



Bar Council response to the Centre for Connected & Autonomous Vehicles call for evidence on Safe Use of Automated Lane Keeping System

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Centre for Connected & Autonomous Vehicles call for evidence on Safe Use of Automated Lane Keeping System (ALKS).¹
2. The Bar Council represents approximately 17,000 barristers in England and Wales. It promotes the Bar's high-quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board (BSB).

2.21: Do you foresee any legal barriers to accessing data for incident investigation?

4. We do not foresee barriers to accessing data in the context of a police investigation of a road traffic accident. The position in relation to civil liability is more nuanced. Due consideration will have to be given to the need to ensure that personal data is processed lawfully.

¹ [Call for evidence](#)

If yes, what are those barriers?

5. See above.

6. We note that the paper refers to both manufacturers and insurers may set conditions on data recording, handling and sharing for use of ALKS and insurance, respectively.

7. One would hope that the company in possession of the data stored on the DDSAD is responsible and would voluntarily produce the data to the investigation authorities. Likewise, one would assume that there would be co-operation to enable insurance companies to access that information. We welcome conditions on manufacturers and insurers on data recording, handling and sharing.

8. However, it should not be overlooked that both the manufacturer/company in possession of the data stored on the DDSAD and the owner of the vehicle might not consent to providing that information to the incident investigation team.

9. We note that the paper refers to PACE and we consider that there are various routes under that Act which would permit the seizure of such evidence. Consideration may also be given to empowering specialist investigators (such as inspectors from the DVSA) with powers to enter premises at a reasonable hour for the purpose of inspection and of retention records. A useful starting point is found in the powers afforded to those investigating type approval of motor vehicles under sch.4 of the Road Vehicles (Approval) Regulations 2020/18. Regulations could also apply to the requirement on owners and manufacturers to maintain and provide records. This may assist in investigations where data is cloud based and may be located outside of the jurisdiction. An obligation to maintain or deliver-up information within the UK could overcome this difficulty. Should it be intended that these powers apply to the owner of the vehicle then the powers would need to cover dwellings and the vehicle itself.

4.9: Do you agree that it is appropriate to exempt the driver from prosecution – if the vehicle comes to an unjustified stop when ALKS is engaged – by creating a further exception in the Motorway Traffic Regulations? If not, why?

10. Yes. The exemption should make clear that where a vehicle stops because the driver has unlawfully failed to respond to a transition demand, the driver would still be liable to prosecution. It is agreed that the courts could decide what would be an unacceptable amount of time for the driver to allow the vehicle to remain at rest, but

the exemption could also provide some guidance e.g. "the driver moves the vehicle as soon as is reasonably possible".

4.12: Do you agree that amending Rule 150 is sufficient to clarify that the driver may rely on the ALKS? If not, why?

11. Yes, subject to the requirement that they must be able to respond appropriately to a transition demand.

4.16: Do you agree that not changing the Motorway Traffic Regulations, except for unjustified stops, ensures the driver is suitably incentivised to take back control when requested? If not, why?

12. Yes. There may be issues with proving that a driver has not responded to a transition demand when they were supposed to, so the designers of the system might be encouraged to bear in mind how transition demands are recorded. Ideally courts should be able to assume, as with speed cameras, that the transition demand system is working properly, unless it can be shown otherwise.

4.17: Do you agree that the Highway Code should be changed so that drivers of ALKS must be alert to a transition demand? If not, why?

13. Yes.

4.17 Do you think that amending the Highway Code is sufficient to communicate to drivers their responsibility? If not, why?

14. Communication of this responsibility could also be required any time that a person buys or rents an ALKS equipped vehicle.

Bar Council²

27 October 2020

For further information please contact

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² Prepared by the Law Reform Committee