

Changes round the Corner? Driverless Cars and E-Scooters

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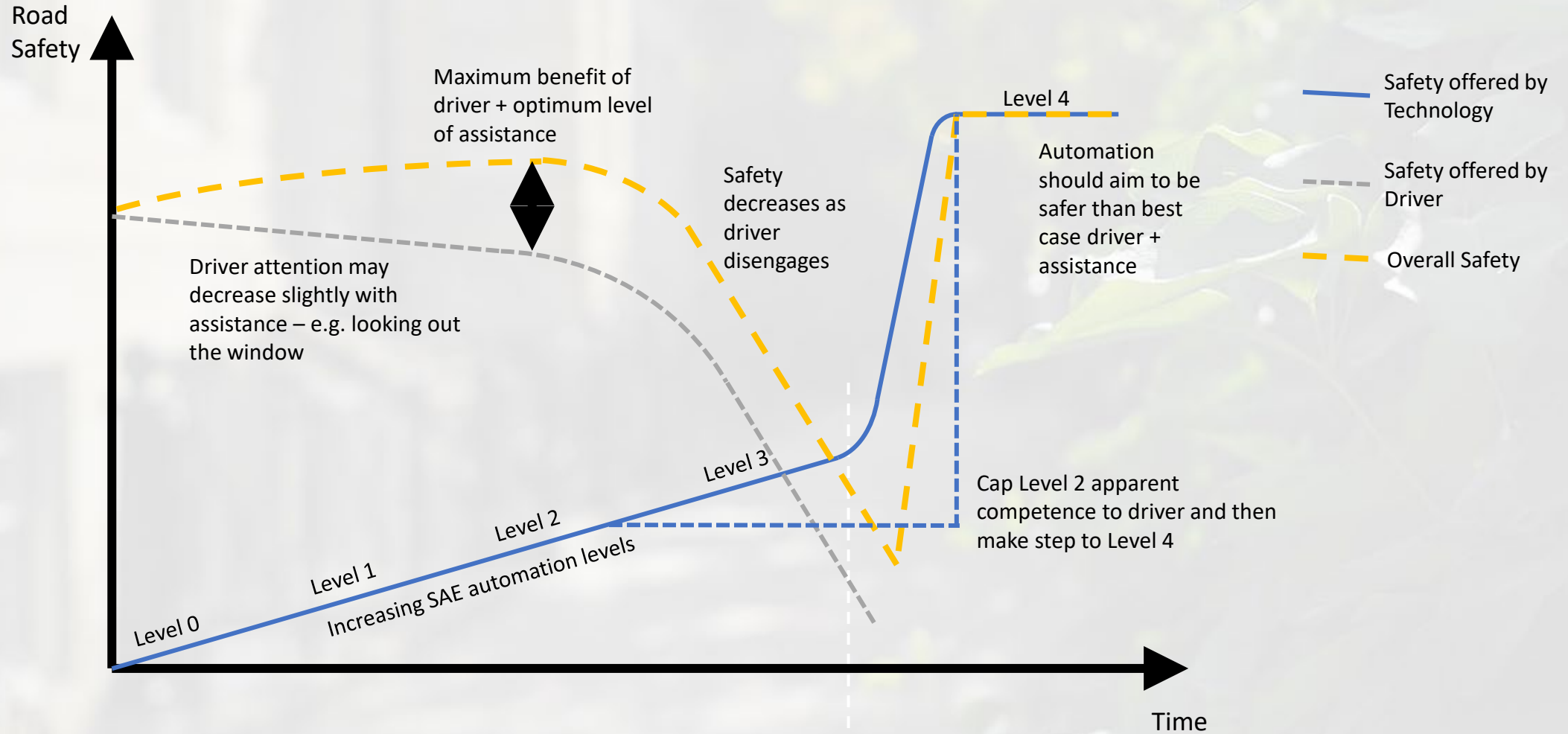
Definition of 'driverless car'

- Correct term is 'Connected and Automated Vehicles' ("CAVs")
- Hence there is a Centre for Connected and Automated Vehicles ("CCAV")
- Covers a range of capabilities: Society of Automotive Engineers (SAE) defines **6 levels** of automation (0-5)

Levels of Automation

| Level | Name | Definition |
|-------|------------------------|---|
| 0 | No automation | The full-time performance by the human driver of all aspects of the dynamic driving task, even when enhanced by warning or intervention systems. |
| 1 | Driver assistance | The driving mode-specific execution by a driver assistance system of either steering or acceleration/deceleration using information about the driving environment and with the expectation that the human driver perform all remaining aspects of the dynamic driving task. |
| 2 | Partial automation | The driving mode-specific execution by one or more driver assistance systems of both steering and acceleration/deceleration using information about the driving environment and with the expectation that the human driver perform all remaining aspects of the dynamic driving task. |
| 3 | Conditional automation | The driving mode-specific performance by an automated driving system of all aspects of the dynamic driving task with the expectation that the human driver will respond appropriately to a request to intervene. |
| 4 | High automation | The driving mode-specific performance by an automated driving system of all aspects of the dynamic driving task, even if a human driver does not respond appropriately to a request to intervene. |
| 5 | Full automation | The full-time performance by an automated driving system of all aspects of the dynamic driving task under all roadway and environmental conditions that can be managed by a human driver. |

