European Commission

Inception Impact Assessment: REFIT Review of the Motor Insurance Directive

A response by the Association of Personal Injury Lawyers

August 2017

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have over 3,500 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Alice Warren, Legal Policy Officer

APIL

Unit 3, Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

Tel: 0115 9435428; Fax: 0115 958 0885

e-mail: alice.warren@apil.org.uk

Introduction

APIL welcomes the opportunity to respond to the European Commission's Inception Impact Assessment on its REFIT review of the Motor Insurance Directive. We maintain that the Motor Insurance Directive should not be amended to narrow its scope, and that the case of *Vnuk* was properly and fairly decided. On the other areas focused on by the impact assessment, APIL believes that all Article 10 bodies should become the funder of last resort for cases where the insurer is insolvent. APIL also believes that the Motor Insurance Directive should provide that the minimum level of personal injury damages cover should be unlimited, not capped at a set level.

We have responded only to those questions which relate to, or will have an effect on injured people and their ability to bring compensation claims.

Guarantee funds

APIL believes that all "Article 10 bodies"[1] should become the funder of last resort in cases where the insurer is insolvent. At present, UK based insurers are covered by the Financial Services Authority should they become insolvent. In other jurisdictions, or where the accident has taken place in the UK but involving a foreign insurer, there may not be access to such a "fall back fund". Where the insurer is insolvent and all national compensatory options have been exhausted, there should be a requirement within the Directive that the Article 10 body deals with the claim. They should be required to do so within a set period of time, e.g. 3 months. If the body does pay out, the Article 10 body should then have a right to sue the insolvent insurer for any money that it can recover. We believe that this approach would be the most beneficial to injured people, and would avoid them being left unsure of how to proceed with their claim, and ultimately having to pursue a complicated contractual claim against the insolvent insurer.

Minimum amounts of cover

We accept that in property damage cases, it may be sensible to have differing minimum amounts of cover for certain vehicles – a truck will be more costly to repair than a small car, for example. Having different minimum levels of cover for different types of vehicle, however, makes no sense in terms of personal injury claims - a broken back is a broken back, regardless of how it was caused. We suggest that for personal injury claims, the standard set by the Road Traffic Act should be adopted within the Directive and thus required across all Member States, with insurance cover for personal injury claims being unlimited.

Scope of the directive

[1] Article 10 of the Motor Insurance Directive requires that each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in Article 3 has not been satisfied.

APIL reiterates its position from June 2016, that the scope of the Motor Insurance Directive should not be amended to the use of vehicles in the context of traffic. The wider interpretation of the Motor Insurance Directive following the ruling in Vnuk is vital to ensure that injured people are able to obtain the compensation that they need and are entitled to in a wide range of circumstances that prior to Vnuk, would have been unlawfully denied. We therefore support the baseline option, of leaving the scope of the Directive as clarified in the *Vnuk* judgment.

The need for a wider reading of the Directive

Limiting the scope of the directive only to accidents caused by motor vehicles in the context of traffic will result in the directive then being too narrow. As a result, it would no longer achieve its objectives of protecting the innocent from the actions of the negligent. It would remove from scope many situations where mechanically propelled vehicles which currently are not required to have compulsory insurance in domestic law are being used. A simple example is a mobility scooter in a shopping centre being driven recklessly or negligently, harming an innocent passer-by. With no requirement for the scooter to be insured, and with the Motor Insurance Bureau having no obligation to compensate in the absence of insurance, the injured person would – pre-*Vnuk*- have been denied access to compensation, which is clearly unjust.

There is no justification for a person in the circumstances of Vnuk not being entitled to damages. The case was decided correctly. Mr Vnuk was knocked off a ladder by a trailer attached to a tractor which was crossing a farmyard. The fact that this was on private land, or that the court held that the tractor was being used as a "machine or propulsion" device rather than a means of transport does not mean that Mr Vnuk was any less injured or any less entitled to compensation for his injuries. The outcome of Vnuk was fair, and the decision ensures that the directive is interpreted to provide a route to redress for a wider range of injured people who despite being deserving of compensation, may previously have been denied a claim due to the circumstances in which they were injured.

