

Law Commission and Scottish Law Commission

Automated Vehicles: Consultation Paper 3 –

A regulatory framework for automated vehicles

A response by the Association of Personal Injury Lawyers

March 2021



Introduction

APIL welcomes the opportunity to respond to the Joint Law Commissions' third consultation paper on the regulatory framework for automated vehicles having responded to the previous two papers. The top five causes of road traffic collisions occur as a result of human error¹. Given the part human error plays in the road traffic collisions, APIL supports automation of vehicles and believes innovation will improve road safety in the longer term. We are concerned by the underlying assumption in this paper that having a human in charge of the driving task is inherently safer.

APIL is concerned that an additional set of UK national standards might inhibit automation innovation by over regulating. Additional UK National standards are not strictly necessary when UNECE already have automated vehicle standards and regulations in place which are applicable to those who are UNECE members, including the UK. Double regulations will make it more challenging for innovation to flourish, which in turn will fail to improve road safety and reduce deaths and serious injuries which occur on UK roads at present. APIL is also keen to see a Regulatory environment which facilitates the marketing of autonomous vehicles due to the benefits to be gained from such vehicles in promoting independent living and mobility for disabled people.

Although the Automated and Electric Vehicle Act 2018 (AEVA) is a small step in the right direction in terms of civil liability, there has been no benefit actually delivered by the legislation thus far due to no automated vehicles being listed. S.2 of the AEVA introduces strict liability, meaning that a person who has been injured as a result of a collision with an automated vehicle can recover their losses from the motor insurer without needing to prove fault on the part of the driver. However, as currently worded this provision will only be available for vehicles being driven fully autonomously.

This will force those injured by partially automated vehicles, or automated vehicles not being driven autonomously such as the ALKS, to pursue complex and costly product liability claims under the Consumer Protection Act 1987. The danger is that many road traffic claims will become product liability claims, such claims are complex and costly. There will be new legal issues as to whether the s.2 liability applies or whether the vehicle was not being driven autonomously at the time of the collision. If these problems are not addressed, there will be a huge impact on the rights of individuals being able to claim compensation for their injuries where they are involved in a road traffic collision that is not their fault. It would also be disproportionately costly for claimants to pursue "low value" claims, impeding access to justice. APIL is concerned that there is a lack of acknowledgement of the difficulties that product liability claims cause to claimants and will be a real detriment to those who are injured through no fault of their own. No consideration has been given to the position of the injured Claimant in the likely event that the whole of product liability law is not separately

¹ <https://www.regtransfers.co.uk/content/common-causes-for-road-accidents-in-britain>

reviewed. APIL considers it is very unlikely that the whole of product liability law will be reviewed as the Consultation suggested.

APIL contends the strict liability regimen of s.2 of the 2018 Act should be extended so that it applies to all vehicles with automated features and whether or not they were being used at the time of the collision. This will save a lot of costs in litigation which otherwise will be incurred and be inefficient. The advent of automated vehicles is an opportunity to make the entire system of legal address for motor vehicles simpler, quicker and more efficient.

APIL has responded to the questions and parts of the questions within its remit.

Q1. We provisionally propose that:

- 1) A vehicle should not be classified as self-driving if, with the ADS engaged, the user-in-charge needs to monitor the driving environment, the vehicle of the way it drives;**
- 2) It is nevertheless compatible with self-driving to require the user-in-charge to respond to a clear and timely transition demand which:**
 - (a) Cuts out any non-driving related screen use;**
 - (b) Provides clear visual, audio and haptic signals; and**
 - (c) Gives sufficient time to gain situational awareness;**
- 3) To be classified as self-driving, the vehicle must be safe enough even if the human user does not intervene in response to any event except a clear and timely transition demand.**

Do you agree?

APIL does not agree that in order to be classified as self-driving there should be no monitoring involved and the vehicle should be fully autonomous. This would mean that partially automated vehicles such as the ALKS would not be classified as self-driving, despite the fact the vehicle is capable of driving itself and the user-in-charge is not involved in the driving task when the ADS is engaged. In addition, this means that a claimant injured by a vehicle capable of self-driving would not benefit from s.2 AEVA and would be forced to pursue a costly and complex product liability claim.

