



Ministry of Justice

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17th March 2021

Dear Sirs,

**Response to Law Commissions'
Consultation on Autonomous Vehicles**

NFU Mutual Insurance Society Ltd Response

The National Farmers Union Mutual Insurance Society Limited (NFU Mutual) is a composite insurer providing insurance, pension and investment products. We are a member of the Association of British Insurers (ABI).

We have a gross premium income for General Insurance of more than £1.5 billion. We have an award-winning range of products and services. NFU Mutual insure over 1.2million vehicles, including circa 455,000 agricultural vehicles, 525,000 cars/motorcycles and 310,000 commercial vehicles (LGV / HGV / OGS).

NFU Mutual is a mutual company, founded in 1910. We do not have any shareholders and we do not therefore pay dividends. Our policyholders are members of the company. Members, as policyholders, are able to participate in the profitability of NFU Mutual through the 'Mutual Bonus'. This involves providing premium reduction discounts to loyal members at annual renewal of their policies.

Responses:

Consultation Question 1.

2.35 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 or 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?

Yes. We agree that for clarity and for the avoidance of misunderstanding by the general public, the classification / description “*self-driving*” should only be used where no human environmental monitoring is required.

We would however urge the Government to consider setting a mandatory requirement for “*self-driving*” vehicles to be fitted with technology to prevent ADS being engaged on roads where it was not designed (or legally permitted) to be used.

Consultation Question 2.

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

This is outside our area of expertise, however given the inherent risks of a disengaged ‘*user-in-charge*’ not responding to an audible stimulus to retake control of the vehicle as required, the proposed minimal dual alert requirement to include haptic warnings (for example existing technology that creates a driving seat / steering wheel vibration in addition to an audible alert) will provide a functionality to meet the needs of users with hearing loss.

Consultation Question 3.

2.65 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?

We don’t disagree; however we would urge the Government to give strong consideration to the rate of technological development and how the definition of ‘*safe*’ will develop over time and throughout the lifetime of the vehicle (i.e. for both the initial and subsequent/used-vehicle purchaser).

- What is the position where a vehicle is decided to be ‘*safe*’ but where it effectively becomes unsafe because the technology falls behind the updated standard? Whilst this may be acceptable for household appliances for example, where the safety of other road users is at risk (and where over-air software updates are possible), further legislative provisions should be considered.
- What is the position where the AV only remain ‘*safe*’ through ongoing updates, but becomes unsupported by the manufacturer, because of passage of time / manufacturer insolvency / secession from original purchaser?

Consultation Question 4.

2.66 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.

This will depend largely on what the Government seeks to achieve by the adoption of AVs. If the purpose is to reduce road deaths and increase road safety, then it would follow that AVs should strive to be as safe as possible, a standard far above the average human driver. However, imposing too high a standard of 'competence' (or expectation of complete avoidance of fault accidents) may result in AVs which are unable to interact with human drivers on the road and inducing behaviour from those human drivers that makes roads less safe.

For this reason, AVs being able meet the level of safety of that as a competent and careful human driver may create the best result for all road users.

Regardless as to which definition is adopted, there will still be a potential gap between the existing common law standard of negligence and the damage / loss caused by an AV for which the vehicle insurer is liable under the Autonomous and Electric Vehicle ('AEV') Act 2018.

Although rare, road traffic accidents can occur without either driver being negligent – an action which 'causes' an accident may not fall below the standards of a reasonably competent and careful driver, particularly where the damage is caused as a result of a positive decision by software to avoid greater risk of harm. In this scenario, although the AEV Act has inferred liability on the Insurer (because the accident was caused by the AV), there would be no right of recovery by the insurer against the vehicle manufacturer because there is no defective product to create a cause of action.

Consultation Question 5.

2.67 We welcome observations on how automated vehicles can be made as safe as reasonably practicable.

- Geographic controls which prevent a system being used on a road type or road condition where it is no designed or permitted to operate. System based controls will prevent user error and will deter casual 'disobedience' of legislation relating to use of AV functions.
- Ensuring that Legislative provisions requiring ongoing support and maintenance of vehicle software systems apply equally to the initial and subsequent vehicle owners, without penalties or unreasonable subscription costs which could deter motorists from maintaining AVs properly.