The effect of the Vnuk ruling is that the "use of vehicles" in the directive covers any use of a motor vehicle that is consistent with the normal function of that vehicle. The ruling that there is no difference between private and public properties in terms of the obligation for insurance cover is very important for many injured people. It also means that a broader range of vehicles must be covered by compulsory insurance, so that innocent victims can claim compensation. There is no justification for vehicles that can cause very significant harm to be driven without insurance. In the event that there is no insurance, the Member State's guarantee fund (in the case of the UK the Motor Insurers Bureau) must compensate. If compulsory insurance requirements are properly enforced, there should be no more call on the MIB for indemnity than at present.

Case studies demonstrating the usefulness of Vnuk

Despite a Department for Transport consultation on the issue taking place in April 2017, the wider reading of the Motor Insurance Directive has not yet been transposed into domestic law in the UK. The Road Traffic Act 1988 still only extends the requirement for compulsory motor insurance to the use of motor vehicles on a road or other public place. This needs to be

amended to delete references to “road or other public place”. The decision in *Vnuk* plays an important role in ensuring that those who are injured through no fault of their own and are entitled to compensation can access this compensation, in situations where pre-*Vnuk* they would have been unable to do so. If there is no insurance in place, the wider definition of vehicle set out in *Vnuk* means that the Motor Insurers Bureau is required to indemnify. This is recognised by the MIB, as claimants have been successful in raising *Vnuk* in cases against the Motor Insurers Bureau – as set out in the examples below.

The failure of the UK Government to as yet amend the Road Traffic Act in line with the Directive opens up the risk of claimants bringing *Francovich*[2] damages claims against the state, if their claim against the MIB is unsuccessful. It would be far simpler and less costly for the UK Government to properly implement the directive, to widen the requirement for compulsory insurance in the Road Traffic Act to mirror the unamended Directive.

Even where the directive has not been properly implemented, the existence of the *Vnuk* ruling helps to provide damages for claimants in situations where they would previously have been denied the compensation that they need and deserve.

Horse rider knocked down by off-road motor bike

One example is a horse rider who was thrown from a horse when a motorcyclist rode too close to her on a bridleway. The horse bolted and the claimant fell, sustaining a broken ankle. The MIB rejected the application as they did not consider that the accident had been caused by the use of a motor vehicle on a public road, as the motor bike was being ridden off road it was not likely to be a road bike that would otherwise require a policy of Road Traffic Act insurance to be in place. The solicitors in the case submitted that the Vnuk judgment extends the MIB’s liability to victims of incidents involving all vehicles, provided that they are being used in a manner consistent with their normal function and as a means of travel. The bike was a vehicle for the purposes of Directive 72/166 1(1), and it should be covered by a policy of compulsory motor insurance. As such, the MIB should be liable to pay the applicant compensation. The case was accepted by the MIB prior to referral to the arbitrator. It was unclear how much emphasis was applied to the Vnuk judgment in the final decision, but it was encouraging that the appeal was successful when referencing the judgment. The claimant received £12,000 in damages for pain, suffering and loss of amenity which, in the absence of the Vnuk decision, they would have been denied.

Off Road fatal accident

Case study provided by Gordon Dalyell, Partner at Digby Brown LLP, Edinburgh

Digby Brown represented the family of a deceased young man killed in a Road Traffic Accident on the grounds of a large estate in the North West of Scotland.

While driving at excess speed, the driver of the car collided with an electrical pole. The collision caused the pole to fall onto the car, electrocuting the client. He was in his mid-twenties and had

[2] C-6/90

a promising career as both a semi-professional footballer and as an accountant. It was established that the driver of the vehicle was liable.

The first defender was, however, uninsured. He and the deceased had been participating in off-road driving which was hosted by the estate once a month. With the driver not insured and not in a position to pay any award of damages himself, the case was dependent upon whether or not the Motor Insurers Bureau (MIB) and Insured Drivers Agreement would apply in the circumstances and allow the family of the deceased to make a claim for damages.

It was dependent upon whether or not the vehicle driven by the first defender at the time could be considered a motor vehicle within the terms of the Road Traffic Act 1988. It also depended on whether the locus of the accident could be considered a "road" within the terms of the Act.

