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ABI AND IFB JOINT RESPONSE TO DEPARTMENT FOR TRANSPORT: "TECHNICAL CONSULTATION ON MOTOR INSURANCE: CONSIDERATION OF THE EUROPEAN COURT OF JUSTICE RULING IN THE CASE OF DAMIJAN VNUK V ZARAROVALNICA TRIGLAV D.D (C-162/13)"

About the ABI

The Association of British Insurers is the leading trade association for insurers and providers of long term savings. Our 250 members include most household names and specialist providers who contribute £12billion in taxes and manage investments of £1.8trillion.

About the IFB

Insurance Fraud Bureau (IFB) leads the insurance industry's collective fight against insurance fraud. We act as a central hub for sharing insurance fraud data and intelligence, using their unique position at the heart of the industry and unrivalled access to data to detect and disrupt organised fraud networks.

Executive Summary

Since the European Court of Justice's *Vnuk* ruling was published in 2014, the insurance industry has worked with the Government to address its unwelcome consequences. We welcome the constructive approach the Government continues to take to this issue and the opportunities the industry has been given to contribute its views.

The European Commission has proposed a workable and proportionate solution to the issues created by the ruling in its June 2016 'Inception Impact Assessment (IIA)'. In this document, the Commission accepted, unambiguously, the need to clarify the scope of the Motor Insurance Directive and its preference for amending the Directive to clarify that it applied only to vehicles when in traffic. In practical effect, such an amendment would maintain how the Motor Insurance Directive has been applied in the UK since its introduction in 1972.

Given this approach would require minimal change to existing practice and would not prohibit those member states that wish to do so from requiring a broader scope of compulsory cover, it is disappointing that the Commission has not kept to the timescales outlined when the IIA document was published. The insurance industry urges the Government to continue to press the Commission to introduce this amendment as soon as possible, especially as addressing the consequences of the *Vnuk* ruling would make the process of arranging an ongoing mutual recognition of motor insurance for cross-border travel after Britain leaves the EU considerably less complicated.

Of the two options proposed in this consultation paper, the ABI and the IFB support the 'Amended Directive' option. It is our assessment that this addresses the most challenging aspects of the *Vnuk* ruling and prevents the scope of motor insurance cover being extended into areas where it would be both unfair and unworkable to attempt to do so. The existing geographical scope of compulsory motor insurance cover is well established and does not need to be amended. It is important that consumers are not confused about when they do and do not need motor insurance.

However, when taking forward the 'Amended Directive' option, the Government must take care not to impose additional unnecessary costs either on individual vehicle users or the wider motoring public. The ABI supports the use of 'derogation' to exclude certain vehicles from the

scope of compulsory motor insurance where these vehicles pose little risk to the public. It is important, however, that the impact of any derogations is carefully assessed, especially if the volume of claims is subsequently higher than anticipated.

The consultation document also seeks views on what is described as the 'Comprehensive Option'. While we recognise that the Government feels it has no choice but to align UK law with the current interpretation of EU law, for the period while the UK remains a member state, the insurance industry is unanimous in its view that it will not be possible to effectively enforce this option, even for a limited period.

The Government should ensure that it continues to highlight to Commission officials two important facts – firstly, that had the incident on which the *Vnuk* ruling was based happened in the UK, the claim would have been settled satisfactorily (and therefore there was no EU-wide deficiency that merited this intervention from the court) and secondly, that no other EU member state has a compulsory insurance regime that matches the extreme interpretation of the Directive implied by the 'Comprehensive Option'.

If the Government concludes that it must demonstrate an attempt to 'comply' with the *Vnuk* ruling in some way, it must be aware that doing so will have the following unwelcome consequences:

- A considerable administrative burden for vehicle owners/users, underpinned by a costly taxpayer-funded enforcement and compliance regime.
- Undermine well-established consumer messaging that has seen the rate of uninsured driving halve over the past decade.
- Wherever there is a failure to comply, this would compel the Motor Insurers' Bureau (MIB) (which is funded by way of a levy on the motor insurance industry, based on the premiums they receive from motorists) to meet the costs for a wider range of off-road industrial, agricultural and recreational incidents that bare no relation to road traffic.
- New opportunities for fraudulent claims in areas where existing investigation processes are not possible.
- Place a demand for compulsory insurance onto inherently risky activities (such as for driver-to-driver motorsport collisions) where such cover can never be provided at an affordable level, in effect making the events uninsurable.

