Further information will follow in future newsletters, and on the website.

Ours is not an isolated case: having mentioned Morgan cars, we might point out that - despite the enormous attractions to Morgan of selling in the wealthy American car-loving marketplace - if you live in America, you cannot buy a new four-wheel Morgan. If it is over 25 years old, you can, because that makes it an historic vehicle; or if it's a three-wheeler, because the rules for trikes are different. But the whole American market is closed to mainstream Morgan sales, in this case not so much because of insurance, but because the homologation requirements are just too much for a car manufacturer of their size to cope with. And Morgan is a FAR larger concern than our little band of Razoredge enthusiasts.