UK Jurisdiction Taskforce

Legal Statement on Liability for AI Harms under the private law of England and Wales

A response by the Association of Personal Injury Lawyers

February 2026

Introduction

We welcome the opportunity to comment on the UK Jurisdiction Taskforce's legal statement on AI harms. This document is a welcome step to gaining clarity around how the legal framework in England and Wales sits with the complex and fast-moving area of artificial intelligence. There are, however, a number of areas that we feel the document should explore further, specifically in the context of personal injury.

We are responding to this consultation from a personal injury claims perspective to ensure access to justice for injured claimants, and therefore have only provided comments that fall within this remit.

Questions

1) *Do consultees agree that the subjects that we address in the Legal Statement are appropriate and useful, and have been addressed in an appropriate and useful way? If not, what alternative issues within scope of the project do consultees think need to be addressed in this Legal Statement, or in what alternative manner would consultees wish those issues to be addressed?*

This legal statement is a welcome step towards achieving clarity around the existing legal framework and how it applies to AI. We highlight below, however, a number of areas where we feel further detail is needed.

AI and causation

While the statement covers how factual and legal causation could apply where a claim involves AI, we believe that there should be further examination of the difficulties that will arise in establishing causation, particularly where AI errors cause harm without obvious human fault, for example in relation to training data defects or bias, or unpredictable decision pathways. There needs to be clear judicial direction on where causation lies in these circumstances, and acknowledgement of the difficulties that in particular vulnerable people will experience when bringing these complex claims.

The statement acknowledges the opacity of AI, but goes on to set out that 'It seems likely that, where there are difficulties with evidence, the law may well recognise this and approach

questions of factual causation differently. Whether this will happen in the context of AI – and indeed whether it will need to happen – remains to be seen.' It is not certain that courts will approach AI in the same light as other areas where difficulties with evidence arise. The uncertainty around causation is likely to mean that it is challenging for those who are harmed by AI to bring a personal injury claim, if they have very little evidence that the AI caused the harm. The uncertainty as to the court's approach will mean that any firm that does take on a case is likely to be taking a very large risk, and it will be difficult for the claimant to obtain legal representation. There needs to be more certainty around causation, and greater appreciation of the knowledge gap that will exist when seeking to prove this.

We would agree with paragraph 115 that the output or 'decisions' of Foundation Models do not neatly map on to common categories of intervening acts, i.e. natural events such as storms, floods, or landslides, or acts of human third parties. However, we would caution against the process of an AI system 'learning' new principles of action or behaviours potentially being deemed to constitute a novel intervening act which breaks the chain of causation between any programming, data selection and other decisions by a Foundation Model Developer or Application Developer, and the eventual output of the system. If there is a break in the chain of causation, this would leave a justice gap as to who would be liable for the harm in such circumstances, meaning that injured people are left without redress. There should be an oversight mechanism in place if it is deemed that AI systems learning new principles do constitute a break in the chain of causation. It would be helpful if the need for an oversight mechanism in these circumstances could be flagged in the statement.

Group proceedings
As with product liability claims, there are very likely to be circumstances where a group of claimants are harmed by defective AI, and wish to pursue claims. We would welcome guidance within the legal statement on whether AI matters fit within the current Civil Procedure Rules Part 19 on group litigation.

AI and product liability
Paragraph 98 of the legal statement sets out that the Taskforce 'would not expect an AI system to cause complications in a product liability case'. We believe that there should be further consideration of the circumstances where AI and product liability law will combine – the legal statement does not consider certain scenarios. This is a complex area and there is much uncertainty – we feel the statement is misleading about the impact of AI on product liability claims.

The inherent complexity in identifying the correct defendant in a product liability case will be exacerbated by AI. For example, the paper considers a situation where a fridge catches fire and burns down a house, that it is immaterial precisely why the fridge caught fire – all that is needed is to show that the fridge was defective. It makes no difference whether the fire within the fridge was caused owing to an issue in the AI system or a faulty capacitor. However, we foresee difficulties with these claims – the manufacturer of the fridge may not admit liability, and they have the money and resources to demonstrate that it was the AI

system within the fridge that was defective, and therefore the claimant must pursue a claim against the manufacturer of the AI chip. It is highly likely that the manufacturer of such a chip is not in this jurisdiction – jurisdiction issues are common in product liability claims. There will also likely be questions around the identity of the importer, particularly if the issue revolves around a software update. If the importer can be identified, there are also sometimes issues with importers lacking the relevant insurance. There will be lengthy and costly arguments around causation, and ultimately the claimant may be unable to pursue those who are actually responsible for the defect. Equally, if the fridge was plugged in to an extension cord, it would also be for the claimant to demonstrate that the fire was not caused by the extension cord. A further difficulty would arise in a scenario where the fridge's software is updated and then the fridge overheats and catches fire. The injured person will have the product itself, but is unlikely to have access to the software running it – how can the injured person find a defect with the software, if they do not have access to the software. The statement does not consider these huge evidential and disclosure difficulties, which will be particularly difficult pre-action.

There is also the question of whether an AI update to a product could substantially modify the product so much so that it removes the traditional producer from that risk. There needs to be consideration of this.