To be absolutely clear, the insurance industry does not dispute that there are accidents that occur on private land and that those victims will feel entitled to compensation. However, this is not the issue under consideration in this consultation. This consultation considers where compulsory motor insurance should be required and where other arrangements need to apply.

The motoring public pay motor insurance premiums in the reasonable expectation that they are also potential beneficiaries from a shared system where all contribute according to the risk they pose. To use motor insurance as a 'catch all' for any incident involving a device with wheels would be fundamentally unfair on these motorists.

In conclusion, therefore, the Government should not proceed with the 'Comprehensive Option' under any circumstances. Instead, it should focus on persuading the Commission to take forward its proposed amendment.

Background and Introduction

1. Since the ECJ's judgment was published, the ABI has sought to work with the Government to address the consequences of a problem we recognise was not of their making. We have also worked very closely with the Motor Insurers' Bureau (MIB), as any change in the enforcement regime for compulsory motor insurance would have a fundamental impact on their work, and with other insurance industry bodies. We welcome the constructive approach that has been taken to this issue by the Government and the opportunities the industry has been given to contribute its views.

2. In particular, we welcome the recognition in the consultation document that a significant disruption to the operation of the motor insurance market would not be in the interests of consumers or other road users.

3. The consultation document states clearly that the Government feels it has no choice but to seek to comply with the ECJ's judgment, however unwise the ruling may appear. Given this acknowledgement that the changes required to comply with the judgment would have a negative impact and the fact that the UK may be able to adopt a different approach after exiting the EU, any changes the Government does make should be implemented in a way that keeps any disruption to the operation of the insurance market to an absolute minimum.

4. As far as the ABI is aware, the UK Government is the only EU Member State actively considering a change to domestic legislation in light of *Vnuk*. However, as the European Commission's Inception Impact Assessment (IIA) makes clear, the uncertainty created by the judgment affects all member states. It therefore feels reasonable to question why the option to 'Do Nothing' has been explicitly ruled out while other EU member states appear content to await further clarity from the Commission before making any changes to the legislation. It does not feel unreasonable to ask why the UK Government feels it has no choice but to amend domestic legislation when other EU member states clearly feel that they are under no immediate pressure.

5. This consultation document puts forward two possible options. Neither are straightforward and whichever approach the Government takes will require considerable further consultation before implementation. In this consultation response, the ABI has sought to provide as much supporting evidence as we can. We would welcome the opportunity for further constructive engagement at the point where there is clarity over the number of newly-in-scope vehicles and over how concepts such as "use", "traffic" and "places where the public has access" will be defined in legislation. This information is needed for the industry to make an informed judgement about what level of enforcement would be needed to underpin the regime and to assess the prospects of insurers offering cover to owners of these vehicles.

6. The first of the two options is described in the consultation document as the 'Comprehensive Option'. This would not be the ABI's characterisation. Instead, the insurance industry would view this as an extreme interpretation of the Motor Insurance Directive that fails to acknowledge the reality that for any compensation regime to

operate fairly, appropriate steps must also be taken to fund it. The ABI rejects the suggestion that the ECJ's judgment identified any deficiency in the UK's approach to insurance, because had a similar accident occurred here, the claim would have been settled adequately by the UK's compulsory Employer's Liability (EL) regime. No reasonable person would address the lack of an Employer's Liability regime in a single member state by dramatically expanding the scope of a different form of insurance across all member states.

7. Motor insurance customers take out insurance to cover the use of their vehicles on the road in the reasonable expectation that they are potential beneficiaries of a shared system. Extending this system to also cover totally unrelated industrial, agricultural and recreational incidents risks undermining public confidence in the fairness of compulsory motor insurance. Indeed, given the lack of any evidence to suggest that there is a problem with how these activities operate at present, any group upon which additional costs are imposed as a result of *Vnuk* (either directly or as a result of administrative burdens) would, with good reason, consider this to be unfair. Therefore, the ABI does not support the implementation of the 'Comprehensive Option' under any circumstances.