Interviews were carried out with Police Officers, crash scene investigators, witnesses, local residents and the owners and managers of the estate where the incident occurred. The principal aim was to establish whether the road where the crash occurred was one accessible by the public and whether the car the first defender was driving was one which should have been insured under the relevant legislation (it was argued by the MIB that as a modified vehicle used for off road driving it was not).

At the centre of this case were a family who having lost a much loved family member were having to pursue damages some years after the event.

Senior and Junior Counsel were instructed to research and prepare detailed arguments that the MIB was liable to pay damages as the road was one with public access, was one that was used and accessed by vehicles and pedestrians. As such, cars being driven on it were required to be insured. The first defender having no insurance at the time of the accident, the Insured Drivers Agreement applied and the MIB were liable. The *Vnuk* decision was instrumental in constructing this argument.

Crucially, Digby Brown was able to persuade the MIB that the road and vehicle both met the conditions for them to be liable to pay damages. Quantum was agreed at a total of £500,000 across the respective claims with the case being settled without the need for the pursuers to go through a court hearing

APIL believes that the reading of the Directive following Vnuk is not overly onerous

Fears that *Vnuk* means that the Motor Insurance Directive is now interpreted too broadly are unfounded. In situations where there is already other insurance in place – for example employers' liability insurance to cover those injured at work on a construction site, we accept that there is no need for the Motor Insurance Directive to be interpreted to allow a claim in these circumstances.

As pointed out in our response to the UK Government's consultation on amending the Road Traffic Act following the *Vnuk* case, the power to derogate certain vehicles from the scope of the directive has been available to Member States since Article 4 of the First Motor Insurance Directive in 1972. Any overly onerous consequences of the wider scope of the directive (such

as a requirement to insure ride on lawn mowers) could be removed by providing for certain vehicles that do not present a risk of causing harm to be exempt from the requirement of compulsory insurance. APIL does caution, however, that the UK Government must carefully decide the list of factors to consider when determining whether vehicles qualify for a derogation. APIL believes that the maximum speed and weight of a vehicle must be taken into account, as well as whether a vehicle is used in a public place. A ride on lawn mower with a low speed and weight only ridden in private should not require insurance, but a mobility scooter (which is perhaps on the borderline of the maximum speed and weight requirements) driven in a public place must have insurance.

Driverless cars

The inception impact assessment states that the REFIT review exercise will focus on, amongst other things, the suitability of the Directive in the light of technological developments (electric bicycles, segways, semi-automated or automated vehicles), and on whether the liability system it provides will suit future needs.

APIL has previously commented on the Motor Insurance Directive's suitability for driverless cars. We reiterate here that unamended, the Motor Insurance Directive is suitable to cope with technological advances such as driverless cars, and the requirement for compulsory insurance extends to this. Following *Vnuk,* the concept of use of vehicles means any use consistent with the normal function of that vehicle. Automated and driverless vehicles would fall within this scope. We append our response to the Centre for Connected and Autonomous Vehicles consultation on driverless vehicles, for consideration by the European Commission on this point.

- Ends -

Association of Personal Injury Lawyers

3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

● T: 0115 958 0585 ● W: www.apil.org.uk● E: mail@apil.org.uk

APPENDIX 1 – APIL RESPONSE TO CCAV CONSULTATION ON DRIVERLESS CARS

Centre for Connected and Autonomous Vehicles

Pathway to Driverless Cars: Proposals to support advanced driver assistance systems and automated vehicle technologies

A response by the Association of Personal Injury Lawyers

September 2016

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a 20-year history of working to help injured people gain access to justice they need and deserve. We have over 3,500 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

Alice Warren, Legal Policy Officer

APIL

Unit 3, Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

Tel: 0115 9435428; Fax: 0115 958 0885

e-mail: alice.warren@apil.org.uk

Introduction

APIL welcomes this consultation. It is extremely important that there is insurance provision in place to compensate those involved in an accident caused by a "driverless" or partially automated car. Section 145 of the Road Traffic Act 1988 should, however, already provide that these cars are covered by compulsory motor insurance. There is no need to add a costly "bolt-on" to compulsory insurance in the form of a product liability policy.

APIL is an organisation campaigning for full and just compensation for injured people, and as such has responded only to those questions that fall within this remit.

