

## IN BRIEF

- ▶ May 2016 saw the UK announcement of the world's first driverless car insurance legislation, as well as the launch of the first consumer driverless car policy.
- ▶ However, the insurance of driverless cars remains a thorny issue, raising questions of how to set premiums and how to determine liability.
- ▶ Over the next few years, the focus is likely to move from individual motor policies to manufacturers' product liability cover. In the longer term, one possible solution would be the establishment of a central "no fault" compensation fund paid into through a premium on the purchase of driverless cars.

According to the Royal Society for the Prevention of Accidents, 95% of all road accidents involve human error, and in 76% of road accidents the driver is solely to blame. Factors include tiredness, impatience and alcohol. While "driverless" cars are not infallible—as illustrated by February's "Googlecar" collision and May's fatal Tesla "Autopilot" crash—their introduction is likely to dramatically reduce the number of collisions. Even lesser levels of automation—such as automatic emergency braking—reduce fatal crashes by 20-25%. Inevitably, such developments are making their mark on the insurance industry.

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#### Assessing the risk

In the short term, the main change will be to how premiums are set. Currently, the premium to be paid by the driver is based on the risk that the driver and vehicle together pose on the road. This will include the driver's age, how long they have been driving, accident history, purpose of use, storage of the vehicle, make and model of the vehicle, other drivers who use the vehicle as well as their characteristics.

As quasi-autonomous safety features become more common, the identity of the driver will assume less importance. In truly driverless cars, the driver will drop out of the picture entirely and the

# Look, no hands!

Matthew Channon & Lucy McCormick consider the challenges that driverless cars are posing for the insurance industry



spotlight will be on the vehicle. In the early days, the insurers will not have a great deal of accident data to go on and the assessment of insurance risk is likely to be extremely difficult. That said, this has not stopped "early adopters" Adrian Flux launching what is said to be the UK's first consumer insurance policy aimed at autonomous cars in June 2016. David Williams of AXA reports that his company has also recently launched a consumer driverless car policy with brokers S-Tech.

#### Uncertainty over liability

An obvious potential headache for insurers will be how liability is apportioned in the event of an accident. In a "classic" road traffic accident, the liability usually falls on the insured driver, a third party driver, or both. In an accident involving a driverless car, a range of other parties come into play, including the vehicle manufacturer and any sub-contractor responsible for programming. The particularly difficult cases will be those where the vehicle is partially automated but some control is left to the "driver" of the vehicle to intervene when an accident can be foreseen. "Hacking" of driverless cars is also likely to lead to particular disputes. Even with legislative intervention attempting to solve many of the liability issues, substantial litigation on a case-by-case basis is still likely. Inevitably, it will be road traffic insurers who will shoulder much of the funding of these disputes.

#### Changes to UK Legislation

However, the government is doing what it can to clarify matters, and the legal landscape is changing swiftly. Last year, the government published a Code of Practice for those wishing to test driverless vehicles on UK roads. The government has also set out its aim to review and amend domestic legislation by summer 2017 to accommodate self-driving technology. This will include:

- ▶ clarification of criminal and civil liabilities in the event of a collision involving an automated vehicle;
- ▶ potential revisions to *The Highway Code*; and
- ▶ possible additions to the MOT in relation to the maintenance of driverless technology.

In a landmark step, the May 2016 Queen's Speech heralded "the world's first driverless car insurance legislation". The (then) transport minister Andrew Jones MP, explained that this will involve the amendment of the motor insurance provisions of the Road Traffic Act 1988. Compulsory motor insurance will be retained, but it will be extended to cover product liability, so that when a motorist has handed control to their vehicle, "they can be reassured that their insurance will be there if anything goes wrong". Where the vehicle is at fault then the insurer will be able to seek reimbursement from the manufacturer. The aim is that "for affected individuals, the insurance

process will feel much the same". A draft Bill is not presently available, but a new consultation has been launched this month and more details are expected to emerge over the summer.

### Developments at EU level

Interesting developments are also afoot at EU level, although given the recent Brexit vote it is not clear the extent to which this will impact upon the UK.. In an "Inception Impact Assessment" issued on 8 June 2016, the European Commission considered an adaption of the scope of Directive 2009/103/EC on motor insurance. This is the instrument which mandates a certain level of compulsory cover, and ensures that a vehicle is insured for third party liability in one EU state is also covered across the EU. Tellingly, the Impact Assessment noted: "It is not envisaged to change the definition of motor vehicle, because the existing definition is technology-neutral and will in the future capture all types of vehicle with a driver intended for travel on land and propelled by mechanical power (including eg automated vehicles)."