8. Instead, any reforms to the scope of compulsory motor insurance must be on the basis that it applies only to vehicles in traffic. The European Commission has published the first stage of a consultation exercise to establish how it should respond to *Vnuk*. This IIA document expressed a clear and unambiguous preference for an amendment to confirm that it applies only in traffic. There were significant barriers identified to all the other options proposed.

9. In response to the IIA, the ABI made a formal submission to the Commission welcoming the proposal to clarify the scope of the Directive and expressing support for limiting the scope to vehicles in traffic. The ABI's view is that this is an uncontroversial amendment that would simply serve the purpose of confirming in the text of the Directive what had been established and recognised practice across the EU anyway. It is very disappointing, therefore, that the Commission has not kept to the timescales it outlined in the IIA. The continued uncertainty this creates is unwelcome, especially if no flexibility is being allowed for member states (such as the UK) to maintain existing arrangements while the Commission finalises its consultation.

10. The ABI has provided answers to the individual questions raised by the consultation below. We would welcome the opportunity for further constructive engagement on any of the specific issues raised by the consultation, especially when it is clearer what approach the Government intends to take.

Q1. Due to the uncertainty, do you think that the Government should add either a sunset clause or a review clause in any new Regulations stemming from this consultation?

Answer: Review clause

11. The insurance industry recognises the Government's intention of providing legal clarity during the remaining period of the UK's EU membership and, were any change to be introduced in advance of the Britain leaving the EU, ensuring this could be reconsidered at the point Britain is no longer a member.

12. However, it remains very unclear what the practical implications of any alignment with *Vnuk* would be – the effect will be determined by the success of accompanying enforcement mechanisms and by how those vehicle owners and users affected react to any changes. As a result, it is therefore not possible to state conclusively whether a formal stop-date would be advantageous. It could have the opposite effect of concentrating the associated costs disproportionately on those sectors that are 'easiest to reach' during the limited time period the rules would apply.

13. Therefore, the ABI would welcome a formal commitment to review the impact of any changes initiated as a result of the *Vnuk* ruling at the point Britain is no longer subject to the rulings of the ECJ, at which point the initial impact of any changes would be better understood and a more informed decision can be taken.

14. A potential drawback to enacting a formal Sunset Clause is that knowledge of an impending cut-off date could actively encourage non-compliance, especially given the likelihood that individuals or sectors brought into the scope of any new regime would be either unaware of the change or unwilling to comply immediately. It is likely therefore that those who do seek to comply on a temporary basis would be forced to contribute disproportionately to the costs.

15. More generally, for those sectors that will have invested considerably in the new processes that would be required to comply with the implications of *Vnuk*, a considered review of the impact of this investment would seem preferable to simply reversing the changes.

16. If the implications of *Vnuk* were ultimately to apply on a temporary basis only, this would need careful consideration. In particular, there would need to be clarity over the status of claims made in relation to a temporarily in-scope vehicle but notified after this time period ends. Settling such a claim would, presumably, rely on the wider enforcement and administrative mechanisms that applied during the temporary period the law was in effect. Consideration would therefore need to be given to how the legacy of the temporary period where a different definition of the scope of motor insurance applied would be managed in the longer term.

Q2. Leaving the EU allows us to look afresh at our overall policy aims on motor insurance. What are your views on the approach the UK should seek to take once we leave the EU?

17. The fundamental purpose of motor insurance will not change when Britain leaves the EU. Motor insurance exists to give anyone who uses public roads (including pedestrians, riders and cyclists) confidence that, if they are unfortunate enough to be the victim of an accident that is not their fault, they are guaranteed a level of compensation proportionate to the loss they have suffered. This will continue to be the purpose of the motor insurance industry.

18. The insurance industry does not want to see any disruption to the ability of private car owners or commercial operators to take roadworthy vehicles into other EU member states. Although we recognise that the precise legal framework that underpins all of Britain's trade and cross-border travel will require further consideration in light of wider decisions relating to Britain's future relationship with the EU, we are confident an agreement to maintain the existing arrangements for motor insurance can be maintained if this is the Government's intention. The insurance industry is committed to working closely with the Government and other stakeholders to achieve this. In particular, it will be important that the MIB (as the organisation responsible for administering the 'Green Card' scheme and the protection of 'visiting victims') plays a central role in this.

