



## Response to Department for Transport Consultation

### **Advanced driver assistance systems (ADAS) and automated vehicle technologies (AVT) supporting their use in the UK**

*September 2016*

#### **Introductory and general remarks**

The CJC is responding to only a few of the consultation questions in this DfT consultation paper, in relation to the insurance and potential civil dispute aspects of 'driverless' cars.

#### **Answers to specific Questions**

***Question 2A:** Do you agree with the proposition to amend road vehicle compulsory insurance primary legislation in Part 6 of the Road Traffic Act 1988 to include product liability for automated vehicles?*

Yes, we agree that legislation should be amended so that existing consumer rights are preserved given advances in technology and the potential impact of this on the legal position of such claims.

The true position for the driver and for any third party road user is not one of product liability at all. The right approach would be to extend existing compulsory third party cover to any situation where the third party injury or damage is caused by the ADAS or AVT; and also to include injury to the driver in defined circumstances where so caused. Seeing this as product liability cover misunderstands the nature of and restrictions in such cover and also ignores the likelihood that some liability under current UK law (based on the Sixth Motor Directive) may still rest with the driver as the user of the vehicle in any event.

An additional key requirement is that the legislation should provide rights for the insurer paying claims caused by ADAS or AVT to have a right of recovery against the Vehicle Manufacturer (VM) where appropriate.

***Question 2B:** What, if any, other changes to the insurance framework should be considered to support use of AVT? Why?*

The advances in technology will inevitably raise questions on product liability, and where responsibility for any accidents should properly lie. We believe the sensible approach to this is to ensure that consumers are not in a worse position in terms of insurance protection and liability, and that should be the starting point for determining the legislative framework. The insurance and vehicle manufacturing industries will need to consider and propose changes to the insurance framework.

As indicated in our response to 2A above, this is easier to understand if the position of the road user is protected by compulsory liability cover rather than by product liability cover and legislation.

**Question 2C:** *If you are an insurer, vehicle manufacturer or other organisation directly affected by these changes, what costs do you estimate your organisation will incur as a direct result of these changes?*

We are not in a position to comment.

**Question 2H:** *Do you agree that where a driver attempts to circumvent the automated vehicle technology, or fails to maintain the automated vehicle technology, the insurer should be able to exclude liability to the driver but not to any third parties who are injured as a result?*

**Question 2I:** *Do you agree that in the event of 3rd party hacking of an automated vehicle, an insurer should not be able to exclude liability, as set out in the Consultation Document?*

These are questions to be determined based on the circumstances and evidence in individual cases. This is likely to be an area where case law will develop.

As a general principle, the extension of the compulsory insurance obligation should not expose motorists to liability risks they do not face at present.

**Question 2J:** *Do you agree that the product liability and insurance requirements for automated vehicles should:*

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

No, we do not agree that product liability legislation and other product liability rules should apply to the liability of road users to each other. Such rules may be applicable to the position between RTA insurer and VM, but the insurer's rights of recovery from the VM should be spelt out in any changes to RTA legislation.

The driver/vehicle user or their insurer must remain directly liable to third parties for any failure in the technology as this will be essential to retain public confidence in the technology. The Government intention is that the victim can sue the driver in any event. It is for the driver's RTA insurers to bring in the product liability insurers for an indemnity. There will not be any need for accident victims to sue the product liability insurer. Any indemnity dispute should be settled independently of the primary claim (a bit like contribution proceedings between insurers in most cases now)

One issue to be considered is limitation. For new technology where the life cycle of new products is not certain this could be an issue and needs to be considered.

**Question 2K:** *Alternatively, should we extend insurance/liability rules specifically for automated vehicles?*

No – the CJC agrees that the approach being adopted is a sensible one – the incremental growth in advanced technology in vehicles should be accompanied by an incremental approach to insuring them.

**Question 2M:** *Do you agree that an alternative first party model option would not be proportionate while automated vehicles represent a small proportion of the fleet?*

Yes – we agree with the reasoning in the consultation paper, this would represent a wholesale change to motoring insurance policies which would be costly and disproportionate at the present time.