Insuring automated vehicles in Britain: new law, new issues

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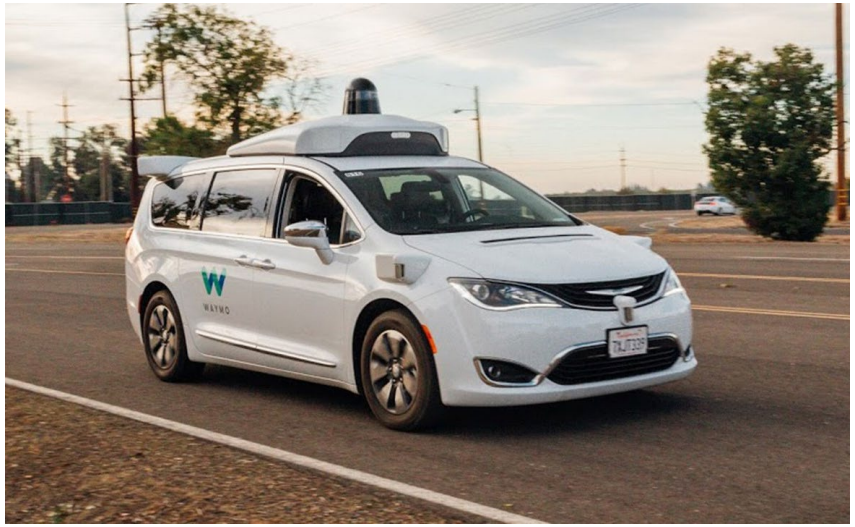
Compulsory motor insurance

FROM MASS MOTORING IN 1930

TO SELF-DRIVING

Existing motor insurance law

- 1930 Act has been amended many times – but never re-written.
- A complex mix of UK law and EU directives.
- Basic principle: a driver must insure against their own liability:
  - for “any liability which may be incurred by him… caused by or arising out of, the use of the vehicle”: Road Traffic Act 1988, section 145(3).
- Only applies if the driver is at fault.



New legislation needed:

Intended to smooth path to compensation for victim: Automated and Electric Vehicles Act 2018 (AEVA).

Insurer directly liable for accidents:

- Where “an accident is caused by an automated vehicle when driving itself”, the insurer is directly liable for the damage caused (section 2(1)).

In principle, insurer liable irrespective of fault - but

- Where accident “caused by injured person”, contributory negligence applies: section 3(1). Compensation can be reduced (possibly to zero).
- Once insurer has paid victim, the insurer may bring a secondary claim to recoup money (section 5).
- Secondary claim could be against:
  - another road user;
  - highway authority; or
  - manufacturer (under product liability law or the law of negligence).

The person in the driving seat can claim for personal injury

Unlike “normal” compulsory insurance – which only covers third parties.

BUT NOT IF:

- At fault in turning on feature:

  Accident wholly due to their negligence “in allowing the vehicle to begin driving itself when it was not appropriate to do so”: section 3(2).

- Made software alterations prohibited under the policy.

- Failed to install software which they knew or ought reasonably to know was safety critical: section 4(1).

AEVA has led to much discussion

Three big questions:

- When is a vehicle self-driving?
- How far is it a move towards strict liability?
- What data will be needed?

When is a vehicle self–driving? The need for a “bright line”

- Humans either pay attention or they do not – so need clarity about when a vehicle is good enough to drive itself.
- Concern about “conditional automation”: British Insurers argue that a vehicle must come to a safe stop even if “driver” does not take over.
- Demand for the same definition for all purposes – both civil and criminal law.

The AEVA definition of self-driving:

- Section 1: Government minister must list vehicles "capable, in at least some circumstances or situations, of **safely** driving themselves".
- Under section 8(1)(a): a vehicle is "driving itself" if it is operating in a mode in which it is not being controlled, and does not need to be **monitored**, by an individual.
- So far, nothing has been listed.

Law Commission recommended a high threshold for self-driving

An authorisation process

Vehicle must be safe and legal even if an individual is not monitoring the driving environment, the vehicle or the way that it drives.

The individual can be expected to respond to a suitable transition demand – which is clear, gives enough time to regain situation awareness; and mitigates against risk if the individual fails to take over.

But not to anything else.

But a person cannot be required to respond to events in the absence of a transition demand

- Not to a tyre blow-out (SAE)
- Not to “obvious circumstances” such as a road sign or snow (Germany)
- Not to emergency vehicles (France)
- Not to stones thrown from a motorway bridge etc

How far is AEVA strict liability?

- Applies where “an accident is caused by an automated vehicle when driving itself”.
- “Caused” often includes some element of fault.
- Not wholly clear how the courts will interpret “caused” in this context.

The three car shunt: would an AV in the middle be liable?

Access to data to process claims

At present, insurers rely on the insured driver to provide information to defend the claim.

Under AEVA, this will be less help:

1. The insured person may be the claimant.

2. They may not have noticed what happened.

3. They have less incentive to co-operate – own reputation and no claims bonus not at stake.

Access to data crucial

Lots of data *may* be available – e.g. camera feeds.

Very little information *must* be available.

Latest version of ALKS regulation (UN 157) requires the date and time of listed events – mainly:

- Activation/deactivation
- Transition demand
- Emergency maneuver
- Detected collision

But no standards for which collisions must be detected.

Contracting states can require more

Law Commission view is that you need location data

Motorcycle accidents (for example) may not be detected.

May not know exactly when it happened – but do know where.

Crucial to know whether ALKS engaged at the time.

How long should data be retained for?

A matter for contracting states.

Very fraught debate.

Normal limitation period for bringing claims is 3 years, but can be longer:

- For example, a child injured in uterus can claim three years after reaching 18 (21 years later).

Views differed between 6 months and 21 years.

Law Commission view: 39 months – three years limitation period plus three months to retrieve data.

Conclusion

A step into the unknown.

Simple in outline – with lots of questions about details:

- How will contributory negligence provisions work?
- How will courts interpret causation?
- How easy will it be to bring secondary claims?
- How much will it cost to retain data?

Try it – and then revise.


Questions?
QUESTION?