- Requiring mandatory advisory notices / warnings for drivers to affirm that they have read and understood the operational limitations and legal restrictions for use of AV functions. Even if documentation is provided with a vehicle, human nature suggests that this is unlikely to be read, particularly in short-term hire vehicles etc. There should be a method by which the user is required to acknowledge that they have read and understood the rules prior to use of features (e.g. when beginning the journey), to create an audit trail in the event of inappropriate or illegal use.

Consultation Question 6.

2.68 We welcome practical suggestions for how AV regulators can fulfil their public sector equality duty.

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 7.

3.11 We provisionally propose that:

- (1) safety assessment should use a variety of techniques;
- (2) manufacturers/developers should submit a safety case to regulators showing why they believe that the automated driving system is safe;
- (3) regulators should:
 - (a) provide guidelines for what is in the safety case;
 - (b) audit the safety case;
 - (c) prepare guidance for manufacturers and developers on preferred standards; and
 - (d) carry out at least some independent tests.

Do you agree?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 8.

3.12 We seek views on whether an approval authority that intends to use a scenario database as part of the testing procedure should consult road user groups on the range of scenarios to be included.

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 9.

3.17 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?

Whilst we agree that unauthorised driving systems should be prohibited by law, however we are unable to offer any comment to the proposed exemption, this being outside our field of expertise.

Consultation Question 10

3.22 We provisionally propose that:

- (1) the Government should establish a domestic scheme to approve automated driving systems (ADSs) for use on roads in Great Britain (a “national ADS approval scheme”);
- (2) manufacturers should have a free choice to apply for approval under either the UNECE system of international type approvals or through the national scheme;
- (3) developers should be able to submit an ADS for national approval, even if they are not responsible for manufacturing the whole vehicle.

Do you agree?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 11.

3.23 We provisionally propose that:

- (1) an ADS approval scheme should be established through regulation under the Road Traffic Act 1988, without further legislative reform;
- (2) an ADS should be defined as a combination of software, hardware and sensors, which can be installed in a “type” of vehicle;
- (3) when an ADS is approved, the approval should be accompanied by specifications for:
 - (a) the type of vehicle in which it can be installed; and
 - (b) how the ADS is installed within the vehicle;
- (4) where an ADS is installed in a pre-registered vehicle, an example vehicle should be submitted to the regulator for approval of the installation.

Do you agree?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 12.

3.24 We invite observations on the appeal process in regulation 19 of the Road Vehicles (Approval) Regulations 2020, including:

- (1) how it works in practice; and
- (2) how well is it suited to the proposed national ADS approval scheme.

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 13.

3.35 We provisionally propose that:

- (1) once an ADS has received type approval at either international or domestic level, an Automated Driving System Entity (ADSE) would need to submit the vehicle to the UK safety regulator for categorisation as able to safely drive itself;
- (2) the safety regulator should make a recommendation to the Secretary of State for how the vehicle should be classified;
- (3) it should be open to the safety regulator to recommend that an ADS-enabled vehicle is classified in one of three ways: as not self-driving but driver assistance; as self-driving only with a user-in-charge; or as self-driving without a user-in-charge;
- (4) the safety regulator should only recommend classification as self-driving (either with or without a user-in-charge) if it is satisfied that:
 - (a) an ADSE is registered as taking responsibility for the system;
 - (b) the ADSE was closely involved in assessing safety and creating the safety case; and
 - (c) the ADSE has sufficient funds accessible to the regulator to respond to improvement notices, to pay fines and to organise a recall.

Do you agree?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 14.

3.36 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?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 15.

3.37 We seek views on whether the new legislation should include provisions for appeals against a categorisation decision. If so, should these be similar to those in regulation 19 of the Road Vehicles (Approval) Regulations 2020?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 16.

3.41 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.

Whilst this is outside NFU Mutual's field of expertise, further data which can be gathered and shared with interested parties such as Insurers would benefit the understanding of what impact self-driving vehicles have on the actions and behaviours of other road users.

Consultation Question 17.

4.22 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?