As mentioned, it is crucial that those injured through no fault of their own are able to access vital compensation for the injuries sustained, and other losses resulting from the accident. Forcing an injured person to pursue often unviable product liability claims is unjust. There are a large proportion of vehicles which currently and will, in the near future, be capable of self-driving in some form. Therefore, a large number of claimants who may have sustained serious and/or life changing injuries will not be able to access funds that they require to lead a reasonable life.

APIL strongly suggests that the classification of self-driving should be amended. A vehicle should be classified as self-driving if the vehicle is *capable* of being self-driven. If it is capable of driving itself then it should be assumed that it is driving itself when the collision occurs. The defendant/driver/user-in-charge should have to prove otherwise. This would place the burden of proof on the defendant and ensure that injured claimants can benefit from s.2 AEVA rather than being forced to pursue a product liability claim.

APIL suggests that regardless of the time it takes an individual to gain situational awareness following a transition demand, the vehicle should be classed as self-driving. As explored in the consultation document, a driver's ability to gain situational awareness is subjective. One

person may take 10 seconds, whilst another may take up to 1 minute. It is therefore important that this is taken into consideration and that s.2 AEVA should cover the fact that a driver may not be fully situationally aware after taking control of the vehicle following a transition demand.

Q2. We welcome views on whether self-driving features should be designed to ensure that they can be used by people with hearing loss.

Self-driving features should be designed to ensure that people with hearing loss or other disabilities are able to use an automated system. Features such as haptic signals or screen cues should be standard features rather than being available through adaptations. This will help promote the equality of disabled people in society, and accords with the public sector equality duty under section 149 of the Equality Act 2010.

Q3. We provisionally propose that the decision whether a vehicle is sufficiently safe to “safely drive itself” should be made by the Secretary of State, as informed by advice from a specialist regulator.

Do you agree?

It is crucial, especially at the outset of these regulations and introduction of automated vehicles, that someone is held accountable for decisions on whether a vehicle is sufficiently safe to “safely drive itself”. It is important that the person making the decisions bases those decisions on objective safety criteria rather than political criteria. There should therefore be a positive duty on the decision maker to promote safety. They should be under a statutory duty to foster innovation to reduce road traffic collisions by eliminating human error and promoting the use of technology to reduce road traffic casualties. The specialist regulator advising the decision maker should also be under a duty to promote safety using objective safety criteria. This would ensure that safety underpins decisions and both independent regulator and the decision maker are held accountable for any problems based on their decision or advice.

Q4. We welcome observations on which of the following standards is most appropriate when assessing the safety of automated vehicles:

- (a) As safe as a competent and careful human driver;**
- (b) As safe as a human driver who does not cause a fault accident;**
- (c) Overall, safer than the average human driver.**

“Overall, safer than the average human driver” is the most appropriate standard to assess the safety of automated vehicles. The objective should be to improve the standard of safety that current applies. It will also be useful in demonstrating to the public, who will initially be cautious of the safety of automation, how beneficial automation will be in improving safety for road users by reducing human error. Implementing a higher standard than this will inhibit innovation and therefore fail to reduce collisions caused by human error.

Q9. We provisionally propose that:

- (1) Unauthorised automated driving systems should be prohibited; and**

(2) This should be subject to an exemption procedure by which the Secretary of State may authorise unauthorised systems to be used in tests and trials.

Do you agree?

APIL is concerned that prohibiting unauthorised automated driving systems (ADSs) would be taking a step backwards in improving road safety. Automated vehicles are already available and being used on UK roads and it may not be beneficial to prohibit their use until they are all authorised as this will take time. APIL's view is that there is no need to require a British regulator to re-authorise the vehicle when it is already in use in the UK. Regulators cannot keep up with the rate at which technology is developing currently, this provision will only delay innovation further and fail to improve road safety in the meantime. There needs to be a more streamlined process and approach to authorise ADSs so innovation is not inhibited and people can continue to use their unauthorised ADSs on UK roads.