Executive Summary

- It is necessary to amend Part 6 of the Road Traffic Act 1988, not to extend it to cover product liability, but to make clear that partially or fully automated cars are covered by compulsory motor insurance. The Road Traffic Act 1988 provides that there must be insurance in place for any liability arising out of the use of the vehicle on a road in Great Britain. "Vehicle" is defined in s 185 as "a mechanically propelled vehicle intended or adapted for use on a road". There is no reason that automated/driverless cars will not fit into this scope. Further, following the CJEU's decision in *Vnuk*[3], compulsory cover for driverless cars will definitely be required under the Motor Insurance Directive and the Road Traffic Act should be amended to make this clear, as the Road Traffic Act should implement the Motor Insurance Directive into domestic law.
- We agree that the Road Traffic Act should be amended to require compulsory motor insurance to cover cases where the driver themselves has been injured by the automated vehicle.
- In terms of liability, the injured party should not be required to bring a claim using product liability law. Product liability law can be extremely complex, requiring substantial resources to investigate and challenge any defences brought. It would be disproportionately costly for the claimant to have to bring a claim under the Consumer Protection Act 1987 if the injury arising is a "low value" injury.
- We suggest that the injured party should instead bring a claim under their motor insurance policy and the insurer should pay out on a strict liability basis. If the insurer then wishes to recoup back their costs from the negligent manufacturer, they can do so. The situation should mirror the Employers' Liability (Defective Equipment) Act 1969.

Q2A) Do you agree with the proposition to amend road vehicle compulsory insurance primary legislation in Part 6 of the Road Traffic Act 1988 to include product liability for automated vehicles?

We do not agree with the proposition to "extend the compulsory insurance requirements for automated vehicles so that the owner must also ensure that there is an insurance policy in place that covers the manufacturers' and other entities' product liability". Instead, Part 6 of the Road Traffic Act should be amended to make clear that accidents involving automated cars are covered by compulsory motor insurance.

[3] C-162/13

Automated vehicles should already be covered by motor insurance policies without the need for additional product liability insurance. “Vehicle” is defined in s 185 of the Road Traffic Act as “a mechanically propelled vehicle intended or adapted for use on a road”. There is no reason that automated/driverless cars will not fit into this scope. Further, section 145(3)(a) of the Road Traffic Act 1988 states that the policy “must insure such person…in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person or damage to property caused by, or arising out of, the use of the vehicle on a road in Great Britain”. Automated and driverless cars will fall into this category. Indeed, there are already cars on the road with self-parking and ABS technology, and compulsory product liability cover has not been required for these. Earlier this year, it was reported that a company[4] had launched what it believed to be the UK’s first personal driverless car insurance policy, aimed at customers who already have driverless features such as ABS and/or self-parking. Customers are covered for loss or damage in the case of failure to install vehicle software updates and security patches subject to an increased policy excess, satellite failure, failure of the manufacturers vehicle operating system, or loss or damage if the car gets hacked. We see no reason why other insurers cannot offer policies in a similar vein.

For the avoidance of doubt, there should be an amendment to the Road Traffic Act to make it clear that driverless/automated cars do fall within the scope of s 145. The claimant should be able to bring a claim using their normal policy – there is no need for an additional product liability policy.

Motor Insurance Directive

Further, following the CJEU ruling in *Vnuk,* the Motor Insurance Directive 2009/103, which the Road Traffic Act 1988 is intended to implement into domestic law, requires any use consistent with the normal function of the vehicle to be covered by insurance. Automated and driverless cars would fall within this scope, and require compulsory motor insurance in accordance with the directive. The Road Traffic Act does not properly implement the Directive at present, and should be amended to make clear that these cars are covered by the requirement to have compulsory motor insurance in the Act.

Similarly, at 2.12, the paper states that the MIB’s liability should be extended to provide cover for these cases. The MIB is already liable as the UK’s authorised article 10 compensating body to compensate for any uninsured or unidentified mechanically propelled vehicle intended for travel on land. This means that the MIB is already liable for any uninsured vehicle that ought to be insured under article 3 of the Motor Insurance Directive, and as above, this will include automated/driverless vehicles. The claimant should be able to claim using their normal policy, and in the normal way claim against the MIB, should the defendant be uninsured. The insurer and MIB should then have full rights to recover from those who are genuinely at fault - in some cases, this will be the manufacturer of the car.