Yes – Regulators should have powers to enforce rules relating to ongoing maintenance of AV safety systems to ensure that models do not become obsolete as models are updated and/or retired over time.

The Scheme should also protect second-hand / used vehicle purchasers and ensure that they have the same rights and access to software updates as purchasers of vehicles from new. If access to safety critical updates is restricted or allowed to become cost prohibitive, this could impact safety of other road users as well as public perception of the safety of AVs.

Consultation Question 18.

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

- (1) scheme regulators should be responsible for comparing the safety of automated and conventional vehicles using a range of measures;
- (2) to do this the regulator should have power to collect information on:
 - (a) leading measures (instances of bad driving which could have led to harm) and
 - (b) lagging measures (outcomes which led to actual harm);
- (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?

Yes.

Consultation Question 19.

4.24 We welcome views on the following issues:

- (1) Should scheme regulators be empowered to approve software updates that apply only within the UK, without requiring the manufacturer to return to the original type approval authority?
- (2) Should the scheme should also deal with cybersecurity?
- (3) Are other powers needed? (Note that data is discussed in Chapter 17.)

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 20.

4.30 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?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 21.

4.31 What formal mechanisms could be used to ensure that the regulator administering the scheme is open to external views (such as duties to consult or an advisory committee)?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 22.

4.38 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?

Yes – we would also request that information should be shared with the Insurance Industry via an appropriate body (such as Thatcham) to allow Insurers to improve understanding of the safety of specific AV makes and models.

Consultation Question 23.

4.42 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?

Yes

Consultation Question 24.

4.43 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?

Yes – we would suggest that the regulator should also maintain a register of improvement notices etc which can be accessed online to maintain public confidence levels.

Consultation Question 25.

4.48 We provisionally propose that a specialist collision 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?

Yes – however there should be a mandate to share the outcome of those investigations with interested parties and / or industry bodies.

AVs will present perhaps the biggest change to motoring during living memory, and every opportunity should be taken to share information which could help improve / maintain the safety of all road users – including pedestrians, cyclists and other drivers. The data provided by AVs may offer valuable insights into accident causes and provide opportunities for education and further technological development, so should be shared where permitted.

Consultation Question 26.

4.53 We provisionally propose that the UK Government should establish a forum for collaboration on the application of road rules to self-driving vehicles.

Do you agree?

Yes, however the opportunity should not be lost for interested parties to collaborate on the application of road rules for the benefit of all motorists / road users.

Consultation Question 27.

4.54 We welcome views on:

- (1) the issues the forum should consider;
- (2) the composition of the forum; and
- (3) its processes for public engagement.

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 28.

5.5 We provisionally propose that that the user-in-charge:

- (1) should be defined as an individual in a 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 a driver while the ADS is engaged and would not be liable for any criminal offence or civil penalty (such as a parking ticket) which arises out of dynamic driving.

Do you agree?

Whilst we do not disagree with this proposal, there is ambiguity as to how this would apply to someone who intentionally / unintentionally becomes physically out of position to operate the controls – e.g. someone moving from the driver’s seat, or someone who becomes incapacitated e.g. drinking alcohol or due to a sudden onset of illness.

In what circumstances could or would a user-in-charge cease to have that legal definition, and could the vehicle effectively be left in use without either a driver or a user-in-charge?

Consultation Question 29.

5.9 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?

As per our response to Q28, are there any scenarios where a user-in-charge would not be capable of requiring the legal obligations of a driver or will this be strictly applied. Where will liability for an offence fall where there is no-one who fits the definition of driver – we would urge the Government to ensure that any subjectivity to be removed.

Consultation Question 30.

5.14 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

Whilst this is outside our expertise, we would invite the Government to consider whether the existing driver licencing process will continue to provide an effective measure of driver competency for using an AV.

It may be that a conventional / traditional driving instructor would not possess sufficient skills and training to provide adequate supervision to a provisional licence holder in the event of an unanticipated handover demand – this is currently a new and unprecedented scenario.

Consultation Question 31.

5.17 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?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 32.

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

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 33.

