



Automated Vehicles Bill – a briefing from the Association of Personal Injury Lawyers (APIL) – House of Commons committee stage – March 2024

Bill Esterson

NC5

To move the following Clause—

“Liability of insurers

Section 2 of the Automated and Electric Vehicles Act 2018 (liability of insurers etc where accident caused by automated vehicle) is amended as follows—

- (a) in subsection (1)(a), omit “when driving itself”;
- (b) in subsection (2)(a), omit “when driving itself”.

Member's explanatory statement

This new clause would remove the need for people to have to prove that an automated vehicle was “driving itself” if they make a legal claim for compensation under section 2 of the Automated and Electric Vehicles Act 2018.

Briefing: APIL supports NC5 tabled by Bill Esterson MP, which would remove the need for people to have to prove that an automated vehicle was “driving itself” if they have been injured and make a legal claim for compensation under Section 2 of the Automated and Electric Vehicles Act 2018. The requirement in the 2018 Act to have to prove that a vehicle was “driving itself” undermines the purpose of the provision, and risks making a legal claim for compensation more complicated, which is the exact opposite of what the provision is intended to achieve.

Section 2 of the 2018 Act allows people who are injured by an automated vehicle when it is “driving itself” to make a claim against the driver’s insurance. Without this provision, they would have to pursue a product liability claim against the manufacturer of the vehicle, and these claims can be costly and complex. If the Automated Vehicles Bill is passed by Parliament, this section will apply to automated vehicles if they are traveling while an authorised automation feature of the vehicle is engaged. To benefit from this provision, however, injured people would need to know, and prove, that an authorised automation feature was engaged, and the car was “driving itself” when the incident occurred.

Speaking at House of Lords committee stage of the Automated Vehicles Bill on January 15, transport minister Lord Davies of Gower said -

“The Automated and Electric Vehicles Act assigns the insurer first-instance liability in incidents caused by an automated vehicle that is driving itself. That means the victim is able to claim compensation from the relevant insurer whether there is an at-fault driver or whether the vehicle was in self-driving mode. A claim can be made in either case. The insurer can then determine whether that claim is covered by the conventional third-party insurance or the self-driving vehicle insurance.”¹

It would appear the Government envisages that it will only be for the defendant to investigate whether a vehicle was or was not “driving itself” when a claim is made. In a legal claim for compensation, however, the burden of proof is always on the claimant. Section 2 of the 2018 Act does not change that. To benefit from this provision as it is drafted, injured people would need to prove that an authorised automation feature was engaged, and the car was “driving itself.” This may not be easy, and could even be impossible.

It is unlikely, for example, that an injured pedestrian or cyclist would be aware at the time of the incident that the vehicle had an authorised automation feature engaged, or that the vehicle is even capable of “driving itself.” This would lead to additional investigations during a legal claim to find out in what mode the vehicle was being driven, which could make a legal claim complex, and delay the payment of compensation which an injured person may desperately need as they recover from the injuries sustained in the incident.

Injured people should not be expected just to rely on an investigation from an insurance company which has an immediate financial incentive not to pay compensation. It might simply be enough just for an insurance company to deny that the vehicle was “driving itself” or simply refuse to confirm either way, which could prevent an injured person from benefiting from the provision, and instead that injured person would have to prove that the driver’s negligence, and not the vehicle, caused the incident.

¹ [https://hansard.parliament.uk/Lords/2024-01-15/debates/D9150731-5A41-4143-86EB-73C3ADB7C075/AutomatedVehiclesBill\(HL\)](https://hansard.parliament.uk/Lords/2024-01-15/debates/D9150731-5A41-4143-86EB-73C3ADB7C075/AutomatedVehiclesBill(HL))

This undermines the very purpose of Section 2 of the 2018 Act, which was introduced after the Government recognised the complexity of claims against vehicle manufacturers. Speaking at second reading of that Act in 2017, the then transport minister, John Hayes, referred to these claims as “time-consuming and expensive, undermining the quick and easy access to compensation that is a cornerstone of our insurance system. Not tackling this problem risks jeopardising consumer protection and undermining the automotive industry’s competitiveness”².

If this new clause is added to the Bill, all an injured person or their solicitor would need to do to make a claim under Section 2 is to check if the vehicle involved in the incident is an authorised automated vehicle, providing a clear route to compensation.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has campaigned for the rights of victims of negligence for more than 30 years. Our vision is of a society without needless injury but, when people are injured, a society which offers the justice they need to rebuild their lives.

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² <https://hansard.parliament.uk/commons/2017-10-23/debates/BDAB60DC-D67C-44CF-B0CB-9FBE8DAE3F30/AutomatedAndElectricVehiclesBill#>