19. Throughout the period since the first Motor Insurance Directive was introduced in 1972, there have always been different approaches to the civil compensation regime in different EU member states. These differences reflect different driving conditions and legal environments. Consequently, the approach to how individual motor insurance policies are sold and how compulsory insurance requirements are enforced varies considerably across member states, with some countries basing insurance cover on drivers and others on individual cars.

20. These differences have not impeded drivers from being able to easily travel across the EU without needing to make new insurance arrangements when they cross a border between two member states. A UK citizen who wants to take their car to another member state for a period of up-to 6 months does not need to make additional insurance arrangements or be issued with a 'Green Card' (which is required when driving outside the EU.) In addition, a UK citizen that needs to make a claim as a result of being involved in a motor accident whilst in another member state can do so in their own language when they return home, by using the 'Protection of Visitors' Scheme.

21. This system would ideally be retained after Britain's withdrawal from the EU, as we would expect that UK citizens will still want to drive a UK registered vehicle in EU member states and vice versa. We see no particular reason to reintroduce a system where drivers would be expected to carry 'Green Card' documentation (and there may be a cost implication were UK insurers obliged to issue documentation whenever one of their customers wished to drive within the EU). This issue would have particular significance for drivers who regularly cross the land border between Northern Ireland

and the Republic of Ireland and also for the border between Gibraltar and Spain. It would also have an impact on international freight and on tourism.

22. It is worth emphasising that existing multi-lateral arrangements exist between all EU member states but also EEA countries and three countries (Andorra, Serbia and Switzerland) that are neither EU or EEA countries.

23. Therefore, maintaining a simple process where insurance cover is recognised abroad when a UK citizen is driving for either business or personal reasons would be beneficial and would help facilitate trade and tourism into and out of the UK, in the interests of both UK citizens and EU member states. The ABI will continue to work closely with all stakeholders, in particular the MIB to achieve this intended outcome.

24. However, there is no reason to go beyond this by harmonising how off-road accidents are treated. Assuming that the agreements referred to above are concluded, were any EU member states to implement a version of the 'Comprehensive Option', a UK motorist would need to be covered to the same level while driving in this country. However, it is already the case that some countries extend compulsory motor insurance cover onto private land and this has not prevented cross-border insurance recognition up to now. UK motor insurers may use contractual terms to protect their exposure to especially risky scenarios (for example, an insurer may not consider it appropriate to cover someone entering an off-road motor race while abroad). Given that the system works well already, there appears to be no reason in principle why car insurance policies cannot continue to be mutually recognised and be assumed to meet the minimum criteria of whatever country the person is driving in at the time.

25. Throughout the period of the UK's membership of the EU, there has never been alignment between member states on the levels of premiums charged, the nature of individual insurance policy terms (aside from the minimum third-party cover – which the UK goes beyond by requiring unlimited personal injury compensation for road traffic accidents), the claims process, how roads and public places are defined or on the arrangements for non-road and off-road vehicles. Indeed, the 'Protection of Visitors' scheme operates despite significant and fundamental differences in how liability is assigned, with some countries adopting a fault-based system and others adopting a very different approach closer to 'strict liability'. Given these significant variations, there should therefore be no practical reason why continued differences in this regard between the UK and EU member states should prevent an agreement on cross-border driving.

26. The ABI is committed to continuing to engage constructively with Government on this issue as discussions on the UK's approach to leaving the EU continue, to ensure that any practical or legal issues can be addressed in a way that does not impede the core objective of making cross-border driving as simple as possible.

27. The Government's work on motor insurance should therefore remain focussed on the efficiency and competitiveness of the market. During the period within which this consultation has been open, the ABI has expressed considerable concern about the impact of changing the Discount Rate. The ABI has also provided a detailed response

to the MOJ's consultation on the personal injury compensation system and continues to take a close interest in the proposals for insuring automated vehicles, as put forward in the Vehicle Technology and Aviation Bill. These issues, in particular, should continue to be the focus of any Government policy initiatives related to motor insurance, alongside the vital ongoing work to further reduce the level of uninsured driving. In addition, much more must be done to improve the driver training and testing regime to address the significant problems associated with young drivers.

Q3 Compared with the current position do you believe if the domestic law on motor insurance changed in line with the comprehensive option it would be better or worse? Why?