5.22 We seek views on whether the new proposed 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.

NFU Mutual is unable to offer a response – this is outside our field of expertise. However we would urge the Government to consider imposing a standard communication and / or minimal warning message to users as to the requirement for a user-in-charge to avoid potential confusion caused by wordings used by different manufacturers.

Consultation Question 34.

5.27 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.

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 35.

5.32 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?

We agree, however there should be a default provision that in the absence of a user-in-charge, responsibility should fall on the vehicle registered keeper.

Consultation Question 36.

5.33 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?

Yes.

We would invite the Government to ensure that rules / regulations are specific as to where responsibility does fall for those roadworthiness failings which are not the responsibility of the user in charge i.e. to the vehicle registered keeper or vehicle operator, and how this will impact the liability of the Insurer under the AEV in the event of an accident.

Consultation Question 37.

6.5 We provisionally propose that:

- (1) where an individual is exercising lateral and longitudinal control (steering and braking) over a vehicle remotely, that should not be regarded as a form of “self-driving”; and
- (2) where lateral and longitudinal control are exercised by an ADS, all other forms of remote operation should be regulated as “self-driving”.

Do you agree?

Yes.

6.6 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”

Whilst this is outside our field of expertise, it would be counterintuitive to include monitored operation within the definition of “*drives itself*”, as the basic definition of self-driving is that the vehicle does not need to be monitored. Applying a conditional exemption to include ‘some’ other forms of remote operation risks confusing users and may also inadvertently cause some highly-automated agricultural / farming machinery to be included within the definition of self-driving.

Consultation Question 38.

6.15 We provisionally propose that:

- (1) the regulation of self-driving vehicles should distinguish between an Automated Driving System Entity (which vouches for the design of the system) and an operator (responsible for the operation of individual vehicles);
- (2) all vehicles authorised for use on roads or other public places with no user-in-charge should either:
 - (a) be operated by a licensed operator; or
 - (b) be covered by a contract with a licensed operator for supervision and maintenance services;
- (3) it should be a criminal offence to use a NUIC vehicle on a road or other public place unless it is operated by a licensed operator or is covered by a contract with a licensed operator for supervision and maintenance services.

Do you agree?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 39.

6.18 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

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 40.

6.21 We provisionally propose that, irrespective of the nature of the vehicle, a licensed operator should be under a duty to:

- (1) supervise the vehicle;
- (2) maintain the vehicle;
- (3) insure the vehicle;
- (4) install safety-critical updates and maintain cybersecurity; and
- (5) report accidents and untoward events (as defined by the regulator).

Do you agree?

Yes.

Consultation Question 41.

6.22 We provisionally propose that legislation should include a regulation-making power by which some or all of these duties could be transferred to the registered keeper or owner, if it was shown that it was appropriate to do so.

Do you agree?

Yes.

Consultation Question 42.

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

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

6.28 We provisionally propose that:

- (1) an accessibility advisory panel should be formed to include:
 - (a) the Equalities and Human Rights Commission; and
 - (b) representative groups for disabled and older persons;
- (2) the Secretary of State should be obliged to consult with the accessibility advisory panel prior to setting any national minimum standards on HARPS;
- (3) there should be a duty to periodically re-consult the accessibility advisory panel at set intervals to ensure requirements keep pace with developing evidence of technical feasibility and changing needs.

Do you agree?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

6.29 We welcome views on what the set interval for periodically re-consulting the accessibility advisory panel should be.

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 43.

6.33 We welcome views on who should administer the operator licensing scheme

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 44.

7.19 We provisionally propose that:

- (1) it should be a criminal offence for an ADSE to omit safety-relevant information or include misleading information when putting a vehicle forward for classification as self-driving or responding to information requests from the regulator;
- (2) the offence should apply to senior managers (where it was attributable to the manager's consent, connivance or neglect);
- (3) the offence should not apply to more junior employees;
- (4) the offence should carry a higher sentence if it is associated with a death or serious injury;
- (5) the offence should be prosecuted in England and Wales by either the regulator or the Crown Prosecution Service and in Scotland by the Procurator Fiscal.

Do you agree?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 45.

