Stewarts Law – Written evidence (AUV0054)

About Stewarts Law LLP
Stewarts Law is the UK’s largest litigation only solicitors’ firm and specialises in high value and complex disputes. The firm acts for both corporate and individual clients and has leading and specialist departments in aviation and travel, clinical negligence, personal injury, divorce and family, commercial litigation, competition litigation, international arbitration, investor protection and tax litigation.

Stewarts Law has strategic partnerships in place with other specialist solicitors’ firms across the world, enabling its clients to take a global approach to litigation. The firm is top ranked in both the Legal 500 and Chambers and Partners, the leading guides to the legal profession in the United Kingdom.

Response to the call for evidence

1 What are the potential user benefits and disadvantages from the deployment of autonomous vehicles?

1.1 The incidence of road accidents should, if anything, reduce as they often result from human error by drivers of both vehicles concerned.

1.2 We do not anticipate that the deployment of autonomous vehicles will have the effect of increasing insurance premiums for conventional vehicles, despite concerns expressed that they might. It is also very unlikely that the cost of insurance products for autonomous vehicles will be higher than for conventional vehicles. In fact, they ought to decrease.

2 Does the Government have an effective approach on data and cybersecurity in this sector?

2.1 We agree with the Government’s approach that in the event of third party hacking of an automated vehicle, the insurer of the vehicle should not be able to exclude liability. Victims should be able to readily secure compensation from vehicle insurers who can then pursue anyone they identify as responsible.

3 Are further revisions needed to insurance, regulation and legislation in the UK to create an enabling environment for autonomous vehicles?

3.1 Delays in the compensation of innocent victims and the increased costs of the legal process highlight the current inconsistencies of UK law with EU legislation and the need for the insurance framework to be changed. It is not just a matter of complying with EU law but, more significantly, about ensuring that innocent victims of motor accidents are compensated absent which a large part of the financial impact of their injuries will fall to the State.
3.2 In addition to the application of insurance/liability rules for automated vehicles, we also propose that strict liability should be imposed on motor insurers for any mechanical or technical defects in vehicles that are responsible for causing and contributing to the accident. For reasons of simplicity and consistency we think that this strict liability should be extended to all mechanical and technical defects in all vehicles, not just automated vehicles. That would also avoid any disputes over whether the vehicle in question was autonomous, or being operated in an autonomous or semi-autonomous way at the time of the accident.

3.3 The Government has already proposed amending road vehicle compulsory insurance primary litigation in Part 6 of the Road Traffic Act 1988 to include product liability for automated vehicles. We agree with the spirit of the proposal, but consider wider ranging reform to be necessary. It is essential that the cross-border scenarios are adequately addressed. Large numbers of vehicles regularly travel to and from the UK and the continent and the numbers may well increase with the ease afforded by automated and semi-automated vehicles. Adequate cover is therefore essential for English citizens who may be injured by European drivers/vehicles on our roads, or when travelling in Europe.

3.4 The current right of English resident victims of road traffic accidents to be able to bring their compensation claims through the English Courts should be retained. This right emanates from the European Motor Insurance Directives, but has only been partially implemented nationally by the The European Communities (Rights against Insurers) Regulations 2002, incorrectly limited to accidents within the UK. A new Modern Transport Act needs to fully implement the Motor Insurance Directives into UK law. In any event, it is likely that the EU will insist on the UK’s full implementation of the Motor Insurance Directives if UK citizens are to continue enjoying the benefits of cross border remedies post-Brexit.

3.5 We disagree with the Government’s proposal to limit product liability and insurance requirements for automated vehicles with the ‘state of the art’ defence. That would undermine the protection of victims and impose an expensive and potentially impossible evidential burden on them in this highly technical area.

3.6 We do not consider the introduction of a no-fault state compensation scheme, as in New Zealand, to be a suitable alternative. It does not provide full compensation, which is a bedrock of our civil justice system. Such scheme, including the CICA scheme for victims of criminally inflicted injuries here in the UK, tend to significantly undercompensate those with serious and life changing injuries. In our view, there should be no erosion of the right of innocent accident victims to recover full restitutionary compensation.

4 What does the proposed Modern Transport Bill need to deliver?

4.1 The Modern Transport Bill needs to sweep away the many inconsistencies between the Road Traffic Act and the Motor Insurance Directives as further particularised in
the Consultation Response by Nicholas Bevan, Professor Robert Merkin QC and Dr Kyriaki Nousia, University of Exeter.

4.2 It also must be capable of anticipating the known forthcoming technological advances as well as simplifying, correcting and clarifying the existing law. To delay anticipating known advances would put a very heavy onus on the Government to react quickly to this rapidly developing technology.

5 Is the Government's strategy and work in this area sufficiently wide-reaching? Does it take into account the opportunities that autonomous vehicles offer in a wide range of areas, not just on the road?

5.1 Whilst agreeing with the Government’s proposed strategy for a staged approach to regulatory reform, we think it would be advisable to invoke a provision that clearly fixes the driver with liability in any scenario in which they would have been liable if they had been in full control of the vehicle without the semi-autonomous system. To put it another way, the law should be clear that use of a semi-autonomous system should not be a defence.

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