Answer: Worse

28. The implication of the 'Comprehensive Option' is wrong in principle. The assumption that the Motor Insurance Directive should be understood to apply for any vehicle of any type regardless of where and for what purpose it is used is plainly unreasonable and unworkable.

29. The ABI is not in a position to comment in detail on the individual case that resulted in the *Vnuk* ruling. However, it is plain to see that had such an accident occurred in the UK, the claim would have been settled satisfactorily by the UK's compulsory Employer's Liability regime. Any suggestion, therefore, that a gap in the civil compensation regime for an individual claimant in Slovenia demonstrates a fundamental EU-wide gap in the motor insurance regime is clearly wrong.

30. Motor insurance plays a vital role in protecting all users of the road network. Every year, thousands of drivers, cyclists and pedestrians suffer tragic injuries that will mean they will spend the rest of their lives receiving medical treatment and care. No amount of compensation can make up for that, but motor insurance is there to help injured people get their lives back on track. Motor insurers also deal with the consequences of less serious accidents where, while those involved did not face serious injury, their vehicles will need expensive repair work to get back on the road. Insurers will cover these costs and also provide for a temporary replacement vehicle if needed. Therefore, motor insurance has a crucial role in ensuring that road traffic accidents do not have a disproportionate impact on the wider economy.

31. In order for motor insurers to continue to perform these essential functions, they need to be able to understand the scale of the risks they are covering and their potential exposure. Since compulsory motor insurance was first introduced, it has covered any scenario where road traffic legislation has also applied. As part of this, the costs of motor insurance includes the funding of the MIB, which provides an equivalent source of redress for victims of uninsured drivers (and, in addition, funds the MIB's highly effective work to reduce the overall level of uninsured driving, in collaboration with the police).

32. For this reason, it is right that motor insurance is compulsory and that robust enforcement measures are in place to ensure that all drivers contribute to the shared

cost of the system, especially as all road users are also potential beneficiaries. However, the implication of the 'Comprehensive Option' would be that road users are also expected to fund a regime that would also apply to a wide range of industrial, agricultural and recreational activities. These activities do not always require a driving license, are not covered by road traffic law and therefore have no link to the activities motorists purchase insurance to cover.

33. A compulsory motor insurance regime can only operate effectively where there is an unambiguous definition of both the kind of driving activities it covers and where it applies. Since it was first introduced in 1930, compulsory motor insurance has operated alongside the wider obligations placed on drivers by the Road Traffic Act. The ABI's view is that this clear distinction between vehicles used where the Road Traffic Act applies and other uses should be maintained. Established motor insurance policies typically specifically exclude cover for anyone who does not have a driving license and for risky scenarios (such as hazardous locations and track/race days).

34. The insurance industry is not aware of any compelling evidence that calls into question the current process for resolving off-road accidents (whereby those injured in off-road settings can seek compensation from those responsible, with compensation often funded by either Public Liability or Employer's Liability insurance). Certainly, there is absolutely no evidence to suggest that this process requires the total overhaul that the 'Comprehensive Option' would inevitably require. Furthermore, it would create significant inconsistencies and uncertainty for claimants - when accidents occur in workplaces or during recreational events, the process for resolving such incidents should not vary considerably depending on whether or not the machinery involved had wheels.

35. In short, the insurance industry's view is that the vital role of motor insurance and the MIB should not be undermined by attempts to use it as a 'catch all' to cover any kind of activity involving a device with wheels.

36. Furthermore, even if the insurance industry's fundamental objection to the 'Comprehensive Option' were to be set aside, there are a number of serious practical implications that would make effectively this approach impossible to implement in practice –

    - Many of the activities potentially brought into scope are already covered by established and well-functioning Employers' Liability (EL) and Public Liability (PL) insurance. Disrupting these markets would have inevitable consequences for both the insurance market and for customers, with small businesses likely to be especially disrupted.
    - A typical EL or PL policy will cover a wide range of activities and risks and is designed to ensure that businesses can access appropriate cover without requiring burdensome information on each individual activity being undertaken in a typical workplace. However, distinguishing those activities involving 'vehicles' from all other machinery being operated will create administrative burdens, especially if the insurance for activities with vehicles needs to meet the minimum threshold set in the Motor Insurance Directive (€5m euros for

personal injury and €1.2m for property damage). In turn, this change in an EL or PL insurer's exposure could make the insurance more expensive and may require customers to provide considerably more information to ensure their cover is suitable – despite the fact that the activities being covered have not altered. (It is also worth noting that not all providers of EL or PL insurance are also licensed motor insurers, so some businesses may have no choice but to renegotiate their cover with a new provider).

