INTRODUCTION
Keoghs is the only top 50 law firm to focus exclusively on handling and defending both mainstream and specialist insurance claims. We offer an end-to-end claims service to insurers, public sector bodies and self-insured companies which includes pre-litigation, litigation and costs negotiation activities. Keoghs acts for eight out of the top ten UK general insurers, and with almost 1,200 dedicated staff, is a recognised leader in its field.

Keoghs has been closely engaged with the Government’s work on the advancement of driverless vehicles; we agree that the enabling of these technologies represent huge opportunities for the UK.

Keoghs welcome the opportunity to engage with the House of Lords Science and Technology Committee’s (“the Committee”) inquiry into the future uses of driverless cars in the UK. In particular, we think that the following considerations are of utmost importance:

- **Clarity around liability**: there needs to be a clear demarcation point as to when liability attaches to a driver and when it attaches to the owner/manufacturer;
- **Regulation for insurance cover based on type**: i.e. requirement for vehicle liability insurance cover to be regulated by vehicle type and specification; and
- **Data sharing**: there must be availability of the data set specifically in relation to when the driver was in full control or merely “in the loop”, so that a third party can identify the correct defendant to a claim.

Given our interest and expertise, the comments in our submission relate to insurance matters, particularly the following question posed by the Committee: “Are further revisions needed to insurance, regulation and legislation in the UK to create an enabling environment for autonomous vehicles?”

THE REGULATORY FRAMEWORK
A review of the regulatory framework is important. The first regulatory review (which concluded in February 2015) demonstrated that testing of Automated Vehicle Technologies (AVT) in the UK was possible and this led to the publication of a Code of Practice to allow testers to comply with current laws. It is now necessary to review and amend our domestic regulations to allow UK citizens and businesses to take advantage of Advanced Driver Assistance Systems (ADAS) and AVT as they become approved and available. But before doing so, it is vitally important to understand the legal issues that arise from the use of ADAS and AVT and the circumstances in which they arise.

Current position
Currently, liability to third parties injured or who suffer damage to property is as follows:

1. **The negligent user**
Where the driver of a vehicle drives it so that it causes injury or damage to property then they will be liable in tort for that injury/damage. The compulsory risks insurance covers this liability.

(2) Owner/supplier/manufacturer of a defective automated vehicle
If a vehicle causes injury or damage to property due to a defect then there could be a liability on the part of the owner, supplier or manufacturer. For example:

- If the defect was caused by a failure by the owner to maintain the vehicle then the owner could be liable in tort. The compulsory risks insurance covers this and the RTA provides a right of recovery for the insurer and a right to reject first party claims.
- If the failure was caused by a manufacturing defect then the manufacturer or supplier could be liable under the Consumer Protection Act 1987 but only to the individual consumer.

The Road Traffic Act 1988 already requires compulsory insurance for the negligent user of vehicle on a road or public place and it is an offence to allow a vehicle to be used without that insurance. There is a mature market for providing that insurance and a mechanism to protect those who suffer injury or damage to property from uninsured vehicles (the Uninsured Drivers Agreement and Untraced Drivers Agreement). There are practical difficulties in extending the existing arrangements in relation to the use of vehicles to protect the public from injury or damage to property caused by ADAS, AVT and automated vehicles.

Our preferred model
Our preferred model would be to make the owners and the manufacturer of the vehicle jointly liable for any injury, loss or damage to property caused by the vehicle irrespective of whether a driver was in or out of the loop. The Road Traffic Act could then be amended to compel the owners of automated vehicles to have compulsory insurance in place in relation to any liability for injury or damage to property caused by the vehicle. This would require owners of vehicles to take out “vehicle liability insurance” to meet such claims. It is important that the following aspects are considered:

- To enable third parties to pursue claims against the appropriate defendant, there needs to be a clear demarcation point as to when liability attaches to a driver and when it attaches to the owner/manufacturer.
- The requirement for vehicle liability insurance cover should be regulated by vehicle type and specification so that it is easily identifiable when purchasing new or second hand vehicles. This should be recorded by the DVLA as a new type of vehicle with a requirement to provide insurance details of the owner to the MID.
- There is a need to make the data set available to all of the parties specifically in relation to when the driver was in full control or merely “in the loop” so that the third party could identify the correct defendant to a claim.
- Where the driver was not in full control then there is a need to make the data set available specifically in relation to the attitude of the vehicle in the period up to and including the incident which is alleged to have caused injury loss or damage.
Once the vehicle liability claims had been met, it would be open to the insurer to pursue recovery of their outlay from the manufacturer.