7.20 We seek views on the following proposed offences.

Offence A: non-disclosure and misleading information in the safety case

When putting forward a vehicle for classification as self-driving, it would be a criminal offence for the ADSE to

- (1) fail to provide information to the regulator; or
 - (2) provide information to the regulator that is false or misleading in a material particular where that information is relevant to the evaluation of the safety of the ADS or the vehicle.
- The ADSE would have a defence if it could show that it took reasonable precautions and exercised all due diligence to prevent the wrongdoing.

The penalty would be an unlimited fine.

Offence B: non-disclosure and misleading information in responding to requests

When a regulator requests specific information from an ADSE (whether before or after deployment), it would be a criminal offence for the ADSE to

- (1) fail to provide information to the regulator; or

(2) provide information to the regulator that is false or misleading in a material particular where that information is relevant to the evaluation of the safety of the ADS or the vehicle. The ADSE would have a defence if it could show that it took reasonable precautions and exercised all due diligence to prevent the wrongdoing.

The penalty would be an unlimited fine.

Offence C: offences by senior management

Where offence A and/or offence B committed by a body corporate is proved—

- (1) to have been committed with the consent or connivance of an officer of the body corporate; or
- (2) to be attributable to neglect on the part of an officer of the body corporate, then that officer is guilty of the offence.

An officer includes any director, manager, secretary or other similar officer or any person who was purporting to act in any such capacity.

We see this as equivalent to offences under the Human Medicines Regulations 2012 and General Product Safety Regulations 2005, which carry a penalty of a fine and/or a maximum two years' imprisonment.

Offence D: aggravated offences in the event of death or serious injury following non-disclosure or provision of misleading information to the AV safety regulator

Where a corporation or person commits Offences A to C, that offence is aggravated where the misrepresentation or non-disclosure:

- (1) related to an increased risk of a type of adverse incident; and
- (2) an adverse incident of that type occurred; and
- (3) the adverse incident caused a death or serious injury.

We see this as equivalent to the offence of causing death by dangerous driving, which carries a penalty of an unlimited fine and/or a maximum of 14 years' imprisonment.

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 46.

7.21 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

As much as possible should be done to prescript the form in which information should be presented and language which should be used. Insurers are already under obligations to signpost information at various stages, and continuous work to make language as clear and accessible as possible, we still encounter misunderstandings.

In view of the potential safety implications to other road users, it is appropriate for the Government to work with VMs to develop acceptable formats and language, and to standardise the delivery and presentation of safety-critical information where possible.

Consultation Question 47.

8.5 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?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 48.

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

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 49.

8.10 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?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 50.

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

Do you agree?

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 51.

8.12 We seek views on whether an approved work defence for repair or maintenance operations authorised by a vehicle manufacturer or Automated Driving System Entity is desirable.

NFU Mutual is unable to offer a response as this is outside our field of expertise, however we support the ABI / Thatcham joint response.

Consultation Question 52.

9.5 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?

The implications of the AEV on Insurers goes way beyond the current road traffic compensatory system and fundamentally changes the way incidents will need to be investigated. It will potentially put us as Insurers in conflict with our own policyholders when investigating the cause of an accident and may require us to offer Personal Injury compensation before investigations have commenced.

For example, where a vehicle has a 'black box' style telematics device fitted, the relevant time period for accepting a claim via the MOJ portal may have already timed out before the raw data has been retrieved. In a situation where vehicle data must be obtained from a VM, those time pressures will be enhanced.

It is also important for the Government to acknowledge the implications on a VM in accepting liability for recovery of an Insurer's outlay under AEV, particularly in accidents involving catastrophic injuries where damages can take many years to settle. Not only do VMs have access to "war-chests" to finance the defence of claims which may prove damaging to their brand, they also have the luxury of prolonging the product liability claim process, the Insurer having already paid out the compensation to the injured party. Smaller insurers may find themselves unable to afford to pursue litigation for recovery of their outlay, or consider it uneconomical to pursue small damages amid costs of complicated data-driven product liability claims against VMs.

The legislative provisions for recovering outlay from individuals who fail to install safety critical updates or who tamper with vehicle systems are a considerable burden to Insurers.