Further, if the claim is run under the CPA, there needs to be consideration of the longstop – if software is downloaded to the product, will the longstop run from when the product was initially put into circulation with the original software, or from when the software itself was put into circulation by means of an update?

As mentioned above, jurisdictional challenges are often a huge issue in product liability claims. It would be helpful for the paper to consider the jurisdictional challenges involved with AI, and how the taskforce envisages these being handled by the courts. In the above example of a software update to a tangible product, could the consumer be the importer for the purposes of the CPA? We foresee huge challenges around jurisdiction and AI, and we would welcome some clarity on this.

We appreciate that the legal statement acknowledges that the Law Commission is currently undertaking a review of the Consumer Protection Act 1987, and it is helpful that the taskforce has provided a view that without amendment, the CPA will not cover software. Amending the CPA to cover software will be far from straightforward, however, and there are numerous considerations for the Law Commission should they recommend that the Act covers software. The issues mentioned above in relation to longstop and jurisdiction will also be very relevant for pure software, for example. In relation to the longstop for example, will it run from when the software was initially downloaded, or if or when there was an update?

Automated vehicles

There is no mention in the legal statement at present of the Automated and Electric Vehicles Act 2018, which introduced strict liability for autonomous vehicles. The legislation is not

currently operating as Parliament intended, with vehicles already on UK roads driving on a substantially autonomous basis (although under supervision) where software is dynamically and adaptively controlling the vehicle's steering and speed, but no vehicles being listed by the Secretary of State as falling within the Act's provisions. We maintain that the strict liability provisions in the Automated and Electric Vehicles Act should be extended to all automated driving vehicle technology and remote driving, and extended to cover all vehicles with automated driving features, regardless of whether they were operating autonomously at the time of the collision. It would be helpful for the legal statement to acknowledge the Automated and Electric Vehicles Act 2018 and provide a view on how it fits within the legal framework.

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Professional liability and the use or non-use of AI

We would welcome further detail in the section relating to professional liability and the use/non-use of AI tools. Paragraph 62 provides comment on when a professional may be liable for failing to use AI tools. One of the examples provided is that of a radiologist who is negligent if they fail to use an AI system that is extremely effective in identifying cancerous tumours. We are concerned that this may be an overly simplistic example, and appears to suggest that a radiologist in these circumstances could be negligent. There are many factors which will come into play to determine whether use/non-use of AI reflects the standard of a reasonable professional, and we would welcome further detail explaining this in the document. The standard of care required of treating medical professionals does change over time, as medical and technological developments move forward – this is not new. The test of whether there has been a breach of duty is, with regard to the state of scientific knowledge at the time of the event, did the actions of the doctor fall below the standard of care required, would a responsible body of doctors of this type have acted in the way that the doctor in this situation did. Where technology is cutting edge, failure to use is unlikely to be negligent. The use of the tool must be the 'required standard', which will develop over time. In order for the use of a tool to be the required standard, clinical guidelines will recommend its use, recommendations to use the tool will come from authoritative bodies such as various medical royal societies/colleges, and there will have been large study research indicating its benefit. Ultimately, whether or not using an AI tool becomes negligent would depend upon the state of knowledge and research in the area at the time. For the example of the radiologist, there would need to be research, proof and acceptance that the equipment would be extremely effective in identifying tumours.

AI and litigants in person

In additional to professional liability and use/non-use of AI, there should also be consideration of what should happen in cases where litigants in person have used AI to help them bring a claim. Examples have already been seen in other areas of practice, of litigants in person presenting their claim with documents containing pages of references to AI hallucinated case law. AI could, and already is, leading people to believe that they have a claim when they do not. In these circumstances, the litigant in person could be at risk of adverse costs orders for significant amounts. There should be consideration of how this should be dealt with, and the recourse that litigants in person could have, should they

receive costs orders because AI lead them to believe that they had a claim.

AI and false statements

We suggest that there is consideration in the section handling AI and false statements, and in particular paragraph 120, of where liability would lie if for example a chatbot designed to assist mental health encouraged someone to harm themselves or others.

2) *Do consultees agree that the approach to defining AI in the Legal Statement is appropriate? If not, what alternative approach would consultees take?*

We have no comments on the definition of AI, as this is outside of our remit of expertise.

3) *Do consultees have any other comments that they would like to make on the approach or conclusions of the draft Legal Statement?*

We also flag that there should be specially trained judges for AI related matters. The area is very fast paced and changing and there would be huge benefit in having specialist judges who fully understand the technology and its implications.

While we appreciate that data protection and regulatory matters are out of scope of the UKJT paper, it must be acknowledged that several of the scenarios in the paper, including chatbots making statements, professionals using AI, will routinely involve processing personal data. These activities will trigger GDPR duties around lawful basis, transparency, purpose, accuracy and storage limitation. Various obligations and safeguards would come into play around the use of AI and personal data, and while this may not be for the UKJT to consider, guidance around this is needed.

For any queries relating to this response, please contact Alice Taylor, Legal Policy Manager, alice.taylor@apil.org.uk.