Q14. We provisionally propose that a new legislative framework should provide regulation-making powers to specify:

- (a) Who should assess whether a vehicle is capable of self-driving;**
- (b) The procedure for doing so; and**
- (c) Criteria for doing so.**

Do you agree?

APIL agrees that the new legislative framework should provide regulation-making powers to specify who assesses the vehicles, the procedure and criteria. However, APIL is concerned that these regulations are not strictly necessary due to the UNECE regulations and may inadvertently inhibit the elimination of injuries from road traffic collisions due to placing additional barriers to the adoption of new technologies.

Q16. We seek views on whether the regulator that classifies vehicles as self-driving should have power to allow their deployment in limited numbers, so as to gather further data on their safety in real world conditions.

APIL agrees with the power to allow self-driving vehicle deployment in limited numbers in order to gather data on their safety in real world conditions. Regulators should do everything to promote the new technologies due to the potential to be gained - fewer road traffic casualties - and make sure any Regulations are justified and necessary.

Q17. We provisionally propose that legislation should establish a scheme to assure the safety of automated driving systems following deployment, giving scheme regulators enhanced responsibilities and powers.

Do you agree?

From a safety perspective, APIL deems this to be a positive proposal. Regulators should implement this in a way to foster and support new technologies rather than create barriers to innovation.

Q18. We provisionally propose that the enhanced scheme should give regulators the following responsibilities and powers:

- (3) Regulators should have power to require an ADSE:**
- (a) To update software where an update is needed to ensure safety and continued compliance with the law;**
 - (b) To keep maps up-to-date, where an AV relies on maps to ensure safety and compliance with the law;**
 - (c) To communicate information about an ADS to users in a clear and effective way, including where necessary through training.**

Do you agree?

APIL has concerns regarding how practical these proposals are. With reference to (3)(a) of this question, it seems impractical for the UK regulator to maintain a large number of software engineers at the level required to be able to safely require a specific update of proprietary software applications in all of a manufacturer's vehicles. Manufacturers currently publish over the air updates on a regular basis and therefore it is doubtful that in practice the UK Government is likely to have the resources or technical expertise in highly sophisticated proprietary systems to safely undertake this function for all global vehicle manufacturers. If all national Regulators attempted to do this, it is difficult to see that it would be workable.

However, APIL does not object to the UK regulator having the power to require a manufacturer to deal with an ongoing issue with an AV where it is necessary to ensure safety. The regulator should have legal power to de-authorise vehicles or require a recall of vehicles where there are ongoing issues which the manufacturers have failed to address. This is a system which is common when issues arise in normal vehicles, the manufacturer recalls the vehicles to assess and deal with the problem.

The UK regulator should have the power to require an ADSE to communicate information about an ADS to users in a clear, effective way. As mentioned in APIL's response² to the ALKS consultation, a central, single, system of hands-on driver training may be impractical due to variations between manufacturers and the pace of change. AVs are sometimes purchased online with no engagement with a traditional car dealership. In addition, the rate at which the software required updating, any training can quickly become out of date. Manufacturers of AVs and the Government and its agencies have a joint responsibility to provide clear information to users. This is crucial in light of the impracticality of physical training and/or simulations and to ensure safety. APIL suggests that information on the ADS should be provided in the owner's manual and through other tools such as videos on how the system operates and its limitations.

If software updates automatically, it is crucial that a user is aware that the vehicle may react differently to the way it did previously. Software updates should be accompanied by information for the driver to educate themselves on potential differences they may experience as a result of an update.

Q20. Should the authority administering the scheme to assure safety while automated vehicles are in use be kept separate from type approval authorities (as is already the case)? Alternatively, should both functions be combined in a single body?

² APIL response to the Department for Transport's call for evidence on the safe use of Automated Lane Keeping System (ALKS) <https://www.apil.org.uk/files/pdf/ConsultationDocuments/3919.pdf>

Although APIL agrees that there may be a conflict of interest for both functions to be combined in a single body, there may also be benefits of combining them. Firstly, it will combine all the expertise on AVs together and secondly it will allow manufacturers of AVs to engage and receive advice regarding compliance to be implemented prior to type approval. Both options have benefits. APIL would require further information before assessing which option would be best in terms of ensuring safety without inhibiting innovation.