- Motor insurance is a highly competitive market. Making the industry responsible for a larger number of compensation claims (either directly or through the levy that funds the MIB) could result in the costs of these claims being reflected in the premiums to all motor insurance customers.
- Where an insurer has particular concerns about their exposure to risk, either because it is perceived to be too great or because they do not have enough evidence to make an accurate assessment, they are more likely to decline to offer cover. For some of the activities that the 'Comprehensive Option' potentially brings under the scope of compulsory insurance (especially motorsports and recreational driving) the anticipated high incidence of claims suggests that there is a material risk that a competitive insurance market will never emerge. These activities are by their nature also those for which 'derogation' is least appropriate (*see answers to Q7-9*). Such activities could therefore become uninsurable and, in effect, it would therefore be impossible to take part in them legally.
- Even where an insurer does feel comfortable offering cover, they will initially lack actuarial data to inform their approach. It is therefore possible that, as insurers gain a better understanding of the risks, the premiums charged may alter significantly when policies are renewed. This would create additional administrative burdens for anyone required to take out this cover.

37. A further challenge would be obtaining appropriate reinsurance. Reinsurers will need to carefully consider whether they can provide cover that mirrors that offered in the primary market, in light of the limited understanding of the scale of the risk and the likely increased exposure to fraud. If reinsurers feel that their potential exposure to high claims costs is too high, they could opt to limit the cover they offer to the insurance market.

38. We would also anticipate the following significant negative consequences for the work of the MIB, all of which would undermine its vital work to reduce uninsured driving and improve road safety –

    - A change of this scale would undermine the consistent and clear message provided to the public on when motor insurance is required and what the penalties are for not taking out insurance. The MIB, working in collaboration with insurers and the police, saw uninsured driving halve over a decade between 2005 and 2015. The MIB should continue to focus on further action to tackle uninsured driving, rather than being expected to branch out into unrelated off-road risks.

- As far as we are aware, no database of newly in-scope vehicles exists. While it may be possible (albeit costly) to identify new vehicles, there is no way of understanding the total number of vehicles affected. Therefore, the MIB will have no means of establishing what its likely exposure to claims would be.
- As outlined in more detail below (*Q 16–18*), the potential exposure to fraud is significant – especially where the wider requirements of road traffic law (i.e. driving licenses, speed limits) will still not apply to off-road scenarios even when insurance requirements do. Any undetected fraud would further increase costs for the MIB, to the detriment of honest motorists.

39. The Government should also consider where inherently risky 'off-road' activities would need to be more strongly restricted, in order to prevent unreasonable costs. For example, while society may currently tolerate underage or unlicensed drivers being allowed to drive on private land, if there was a prospect of the MIB being responsible for any claims arising as a result of this inherently unsafe activity, such behaviour is harder to justify. The Government would potentially even need to criminalise allowing unlicensed drivers to use a vehicle, even on private land. However, while this would be necessary to protect the interests of the wider motoring public, such a step seems draconian – and, as such, provides further evidence of why it would be unwise for the Government to pursue the comprehensive option.

40. A further potential area of complexity is where newly-in-scope vehicles are owned and operated by someone under the legal driving age. The Government will need to give consideration to any potential legal obstacles to these vehicle owners being legally obliged to enter into an insurance contract.

41. From a practical perspective, existing sales channels (such as PCWs) would need to be significantly adapted for this new form of insurance (for example, many depend on a customer providing a driving license number and a 'vehicle look up' facility is used for both PCW and broker quotation engines). This would require a new industry 'code list' which the ABI has been advised would take several months to produce, at a minimum. In the absence of readily available databases, customers would need to be asked a much longer list of tailored questions. Establishing these new sales mechanisms and associated administration would require upfront investment and it may not be possible for all insurers to be ready to offer products at the same time (this will depend on their own internal business priorities). Where an insurer is offering a policy to meet third party liabilities, they may be unwilling to also offer cover for damage to the vehicle itself (especially if they have no experience arranging for such vehicles to be repaired). Given that a change of this scale will need to be supported by an extensive public information campaign, we recommend that careful consideration is given to the practicalities of how this cover would be arranged (it is unlikely that it will sold in the same way as established motor insurance products).