There should be a step by step rolling programme of regulatory review. We recognise that the regulatory solutions that will enable future technology such as fully automated driverless cars may stifle progress and prevent UK citizens and businesses from taking advantage of them as they become approved and available. There needs to be positive engagement with innovators to identify technologies and vehicles systems as they begin to emerge to allow them to be tested and approved and made available.

**Should we only consider technologies that are likely to come to the UK market in the next 2-4 years?**

The ADAS and AVT that currently exist and those that are expected to reach the market in the next 2 to 4 years are primarily assistance systems. They require a driver to be in the loop which brings with it a risk of a lack of understanding, distraction and abuse by the driver.

But they also include technologies which go well beyond merely providing assistance. They include systems that are capable now of being used on normal roads such as the Mercedes, Volvo and Tesla systems. The current technologies are able to provide a driver with the ability to undertake non-driving tasks whilst on long journeys. There is significant competition between manufacturers to be first to market with new and improved technology and we are likely to see technology that provides an automated driving capability in all but name within 2-4 years.

We need to start now on the groundwork of considering and defining appropriate construction regulations for automated vehicles. The system technology will only increase in complexity and increase the time and resource needed to define the appropriate regulations.

We do not want to be in a position whereby the technology exists but cannot be used for want of appropriate regulation. If UK PLC is to become the leader in these technologies then the pace of regulatory reform needs to match the rate of technological advancement that is anticipated.

**LEGISLATION**

We should amend road vehicle compulsory insurance primary legislation in Part 6 of the Road Traffic Act 1988 to include liability for automated vehicles. However, we would caution against calling it “product liability”, as it is not “product liability” in its true sense.

The current primary legislation works on the basis of compelling motorists to insure against compulsory risks to third parties. This allows victims of road traffic accidents to be compensated fairly and quickly. The introduction of ADAS and AVT (“the system”) creates a situation where liability rests either with the engaged driver or with the manufacturer of the system. This is a blocker to third parties being compensated fairly and quickly because:
They do not have control of the evidence that will assist them in determining where liability rests.
They may have to seek compensation from the system manufacturer rather than an engaged driver.

This will cause friction over who or what caused the accident and result in victims being delayed or denied their compensation unnecessarily.

**Necessary amendments**

The Road Traffic Act 1988 needs to be amended to address:
• Liability: i.e. make the owners and manufacturers of vehicles jointly liable for any injury, loss or damage to property caused by the vehicle irrespective of whether a driver was in or out of the loop.
• Compulsory insurance: i.e. compel the owners and manufacturers of automated vehicles to insure against claims for injury, loss or damage to property caused by the vehicle. This “vehicle liability insurance” will then meet third party claims.

ADAS and AVT are currently designed to be driver aids and not to replace the driver. There is a need to make a clear demarcation of liability from driver to owner so that a third party knows who the correct defendant is. There is no doubt that accidents will occur as a result of the misuse of AVT but that is not an issue which should prevent innocent third parties from being compensated or being covered by “vehicle liability insurance”. The insurer can then decide as to whether to pursue recovery as against the “in the loop driver” or the manufacturer depending upon whether the abuse of AVT caused the accident or the AVT.

**INSURANCE**
There are a number of changes to the insurance framework that should be considered to support the use of AVT.

**Classification**
There is a pressing need to implement a system for classifying automated vehicles to the extent that they can be easily identified when purchasing a new or second hand vehicle as requiring “vehicle liability insurance”. Manufacturers should be required to provide automation type specification upon registration of new vehicles and those upgrading vehicles with automation should be required to register the type specification. Where the owner is different from the registered keeper, the owner needs to be required provide insurance details of the owner to the Motor Insurance Database (MID).

This will allow insurers to rate vehicles in accordance with the different automated systems and technologies.

**Definition of a standard data set**
It is important to have a definition of a standard data set of information:
The standard information should include confirmation of whether the driver was in full control or in the loop. Where it is the latter then it should include details of the vehicle’s movements in the period up to and including the incident which is alleged to have caused injury loss or damage together with the attitude adjustments brought about by the automated system.

There needs to be regulation over the format of the data and detail of how it can be handled to ensure that a court would view it as an accurate, reliable and factual recording leaving no scope for error or complex technical challenges in claims.

The data set should be recorded in a “black box” and the data set should be easily accessible to the police authorities when attending upon the scene of an accident.

RTA Amendments: S172 of the RTA 1988 may need amending to allow for a request for details of whether the driver was in full control or driving in or out of the loop. S170 RTA 1988 should be amended to require the disclosure of the standard data set recorded in relation to the accident to any person having reasonable grounds to require disclosure of the data set.