Q22. We provisionally propose that a statutory scheme to assure AVs in-use should:

- (1) Investigate safety-related traffic infractions (such as exceeding the speed limit; running red lights; or careless or dangerous driving);**
- (2) Investigate other traffic infractions, including those subject to penalty charge notices;**
- (3) If fault lies with the ADSE, apply a flexible range of regulatory sanctions.**

Do you agree?

APIL agrees with this proposal because AVs should not be permitted to break ordinary traffic laws and regulations. There must be an effective mechanism to deal with AVs that fail to abide by existing traffic laws and a statutory method to take up traffic infractions with the manufacturers of the AV in question in order to rectify the issues. It would be incorrect to assume that the criminal code would apply to ADSEs in the same way as it would a driver of a normal vehicle. A flexible range of regulatory sanctions would be appropriate to deal with traffic infractions.

Q23. We provisionally propose that the regulator which assures the safety of AVs in-use should have powers to impose the following sanctions on ADSEs:

- (1) Informal and formal warnings;**
- (2) Fines;**
- (3) Redress orders;**
- (4) Compliance orders;**
- (5) Suspension of authorisation;**
- (6) Withdrawal of authorisation; and**
- (7) Recommendation of attendance at a restorative conference.**

Do you agree?

The sanctions proposed are necessary and broad in order to cover different manufacturers and allow flexibility in the sanctions which can be imposed. It is crucial that where attendance at a restorative conference is recommended, attendance by an injured or vulnerable party is voluntary. This will protect the best interests of the injured or vulnerable party. It should be their decision to cooperate.

Q24. We provisionally propose that the legislation should provide the regulator with discretion over:

- (1) The amount of any monetary penalty; and**
- (2) The steps which should be taken to prevent re-occurrence of a breach.**

Do you agree?

APIL agrees with this proposal.

Q25. We provisionally propose that a specialist incident investigation unit should be established:

- (1) To analyse data on collisions involving automated vehicles;**
- (2) To investigate the most serious, complex or high-profile collisions; and**
- (3) To make recommendations to improve safety without allocating blame.**

Do you agree?

APIL welcomes the introduction of a specialist incident investigation unit to draw on specific expertise, collect data and investigate collisions involving AVs. As long as the unit is properly funded and resourced, it would promote a learning culture and improve safety for road users.

However, APIL is concerned that the terms 'serious', 'complex' and 'high-profile' are not defined. This wording does not specify the collisions which will be investigated in terms of injury severity or whether injury severity will be considered when deciding whether a collision will be investigated. For example, there may be a life-changing injury resulting from a small error which may not be investigated by the unit. On the other hand, there may be a significant problem with an AV, but because it has not caused a significant injury or death, the unit would not investigate it. APIL suggests there needs to be more clarification to establish which collisions the unit will investigate or perhaps the unit should be able to investigate all collisions caused by an AV.

Q28. We provisionally propose that the user-in-charge:

- (1) Should be defined as an individual in position to operate the controls of a vehicle while an ADS is engaged and who is either in the vehicle or in direct sight of the vehicle; and**
- (2) Is not the driver while the ADS is engaged, and would not be liable for any criminal offence of civil penalty (such as a parking ticket) which arises out of dynamic driving.**

Do you agree?

APIL disagrees that a user-in-charge must be in direct sight of the vehicle. There is currently technology available which allows a user to operate the controls of a vehicle whilst the ADS is engaged without being in direct sight of the vehicle. UNECE regulations currently prohibit this for all members of UNECE but the UK regulator should allow this provided a manufacturer can certify safety in operation and an insurer is willing to underwrite the vehicle. This might (for example) enable a disabled person to summon their vehicle from a car park at the rear of a building to collect them at the front, thereby enabling them to participate in society.