Whilst we strongly support the need to compensate innocent victims of road traffic accidents, the process of recovery from policyholders is very difficult in practice. To litigate against a policyholder, relying on vehicle data which may need expert input to properly understand, will in many cases be cost prohibitive. Even where a County Court Judgment is secured, financial recovery is rarely achieved where damages far outweigh most people's disposable income.

We would invite the Government to consider the position where Insurers are expected to compensate injured parties but where there is no "defective product" to trigger a recovery against the manufacturer. Is it the Government's intention that parties would financial benefit by virtue of an AV being involved, whereas the injured victim of an incident involving non-automated vehicles may not receive compensation if no drivers' actions fell below the requisite standard.

Consultation Question 53.

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

Do you agree?

We agree – the Motor Insurers Bureau (MIB) is already established and positioned to deal with these claims.

Consultation Question 54.

9.13 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?

We agree that current product liability law is insufficient to meet the peculiarities of AVs, and that further review is required.

We agree that that the measure by which AVs are assessed should be consistent with wider product liability rules and regulations, to ensure consistency. This will help to prevent a gap arising between the standard required by way of product design and the strict liability implications of the AEV Act.

However, we ask the following to be taken into consideration.

- The combination of the AEV and compulsory motor vehicle insurance regulations creates a unique relationship, inferring liability on an insurer who is not part of AV production and sales process on behalf of an insured driver (who is not necessarily the policyholder) who may not have been the first owner of the vehicle.
- What would fall within the definition of a “*defective product*” for manufactured goods may be very different for AVs which will be interacting with human drivers in real world scenarios which cannot yet be predicted.
- Every scenario which results in an accident being “caused” by an autonomous vehicle may fall within the development risks / state-of-the-art defense simply because the programmers could not have predicted, expected or anticipated the actual version of events which transpires. In motor liability disputes case-law and precedent is rarely of assistance because of the unique circumstances of almost every accident involving multiple vehicles – there is nothing to suggest that any accident involving an AEV would be any different.

- There is currently limited data currently available to help manufacturers understand the way in which drivers will use AVs or will respond to the handover process in the case of an emergency – an emergency / unexpected scenario is very difficult to test.

Consultation Question 55.

10.17 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 within 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?

Yes – provisions relating to collection of data should ensure that it is collected, and can be shared, in a format which can be accessed and used by those who are entitled to it. A scenario where data is retained but cannot be “read” because of manufacturer proprietary / limited access software, should be avoided.

Consultation Question 56.

10.19 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?

Yes – we consider this to be essential and the duty imposed must provide sanctions for failure to do so within the specified period.

The AEV will put Insurers in the position where they must pay compensation to injured parties where the AV is responsible (or partly responsible) for the accident, without any automatic right to the data to establish liability / causation.

The Civil Procedure Rules set out strict time limits for the investigation of liability following a road traffic accident and infers costs consequences in numerous scenarios (e.g. the MOJ Fixed Costs Regime) where a party does not acknowledge / agree damage within a set period of time. Unless it specifically legislates, the Government will have created a scenario where an Insurer is forced to make and communicate a decision on liability to the third party before it has had the opportunity to access or review the relevant accident data.

Insurers ultimately have a choice whether take offer cover on a certain make or model vehicles, so leaving a regulatory gap by which VMs can circumvent or frustrate the process may limit the number of insurers willing to provide cover. Although it is anticipated that vehicle

manufacturers may look to underwrite AVs themselves, this restriction in options could severely damage opinion and adoption of AVs within private ownership, particularly in second-life.

Consultation Question 57.

10.23 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 the light of experience.

Do you agree

Whilst we have no objections to this proposal, the limitation period for injury claims involving children is far longer (3 years from when the child reaches the age of 18) and may result in data being destroyed before a claim is presented.

The longstop date of 10 years for product liability claims should also be taken into account, particularly given the average life-cycle of vehicles throughout multiple owners, and that a defect may not become apparent until a specific scenario arises in the course of a vehicle's use.

We would suggest that 10 years may be a more appropriate retention period for data.

Consultation Question 58.

10.26 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 that the ADSE has systems to abide by its obligations under the GDPR.

Do you agree?

Yes.

Yours sincerely,



Zoe Hanson
NFU Mutual Insurance Company Limited