Liability

Insurance cover does not need to be extended to product liability. This would unnecessarily complicate the process for the claimant, and for affected individuals the insurance process will not feel “much the same” as it does now – something the Government is keen to achieve

[4] https://www.theguardian.com/business/2016/jun/07/uk-driverless-car-insurance-policy-adrian-flux

according to Roads Minister Andrew Jones MP, speaking about the proposed changes in May this year[5].

We suggest that in circumstances where the accident involves a car with automated technology, the injured party should bring a claim against the motor insurer in the usual way, and be compensated under the normal car insurance policy on a strict liability basis. It will then be up to the well-resourced insurer to recoup damages from the manufacturer in the relevant circumstances. We suggest that the model should mirror the Employers' Liability (Defective Equipment) Act 1969, which provides that there is strict liability on the employer to compensate the employee where they are injured as a result of defective equipment, and then the employer can claim against the manufacturer - "Where…an employee suffers personal injury in the course of his employment in consequence of a defect in equipment provided by his employer for the purpose of the employer's business; and the defect is attributable wholly or partly to the fault of a third party…the injury shall be deemed to be also attributable to negligence on the part of the employer…without prejudice to the law relating to contributory negligence and to any remedy by way of contribution which is available to the employer in respect of the injury".

This process is far preferable to a separate product liability policy which would require a claimant to bring their claim under the Consumer Protection Act 1987 against the manufacturer. Although this act provides for strict liability on the manufacturer, there is still the requirement to prove that the product was defective. There are also limitation period issues as a claim cannot be made under the CPA more than ten years after the product was put in circulation, and cars regularly exceed that age. It is also likely that the manufacturer will be out of the UK and also have a foreign insurer, which will present additional difficulties in recovering damages for the claimant. This area of the law can be complex and requires substantial resources to investigate and challenge the defences brought. It would be disproportionately costly for the claimant to have to bring a claim under the Consumer Protection Act 1987 if the injury arising is, for example, a "low value" injury. The onus should not be on the driver of the car to have an additional product liability policy, their motor policy should cover them, and it should then be up to the insurance company, with the resources to do so, to then recoup costs from the at fault manufacturer.

Not at fault automated vehicle driver
We agree that injuries suffered by the not at fault automated vehicle driver should be covered by the car insurance policy. An amendment to the Road Traffic Act 1988 will be necessary to reflect this.

Q2B) What, if any other changes to the insurance framework should be considered to support use of automated vehicle technologies, and why?

As above, vehicles with automated technology should already be covered by the Road Traffic Act, and there is no need for a "bolt on" product liability policy. The insurance framework needs to be amended to make this clear, and whilst the Road Traffic Act is under review, it should be amended to bring it fully in line with the ruling in *Vnuk.* This may mean that Part VI of the Road Traffic Act 1988 should be repealed and the provisions instead be codified in the Modern Transport Bill, along with the MIB Agreements. This should result in a shorter, simpler, clearer and fairer provision that fully satisfies the rule of law principles. There is a need for certainty and clarity above all else.

Q2C – Q2G – Insurance Costs

[5] https://www.gov.uk/government/speeches/driverless-cars-are-the-future-not-science-fiction

We are not placed to answer these questions in any detail, but wish to point out that as the technology is intended to make roads safer, it follows that there will be fewer claims, and so there should be a reduction in insurance premiums.

Q2H) Do you agree that where a driver attempts to circumvent the automated vehicle technology, or fails to maintain the automated vehicle technology, the insurer should be able to exclude liability to the driver but not to any third parties who are injured as a result?

We agree. This situation mirrors the current law, for example where the driver does not have an MOT. Insurers in these circumstances still have an obligation to third parties involved in the accident, and this should also be the case where the driver has attempted to circumvent the automated technology or fails to maintain it properly.

Q2I) Do you agree that in the event of 3rd party hacking of an automated vehicle, an insurer should not be able to exclude liability, as set out in the Consultation Document?

We agree. There have already been incidents of hacking of automated cars, and we are pleased that the Government is alive to this issue. Insurers should not be able to exclude liability in these circumstances.

Q2J) Do you agree that the product liability and insurance requirements for automated vehicles should:

- **Follow the normal rules on product liability with different rules depending on whether the injured party was an individual or a company?**

This question is outside of our remit as it relates to property damage only.