APIL agrees that if an individual is negligent in controlling the vehicle, the individual's motor insurer should be liable for any collision or damage which occurs as a result – (if s.2 strict liability did not apply).

Q29. We provisionally propose that following the end of the transition demand period:

- (1) The user-in-charge should re-acquire the legal obligations of a driver, whether or not they have taken control of the vehicle; and**
- (2) If, following a failure to respond to a transition demand, the vehicle stops in a manner which constitutes a criminal offence, the user-in-charge should be considered a driver and should therefore be liable for that offence.**

Do you agree?

APIL agrees with this proposal.

Q30. We seek views on whether a person with a provisional licence should be allowed to act as a user-in-charge, if accompanied by an approved driving instructor in a vehicle with dual controls.

A person with a provisional licence should be permitted to act as a user-in-charge as long as they are accompanied by an approved driving instructor in a vehicle with dual controls. This is the only way for people to gain hands-on experience with automated technology and will teach them the limitations of different ADSs from the outset of their driving experience. This will further enhance safety in the future.

Q31. We provisionally propose that legislation should create new offences of:

- (1) Using an automated vehicle as an unfit or unqualified user-in-charge; and**
- (2) Causing or permitting the use of an automated vehicle by an unfit or unqualified user-in-charge.**

Do you agree?

APIL agrees with this proposal.

Q32. We provisionally propose that persons carried without a user-in-charge should be guilty of a criminal offence. Do you agree?

Q33. We seek views on whether the new propose offence of being carried without a user-in-charge should only apply if the person:

- (1) Knew that the vehicle did not have a user-in-charge; and**
- (2) Knew or ought to have known that a user-in-charge was required.**

Although APIL agrees with this proposal, it is crucial that the legislation is constructed in a fair and reasonable way to assess the circumstances on a case-by-case basis. An individual should not be expected to have known that a user-in-charge was required when they have little experience with, or knowledge of, AVs themselves. There should be good reason to hold someone criminally liable.

Q34. We provisionally propose that a user-in-charge who takes over control of the vehicle:

- (1) Should be considered a driver; but**

- (2) Should have a specific defence to a criminal offence, if, given the actions of the ADS, a competent and careful driver could not have avoided the offence.**

Do you agree? If not, we welcome views on alternative legal tests.

It is crucial that users of AVs are not discouraged from correcting a system error because of the risk of being criminally liable and prosecuted for an offence which they could not have avoided. In light of the example given in paragraph 5.24 of the consultation summary document, the legislation should encourage a user-in-charge to rectify the mistake of a vehicle turning into a one-way street, rather than make them liable for taking back control of the vehicle. APIL therefore agrees with the proposal.

Q35. We provisionally propose that the user-in-charge should be liable for criminal offences which do not arise from the dynamic driving task, including those related to:

- (1) Insurance;**
- (2) Maintaining the vehicle in a roadworthy condition (including installing safety critical software updates);**
- (3) Parking;**
- (4) Duties following accidents to provide information and report accidents to the police; and**
- (5) Ensuring child passengers wear seatbelts.**

Do you agree?

APIL agrees with this proposal. However, in addition to the above offences, tampering with or modifying the vehicle should also be an offence due to the potential danger of serious injury and/or death as a result of tampering/modifying the vehicle. See APIL's response to Q48 and 49.

Q36. We provisionally propose that the legislation should include a regulation-making power to clarify those roadworthiness failings which are (and those which are not) the responsibility of the user-in-charge.

Do you agree?

APIL agrees with this.

Q37. We welcome views on whether the current definition of when a vehicle “drives itself” under the Automated and Electric Vehicles Act 2018 should be amended to deal with some forms of remote operation which may involve a degree of “monitoring”.

The definition of a vehicle driving itself should be amended to include ADSs where a degree of monitoring is required. The current definition is unnecessarily limited and will exclude a number of automated vehicles, especially those that are already present and being used on UK roads. Under the current definition, if the vehicle requires any form of monitoring (for example the ALKS), it will not be covered by s.2 AEVA. This would be detrimental to claimants because they would have to prove that the ADS was engaged at the time of the collision, which will be extremely difficult. Widening the scope of the definition will allow injured claimants to benefit from strict liability in s.2 AEVA so they are not forced to pursue a

costly and complex product liability claim against an ADSE. APIL reiterates that if a vehicle is fitted and capable of self-driving then strict liability under s.2 AEVA should arise. APIL is concerned that the paper fails to recognise the legal difficulties for claimants if the definition is not sufficiently broad to cover all vehicles capable of driving themselves.