One might raise an eyebrow at the description of an "automated vehicle" as necessarily a subcategory of "vehicle which has a driver". Nonetheless, the Assessment is a significant document, because it indicates that vehicles which are almost entirely autonomous but still have a driver are intended to be covered by the Motor Insurance Directives. This has wide practical consequences, meaning that within the EU:

- ▶ autonomous cars must be covered under compulsory motor insurance (see Art 3 Directive 2009/103/EC);
- ▶ this currently applies on both public and private land (see *Damijan Vnuk v Zavarovalnica Triglav C-162/13*);
- ▶ autonomous cars must also be covered under the agreements of the "compensation body", such as the Motor Insurers' Bureau in the UK; and
- ▶ exclusions of liability are not permitted in insurance policies (see Art 13) or under the compensation body (see Art 10) except for those permitted by the Directive in the respective Articles.

### The end of motor insurance?

Some insurers are concerned that driverless cars may ultimately make motor insurance unnecessary. Speaking in May, Andrew Jones dismissed this fear as "pie in the sky". Is he correct?

Certainly, the next few years are likely to see a gradual shift of liability from drivers to manufacturers. Motor insurance

is likely to become less profitable, and the real growth area will be product liability. While this might sound like good news for the customer, the cost of manufacturer's product liability policies will ultimately be incorporated into the price of the vehicle. The shift will therefore ultimately not make much difference to the consumer's overall expenditure. That said, the overall reduction in the number and severity of collisions brought about through increasingly advanced safety technology is likely to bring down premiums in itself.

## **“The motor sector is notorious for ill-thought-out legislation, notably the disastrous Road Traffic Act 1930”**

More speculatively, in the very distant future, if technological advances reach the stage that getting in a car is no more dangerous than walking in a park, it may come to seem odd that we mandate insurance for one and not the other. However, throughout our lifetimes some form of motor insurance will remain essential. The latest Google Cars and Teslas will be sharing the road with anything from classic 1960 Aston Martin DB4s to battered Ford Fiestas. No matter what stage the technology reaches, many people will prefer to drive themselves, at least from time to time.

### The MIB

As long as motor insurance remains, so will the Motor Insurer's Bureau (MIB). The MIB is the mechanism in the UK through which compensation is provided for victims of accidents caused by uninsured and untraced drivers, and is funded by an estimated £30 a year from every insured driver's premiums. The rise of driverless cars will, however, have an impact on the MIB.

With an increase in telematics and on-board cameras, the number of unidentified drivers and fraudulent claims will likely fall, meaning a reduction in the MIB's costs. The falling collision rate generally is also likely to reduce the role of the MIB. It is expected that this will prove a boon to the consumer, in terms of reducing each insured driver's premiums. However, from the EU Assessment discussed

above, it appears that the MIB will be required to cover uninsured and untraced autonomous cars just as it does ordinary models.

### A non-insurance approach?

Motor insurance is, however, not the only model for compensating victims of collisions.

One concept is the creation of a central fund, paid into through a premium on the purchase of driverless cars. Then if an accident occurs, the fund would pay for damage irrespective of liability. Such a "no fault" system would be a smaller cousin of the arrangement in New Zealand, which has an "accident compensation corporation" which administers the country's universal no-fault accidental injury scheme. A central fund model may well prove to be a cheaper solution overall, as it would cut out profit-driven insurers and prevent costly liability disputes. Of course, while some problems would be solved, others would be created: notably exactly how much is paid into the fund, who is to manage it, and how to deal with illegal use of driverless cars.

Another less satisfactory suggestion is the assumption of voluntary strict liability by manufacturers. In October 2015, for example, Volvo indicated that it would "accept full liability whenever one of its cars is in autonomous mode". Inevitably, this broad assertion was subsequently caveated in a number of important ways and is rather less comprehensive than it might appear. More fundamentally, it cannot be desirable that a third party's remedy varies depending on the brand of car which has crashed into him. A further problem is that at present there is no requirement for manufacturers to maintain cash reserves to ensure that they could meet claims—a significant problem could bankrupt a company, leaving accident victims without a remedy. It is perhaps best to treat such suggestions of voluntary strict liability as "mood music" by manufacturers hoping to convince legislators of their good intentions.

Whatever approach legislators settle on during the 2017 review, it is important to get it right. The motor sector is notorious for ill-thought-out legislation, notably the disastrous Road Traffic Act 1930, which was so riddled with loopholes that it was replaced only four years later. Hopefully the Modern Transport Bill will, when unveiled, provide some insight into government plans.

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