Exclusion of liability
There will be certain situations that arise that are, for obvious reasons, not taken into consideration by the current regime. These must be considered, and there must be clarity around the exclusion (or not) of liability. We set out some examples below:

- 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. This will allow third parties to be compensated fairly and quickly and will allow insurers to recover their outlay from the driver similar to the statutory right that exists under Section 148(4) of the Road Traffic Act 1988. This is the current position and we do not see any reason to change it.

- In the event of 3rd party hacking of an automated vehicle, an insurer should not be able to exclude liability. This will allow third parties to be compensated fairly and quickly and will allow insurers to recover their outlay from the hacker in the same way that recovery can be sought from the driver of a stolen vehicle. The incidence of hacking is prima facie evidence that the vehicle is not fit for purpose giving rise to a right of recovery by the insurer against the manufacturer.

- With respect to automated vehicles, we believe that the public sector should be able to continue to self-insure but, where they choose to self-insure, they would then be required to step into the insurer’s position in respect of product liability damages. This will allow victims to recover damages as fairly and quickly as if the claim were being met by an insurer.

COST CONSEQUENCES
Our view is that the cost of any changes to accommodate AVT could be very significant unless they are appropriately managed. We say this with the following considerations in mind:

Data
• Management - there needs to be a defined set of data recorded in a standard format that covers the immediate run up to and aftermath of an incident. That data set needs to be recorded in a standard format and be readily accessible by the police authorities in attendance upon an accident.

• Format - there needs to be regulation over the format of the data and detail of how it can be handled to ensure that a court would view it as an accurate, reliable and factual recording leaving no scope for error or complex technical challenges in claims. It needs to be stored appropriately and be made accessible to any person having reasonable grounds to require disclosure.

Unless this is appropriately regulated, then the cost of recording, obtaining, interpreting, challenging and storing the data in relation to potentially hundreds of thousands of accidents each year could be very significant.

Underwriting considerations
Underwriting and vehicle technology rating and experience modelling aspects may add to the cost of these changes. The underwriting teams will need to assess the risk presented by each vehicle type to determine the risk and policy rating.

IT Systems and engineering
There would need to be an IT review to store and analyse disclosed data from accidents. There would need to be training and upskilling the engineering workforce in relation to estimating cost of and completion of repairs to automated vehicle technology.

What about the cost of AVT insurance products?
Initially, we anticipate that the cost of AVT insurance products will be higher than for conventional vehicles. We are not in a position to say how much higher that may be but if the requirement for vehicle liability insurance applied to current vehicles with ADAS and AVT then the initial cost would be spread amongst many from the outset thereby reducing the difference between it and insurance for conventional vehicles. It is also likely to be higher because of the underwriting uncertainty over claims frequency and severity. It may also be because of the additional cover required for the “non-fault driver” claims and the additional (even if only perceived) risk of cyber-attack.

There are also costs that do not apply to conventional vehicles that will have to be factored into the price of AVT insurance products. These will include:

• The cost of data sharing/ownership: these costs are likely to be significant. We have outlined the relevant considerations (which will be accompanied by a corresponding cost) in our response above.

• The cost of vehicle repair: AVT vehicles are, by their very nature, more sophisticated machines than conventional motor vehicles. We can reasonably assume that in the event of vehicle damage, the cost of repair is likely to be higher - at least in the short term.

• The cost of vehicle service: AVT vehicles will need regular servicing just as conventional cars do. However, there will be additional requirements due to the increased capabilities
of AVT vehicles. Servicing will, for example, probably require that the relevant software is kept up to date.

- The cost of credit hire: providing a customer with a like-for-like replacement in the event that they are unable to use their own vehicle will inevitably be higher, at least in the immediate future and until the purchase price of AVT vehicles decrease.

However, if as expected, the frequency of at-fault accidents (whether it be engaged driver, disengaged driver or system failure) reduces compared with vehicles without AVT then popularity of safer AVT vehicles will increase.

As more and more people opt for safer AVT vehicles, the costs of AVT insurance products is likely to decrease. This may cause an increase in the cost of insurance products on non-AVT vehicles which may be considered a higher risk.

We anticipate that the introduction of vehicles with AVT will have no initial effect upon insurance premiums of conventional vehicles. However, as the AVT vehicles become more popular and safer, the risk of non AVT vehicles may be considered higher and insurance premiums may increase.

Although we anticipate that there will be rigorous testing of AVT prior to it being made available to ameliorate the risk of system fault incidents, the current uncertainty around the demarcation point of liability together with the model that is used means that costs are difficult to quantify. Certainty around liability and data transparency will be key to keeping costs down. If liability remains unclear, the risk of litigation and the potential exposure will undoubtedly push up costs for insurers. Market economics dictates that it is almost inevitable that at least some of the cost will be passed onto the consumer. And unless data is regulated and access is managed then litigation is likely to follow causing further increases in cost.

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