

Automated Vehicles Team
Law Commission
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21 January 2020

By email only: automatedvehicles@lawcommission.gov.uk

Dear Sirs

Automated Vehicles: Consultation Paper 2 on Passenger Services and Public Transport

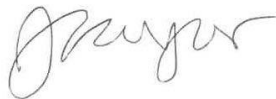
We are writing to you in relation to the joint Law Commissions' review on automated vehicles. Our main concern in the area of automated vehicles continues to be that the Automated and Electric Vehicles Act 2018 does not provide for strict liability in cases where vehicles have partial automation. Section 8(1) of the Automated and Electric Vehicles Act 2018 states that a vehicle is "driving itself" if it is operating in a mode in which it is not being controlled, and does not need to be monitored, by an individual. As drafted, therefore, the Act does not provide for the strict liability provisions to apply to cars currently on the roads that feature partial automation and which need to be monitored whilst in an automated mode. Partial automation in cars – such as autopilot or traffic adaptive cruise control - is becoming increasingly common, and will only grow in popularity in the coming years. However, if a person is injured by one of those cars whilst it is operating in automated mode, the person will not be able to bring a claim against the motor insurer. They will instead have no choice but to pursue a costly and complex product liability claim against the manufacturer of the automated technology. Product liability claims under the Consumer Protection Act 1987 are hugely complex. Substantial resources are required to investigate and challenge the defences raised by the defendant under the Act. If people injured by vehicles that are partially automated are unable to bring claims under the strict liability regime in the 2018 Act, it is likely that any lower value claims will be deemed disproportionately costly to pursue – creating a barrier to access to justice.

The advent of new car technologies is a major challenge to civil justice. While the Act provides a welcome solution for the future, there are estimates to suggest that automated cars requiring no monitoring will take a further ten years to be approved for use on the roads. It is vital that amendments are made to the Act to ensure that those injured by cars being driven on the roads *now*, which have aspects of automation, are sufficiently protected. We suggest that the scope of the 2018 Act must be broadened, to take account of all vehicles with automated features, including those where there must be a human monitoring the vehicle in automated mode.

In relation to the current consultation on HARPS¹, Passenger Services and Public Transport, we note that it is proposed that the legislation should state that HARPS operators should ensure that vehicles are adequately supervised, and that for passenger only vehicles not operated by HARPS, there should be a regulation making power to require registered keepers to have in place a contract for supervision and maintenance. It is set out at paragraph 4.14 that supervision is different to monitoring, as it relates to dealing with problems after the vehicle has achieved a minimal risk condition – for example the vehicle has brought itself to a stop to remain safe, but is then blocking traffic. While we welcome that these vehicles will be supervised, we are concerned that, because of the way the Act is currently drafted, there may be – at the very least – a risk of satellite litigation, with insurers arguing that strict liability does not apply because the vehicle is being supervised, which is equal to the vehicle being monitored.

We hope that our comments prove useful to you.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Alice Taylor', written in a cursive style.

Alice Taylor

Legal Policy Officer

¹ Highly Automated Road Passenger Service