- **Be limited by the "state of the art" defence?**

As above, we do not believe these claims should be dealt with under product liability law, and the "state of the art" defence is another demonstration of the unsuitability of this area to deal with these claims. The "state of the art" defence contained in section 4(1)(e) of the Consumer Protection Act 1987 is akin to a test of foreseeability; in that it seeks to ensure that manufacturers of products are not liable for defects that they could not have been aware of when the product was under their control. To remove this as a defence in claims arising from the use of automated vehicles is likely to place the manufacturers of these vehicles at a considerable disadvantage as it would impose liability upon them for defects in their products that they could not have foreseen and creates a risk that they themselves would not be able to insure against.

Instead, if these claims are dealt with under motor insurance policies, motor insurers should not be able to refuse to honour claims on the basis of this defence. The issues arising as part of this defence are often complex and require substantial resources to investigate and challenge. Allowing motor insurers to raise this defence in a claim brought against them under an insurance policy would place an overly onerous burden upon a consumer.

Q2K) Alternatively, should we extend insurance/liability rules specifically for automated vehicles?

A distinction must be drawn between a claim arising from a defect in an automated vehicle which is brought under the Consumer Protection Act 1987 against a manufacturer, and a claim made under a motor insurance policy which includes cover for product liability (which, for the reasons set out above, the Road Traffic Act should already provide in accordance with the Motor Insurance Directive, with no need to provide for an additional "bolt on" policy). A claim made under a motor insurance policy will ensure that all victims of road traffic accidents are adequately protected, and thus encourage consumer and business confidence in this emerging technology.

There is simply no need to amend the current law on product liability. To do so would place an unfair burden on the manufacturers of automated vehicles (of a type not borne by other technology manufacturers) and discourage valuable investment. It is also likely to discourage smaller manufacturers from bringing products to market and thus negatively impact on consumer choice.

Q2L) Do you agree with the proposal that, with respect to automated vehicles, the public sector can continue to self-insure but, where they choose to self-insure, they would then be required to step into the insurer's position in respect of product liability damages?

Again, these claims should be dealt with as described above, and not under product liability law. Therefore the public sector should continue to self-insure, and should step into the insurer's position, as is the case currently, for any claims involving automated vehicles.

Q2M) Do you agree that an alternative first party model option would not be proportionate while automated vehicles represent a small proportion of the fleet?

A first party insurance model would be an ill-considered approach. Whilst motor insurance often includes first party cover (as with the comprehensive motor cover or with legal expenses insurance) first party cover policies are primarily contractual arrangements that result in the compensation being paid to the policy holder. They are not subject to the consumer protection that applies to third party policies, usually conferring no rights on third parties so they are neither caught by the Contracts Act 1999, nor does the insurers statutory duty under s 151 Road Traffic Act 1988 apply. There is also no insolvency protection within the Third Parties (Rights Against Insurers) Act 2010.

Again, we suggest as above that normal compulsory motor insurance should cover these cars, and then in the event of an accident, the injured party claims against the insurer, who then recovers from the manufacturer where they need to – mirroring the Employers Liability (Defective Equipment) Act 1969.

Highway Code and Construction and Use Regulations

We believe that the majority of the suggested amendments to the Highway Code are sensible and fit very well with what the Government is trying to achieve. We have several additional comments, as set out below:

3B – allowing platooning by relaxing Highway Code rule 126

There should be further clarification as to whether this provision applies only to motorways, or to all roads where pedestrians and cyclists may frequent. We strongly suggest that this

should only apply to motorways. We also query how long the proposed platoons are going to be, and suggest that a maximum length should be enshrined into the Highway Code.

3F – allowing drivers to view TV/display screens displaying information that is not related to the driving task, while driving

With technology as it currently stands, there should be no encouragement to stop people from having the responsibility for concentrating on what is going on, on the road. The relaxation of this rule should only occur when there is a highest level of automation and evidence has proven that the technology is reliable and does not require human intervention. In any other circumstances, the person should be required to be able to take back control of the car at any time, and they will be unable to do so if they are looking elsewhere.

- Ends -

Association of Personal Injury Lawyers

3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX

● T: 0115 958 0585 ● W: www.apil.org.uk● E: mail@apil.org.uk