Q39. We welcome views on whether NUIC operators should be required to demonstrate professional competence through a safety management system, as set out in a safety case.

APIL thinks NUIC operators should demonstrate professional competence to ensure safety.

Q42. We welcome views on how accessibility standards for Highly Automated Road Passenger Services (HARPS) might be developed.

APIL supports ensuring that HARPS are accessible for vulnerable and disabled people. AVs present a great opportunity for those with disabilities to access independent transport and gain independence where they are unable to drive themselves. It is crucial that the regulator fosters and encourages innovation and accessibility of HARPS to allow those with disabilities to become more independent.

Q46. We welcome views on whether an ADSE should be under a duty to present information in a clear and accessible form, in which safety-critical information is indexed and signposted.

It is vital that information is presented in a clear and accessible form to inform drivers of safety-critical information. Placing a duty on ADSEs will ensure that users of AVs will obtain the information required to educate themselves of the limitations and functionality of ADSs to ensure that they are able to use the system appropriately, responsibly and safely. Such information should be available in a number of ways, for example the Highway Code should be amended to include a section on automated vehicles and inform users of key features of specific ADSs and their liability as a user. It is crucial that the Highway Code is not the sole form of straight-forward information for users of AVs. ADSEs should be under a duty to provide the information in layman terms and in various formats to ensure that AVs are accessible for all.

Q47. We provisionally propose that legislative amendment should clarify that the tampering offence in section 25 of the Road Traffic Act 1988 applies to anything that is physically part of a vehicle and any software installed within it.

Do you agree?

APIL agrees with this proposal.

Q48. We welcome views on whether the tampering offence should apply to external infrastructure required for the operation of the AV.

APIL takes the view that the tampering offence should also apply to external infrastructure required for the operation of an AV.

Q49. We provisionally propose that there should be an aggravated offence of wrongfully interfering with an AV, the road, or traffic equipment contrary to section 22A of the Road Traffic Act 1988, where the interference results in an AV causing death or serious injury, in:

- (1) England and Wales; and**
- (2) Scotland.**

Do you agree?

APIL agrees with this proposal because causing death or serious injury is foreseeable when wrongfully tampering with an AV, the road or traffic equipment.

Q50. We provisionally propose that the appropriate mental element of the aggravated offence is intent to interfere with a vehicle, the road or traffic equipment.

Do you agree?

APIL agrees that the intent to interfere should be the mental element of the offence.

Q52. We provisionally propose that the way the Automated and Electric Vehicles Act 2018 deals with contributory negligence and causation is:

- (1) Adequate at this stage; and**
- (2) Should be reviewed by the UK Government in the light of practical experience.**

Do you agree?

Since the AEVA has not come into force and no vehicles are listed to benefit from the Act, it is impossible to assess whether it is adequate.

APIL has reservations as to the way in which the Act has been put in place. S.2 AEVA only arises where a vehicle is being driven fully autonomously and does not currently provide for partially automated vehicles. As a result, a defendant is able to escape the provisions. We have previously explained the detrimental effect this will have on injured claimants. We strongly recommend that the Law Commission and Scottish Law Commission revisit the provisions because the Act is not yet in force and can be amended to include vehicles which are *capable* of driving themselves. S.2 should apply to all vehicles which are capable of self-driving so that claimants are not forced to pursue costly product liability claims and are able to access vital compensation for serious and life-changing injuries sustained as a result of a collision with any automated vehicle.

Q53. We provisionally propose that measures should be put in place to compensate the victims of accidents caused by uninsured AVs.

Do you agree?