AD Technology vs. Road Safety



Relevant legislation

- Automated and Electric Vehicles (AEV) Act 2018
 - Applies to Level 4&5 CAVs
 - Sections 1-8 came into force on 21 April 2021
 - List of vehicles to be prepared by Secretary of State
 - Sets out provisions for third party liability
- CCAV also invited a Joint Law Commission Report
 - Reported on 26th January 2022
 - Lots about regulatory changes –
 - Creates Authorised Self-Driving Entity ASDE – responsible for performance of the vehicle
 - ‘Driver’ relegated to ‘User-in-Charge’ (UIC) with reduced duties
 - Next to nothing about civil liability:

Liability of Insurers

2 Liability of insurers etc where accident caused by automated vehicle

(1) Where—

- a) an accident is caused by an automated vehicle when driving itself on a road or other public place in Great Britain,
- b) the vehicle is insured at the time of the accident, and
- c) an insured person or any other person suffers damage as a result of the accident,

the insurer is liable for that damage (So a very strict liability!)

- Note: special 3-year time limit from date of the accident or date of knowledge (s. 11B **Limitation Act 1980**)

What is “damage”?

(3) In this Part “damage” means death or personal injury, and any damage to property other than—

- a) the automated vehicle,
- b) goods carried for hire or reward in or on that vehicle ...
- c) property in the custody, or under the control, of— (i) the insured person..., or (ii) the person in charge of the automated vehicle ...

Impact of strict liability?

- Direct action against insurer. (Much like **EC 2002 (Rights Against Insurers) Regulations** – so no need to pursue manufacturer)
- **BUT** ‘....accident caused by automated vehicle’
- (s. 8(3)(a)) “An accident” includes multiple causally-related accidents
No need to establish or plead
- (s. 8(3)(b)) Sufficient that accident is ‘partly caused’ by automated vehicle
- Does it require a broad or narrow interpretation?
- Is it ‘caused’ if it would have been negligent?
- Is it the test of causation in tort (material contribution)?

Contributory Negligence

3 Contributory negligence etc

- 1) Where—
 - a) an insurer or vehicle owner is liable under section 2 to a person (“the injured party”) in respect of an accident, and
 - b) the accident, or the damage resulting from it, was to any extent caused by the injured party,

the amount of the liability is subject to whatever reduction under the **Law Reform (Contributory Negligence) Act 1945** would apply to a claim in respect of the accident brought by the injured party against a person other than the insurer or vehicle owner.

(Who? The Driver? The UIC? So how does that affect blameworthiness?)

Example

Section 6(3):

“For the purposes of section 3(1), the Law Reform (Contributory Negligence) Act 1945 and section 5 of the Fatal Accidents Act 1976 (contributory negligence) have effect as if the behavior of the automated vehicle were the fault of the person made liable for the damage by section 2 of this Act.”

- Effect of stepping off the pavement into the path of the vehicle?
 - Has the vehicle caused the accident?
 - Do you assess what a ‘reasonable driver’ would have done?
 - Is contrib affected by the quality of technology in the vehicle (eg better sensors = less contrib?)

Limitations/Exclusions of Cover

- **S.3(2)** ‘The insurer or owner of an automated vehicle is not liable under section 2 to the person in charge of the vehicle where the accident that it caused was wholly due to the person’s negligence in allowing the vehicle to drive itself when it was not appropriate to do so.’
- Otherwise per (s. 2(6)) Insurer’s s. 2 liability can only be limited or excluded under the insurance policy in accordance with s. 4
 - **software alterations** made by the insured person, or with the insured person's knowledge, **that are prohibited under the policy**, or
 - a failure to install **safety-critical software updates** that the insured person knows, **or ought reasonably to know**, are safety-critical.
 - **BUT** where the insured person is not the policy holder, any limitations or exclusions for software alterations will only apply where the person knows they are prohibited under the policy (s. 4(2))

What if no insurance?

- Quite likely if:
 - Not purchased/expired
 - Excluded under s4
- **S151 RTA 1988** will not apply
- **MIB** liability not engaged. Law Commission report says '*we recommend the UK government puts measures in place to provide compensation for victims*'. (Yes, but what?)
- What about 'semi automated' vehicles? Are we back to traditional motor insurance principles?

Is s2 the answer?