APIL strongly agrees with this provision. It is vital that victims of road traffic collisions are able to access compensation to put them back into a position in which they would have been

in, as far as possible, prior to the collision. The same Motor Insurance Bureau provisions should apply.

Q54. We provisionally propose that:

- (1) Product liability law should be reviewed to take account of the challenges of emerging technologies;**
- (2) Any review should cover product liability as a whole, rather than be confined to automated vehicles; it should not, therefore, form part of this project on automated vehicles.**

Do you agree?

It is unlikely that a review of the whole of the multi-jurisdictional law relating to product liability is going to occur in order to deal with one issue in relation to automated vehicles. The suggestion in the Consultation is therefore impractical and it does not address what the position will be in the very likely event this does not happen.

APIL suggests addressing the specific problem which was created by s.2 AEVA, rather than having a large, unnecessary and time-consuming product liability review. Victims of road traffic collisions should not be forced to pursue costly and complex product liability claims and be seriously disadvantaged as a result. Instead, the solution to the issue at hand is to widen the scope of s.2 AEVA to include strict liability for vehicles capable and equipped to drive themselves. This will ensure injured and vulnerable claimants are able to access vital compensation for their needs following a road traffic collision with any automated vehicle regardless of the level of automation.

Q55. We provisionally propose that:

- (1) For a vehicle to be classified as self-driving, it needs to record the location as well as the time at which the ADS is activated and deactivated;**
- (2) The Government should work with the UNECE to ensure data storage systems for automated driving record these data; and**
- (3) Any national system to approve an ADS should require these data to be collected, subject to safeguards.**

Do you agree?

APIL agrees with this proposal. Recording the location as well as the time in which an ADS is engaged will aid police investigations and establish whether a driver or the ADS was liable at the time of a collision.

Q56. We provisionally propose that legislation should impose a duty on those controlling AV data to disclose data to insurers, where the data is necessary to decide claims fairly and accurately.

Do you agree?

APIL agrees with the legislation imposing a duty on those controlling AV data to disclose data to insurers, however we believe that there should also be a duty to disclose the data to the claimant or their lawyer to ensure access to information is fair from the outset.

Q57. We provisionally propose that:

- (1) Initially, DSSAD data from self-driving vehicles should be stored for three years; and**
- (2) The issue should be reviewed in light of experience.**

Do you agree?

Storing data for only 3 years may be detrimental to a claimant's claim because the limitation period to start proceedings is 3 years and sometimes longer.

Data which has a bearing on any incident which may give rise to a claim should be specifically protected and preserved until any legal proceedings relating to that collision have finally resolved.

Often there are delays to bringing a claim and it would be unjust for data to be wiped the day after proceedings have been issued. In addition, the limitation period is longer for cases involving children or those who lack capacity. Therefore, by the time they are able to bring a claim, the data may have already been wiped. This will cause problems in terms of liability and will force claimants to attempt to prove that the ADS was engaged at the time of the collision. Without the data showing when the ADS was activated/deactivated, it would be extremely challenging to prove. As mentioned previously, a product liability claim is complex and costly and may be inviable for a claimant. In order to not disadvantage a claimant in bringing a road traffic collision claim, it is important that the crucial data around the time of the collision is available/accessible.

APIL therefore does not agree with this proposal. It is desirable for the data relating to an incident which may give rise to a claim to be stored until all proceedings have finally resolved. Data could be preserved by vehicles uploading the data immediately prior to the collision and during the collision, to a network. This could be a small amount of relevant data in the circumstances rather than, for example, storing the data from the whole day.

Q58. We provisionally propose that:

- (1) When an ADSE applies for categorisation of its vehicle types as self-driving, it should present the regulator with details on how data will be recorded, stored, accessed and protected;**
- (2) The regulator should only categorise a system as self-driving if it is satisfied that the ADSE has systems to abide by its obligations under the GDPR.**

Do you agree?

APIL agrees with this proposal. Data that specifically relates to an incident or collision should be prioritised when considering storage because this data is crucial to establish liability and promote improved safety through learning. The ADSE should at least present the regulator with details on how this relevant data around collisions will be recorded, stored, accessed and protected.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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