- Where—
 - (a) an accident is caused by an automated vehicle...
 - (b) the vehicle is not insured at the time of the accident,
 - (c) section 143 of the Road Traffic Act 1988 (users of motor vehicles to be insured or secured against third-party risks) does not apply to the vehicle at that time—
 - (i) because of section 144(2) of that Act (exemption for public bodies etc), or
 - (ii) because the vehicle is in the public service of the Crown, and
 - (d) a person suffers damage as a result of the accident,
- the owner of the vehicle is liable for that damage.

(Anyone want to buy a driverless car?)

Insurer Right Of Recovery

5 Right of insurer etc to claim against person responsible for accident

- 1) Where—
 - a) section 2 imposes on an insurer, or the owner of a vehicle, liability to a person who has suffered damage as a result of an accident (“the injured party”), and
 - b) the amount of the insurer’s or vehicle owner’s liability to the injured party in respect of the accident (including any liability not imposed by section 2) is settled,

any other person liable to the injured party in respect of the accident is under the same liability to the insurer or vehicle owner.
- 2) For the purposes of this section, the amount of the insurer’s or vehicle owner’s liability is settled when it is established— (a) by a judgment or decree, (b) by an award in arbitral proceedings or by an arbitration, or (c) by an enforceable agreement.

NB This mirrors the **Civil Liability (Contributions) Act 1978**. (Or does it...?)

Note also (s. 6(5)) a special 2-year time limit (s. 10A **Limitation Act 1980**)

Consumer Protection Act 1987

2. Liability for defective products.

- 1) Subject to the following provisions of this Part, where any damage is caused wholly or partly by a **defect in a product**, every person to whom subsection (2) below applies shall be liable for the damage.
- 2) This subsection applies to—
 - a) the producer of the product;
 - b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product;
 - c) any person who has imported the product into a member State from a place outside the member States in order, in the course of any business of his, to supply it to another.

Defect?

- 1) Subject to the following provisions of this section, there is a defect in a product for the purposes of this Part if **the safety of the product is not such as persons generally are entitled to expect**; and for those purposes “safety”, in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.

Defences

In any civil proceedings by virtue of this Part against any person (“the person proceeded against”) in respect of a defect in a product it shall be a defence for him to show—

- a) ...
- b) ...
- c) ...
- d) ...
- e) that the state of scientific and technical knowledge at the relevant time was not such that a producer of products of the same description as the product in question might be expected to have discovered the defect if it had existed in his products while they were under his control; or**
- f) ...

Driverless Cars

- Future litigation flashpoints:
 - Liability for collisions
 - Uninsured drivers
 - Product liability: CPA 1987
 - Data protection / cyber security

E-Scooters



E-Scooters

- Lots of them
 - 50 million units by the end of 2020.
 - Expected to reach 129 million by 2028.
 - By 2023, electric two-wheelers will make up 8% of all two-wheelers on the road. (Currently stands at 2.5%)
- Still illegal to ride a privately owned on a road or public place in the UK
- BUT huge push to develop them (even got a mention in the Queen's Speech in May 2022)

E-Scooter Trials

- Began in July 2020.
- 6 London boroughs began trials in June 2021.
- Trials look set to run to mid-2022.
- The **Electric Scooter Trials** and Traffic Signs (Coronavirus) **Regulations** and General Directions 2020:
 - Fitted with an electric motor with a maximum continuous power rating not exceeding 500 watts.
 - Maximum weight of not more than 55kg (not including the rider).
 - Maximum design speed of not more than 15.5mph.

DFT stats for 2020:

- 460 reported accidents involving e-scooters.
- 484 casualties (depending on how police record them –possibly 128 seriously injured) 384 were e-scooter users
- 1 fatality
- Most casualties were aged between 10-19.
- 60% of the accidents recorded were in London.



Basic rules

- Modelled on Electrically Assisted Pedal Cycles (EAPCs)
- Ride on road NOT pavement (like **Coates v CPS [2011] EWHC 2032** re Segways)
- Helmets not obligatory. (Seriously?)
- Need a driving licence (full or provisional but not all categories)
- Need third party insurance (already the law?: **Winter v DPP [2002] EWHC 1524.**)



E-Scooters: Insurance

- E-Scooters in trials covered motor insurance provided by companies operating the e-scooters.
- What happens in the following situations?
 - RTA: No equivalent provision to Driverless Cars – sue the driver.
 - Scooter/pedestrian accidents?
 - Who thinks to take insurance details? More untraced claims?
 - Contributory negligence
 - Scooter driver injured
 - *Ex Turpi* arguments – driving on pavement without insurance?

E-Scooters: Future Issues

- Road safety
 - Driver awareness
 - Same issues as Boris Bikes re helmets
- Insurance
 - Who would think to take insurance details at scene of an accident (fine of only one scooter provider, but what if they grow?)
 - Much harder to trace driver afterwards

THE END