Q4 Which of the Commission's four suggestions do you believe would be best for amending the Directive?

Answer: Option 3 - Insurance required when vehicle is used in traffic

42. The insurance industry does not agree with the interpretation made by the ECJ in *Vnuk* and believes that none of the four options put forward by the Commission should be seen as an improvement on the arrangements currently in place. However, given that there does not appear to be an opportunity to challenge the underlying premise of the judgment, the ABI has strongly welcomed the European Commission's acknowledgement that there is sufficient uncertainty to merit clarifying what the intended scope of the Directive is.

43. The European Commission should clarify the scope of the Directive by way of an amendment that leaves no ambiguity and ensures that the requirement for compulsory motor insurance cover continues to be proportionate. The ABI's assessment is that the necessary level of clarity can be achieved by a targeted, minor amendment to specify that the requirement for compulsory motor insurance applies only to vehicles 'in traffic'.

44. The ABI has sought to engage constructively with the European Commission since the outcome of the original ECJ judgment was published, including submitting a formal response to the Commission's Inception Impact Assessment, which indicated our support for the approach outlined in 'Option 3'. It is notable that, of the four options the Commission proposed in its Inception Impact Assessment, this was the only one for which significant drawbacks were not identified. The ABI believes that the Commission has, therefore, already made a convincing case for taking this forward.

45. It is, therefore, very disappointing that the timescale for further detailed consultation outlined by the European Commission in the Inception Impact Assessment has not been met. Given the ongoing considerable uncertainty across the EU over what the *Vnuk* ruling means in practice, this is a matter that needs to be addressed with more urgency. The Commission should maintain its commitment to resolving this issue as soon as possible.

46. It is possible that some respondents may argue in favour of the European Commission's Option 2. The insurance industry would not recommend this approach. The entirely new guarantee fund that would be required for this approach would be potentially very costly to establish and could impose disproportionate costs on a wide range of businesses and individuals. For some of these activities, the cost of maintaining a guarantee scheme of this kind would potentially be so large as to make the activity itself no longer viable.

Q5 If the Directive was amended so insurance was required when vehicles are used in traffic when compared to the comprehensive option would this make it better or worse? Why?

Answer: Better (in comparison to the comprehensive option)

47. This would appear to address many of the most significant concerns with *Vnuk*. Therefore, it is certainly preferable to the 'Comprehensive Option'. It also removes from scope many of the situations that are most vulnerable to exploitation by fraudsters and unscrupulous claimant lawyers/CMCs. While this would still potentially result in an unnecessary extension of the scope of compulsory motor insurance to a wider range of vehicles, it would at least restrict the scope of insurance to a defined area – which should remain those areas where drivers are obliged to be licensed and to follow the road traffic act.

48. However, there would need to be careful thought and further consultation given to the definitions of "traffic" – it is important that this is defined in a way that refers only to genuine road transport activities and not movement of a vehicle within a single workplace, venue or private-space. It must also be clearly acknowledged that many of the 'vehicles' potentially brought into scope are tools of trade (construction and agricultural equipment). Where they have motor insurance, this covers their movement from one place to another. However, once they have reached their location and are being operated as machines, it would not be appropriate to continue to treat them as a vehicle (why should a wholly stationary digger be treated differently in law to one that has its own wheels?).

49. The success of this approach will also be dependent on how derogations are applied (*see Q7 & Q8*). As derogation places the ultimate responsibility for compensation onto the MIB, the Government will therefore need to ensure the number of claims and the scale of compensation being paid is carefully monitored. Certain vehicles may be seen as 'low risk' at present, but that could change if their use was deliberately targeted by organised gangs and opportunistic claimants. It is clear that unscrupulous claimant law firms and CMCs are quick to exploit any opportunity they perceive to be financially lucrative. Recent examples include the sharp spikes in the numbers of Noise Induced Hearing Loss (NIHL) claims made against insurers[1] and food poisoning/sickness claims made against package travel operators[2]. While these spikes may also include some legitimate claimants, the suddenness of the increase indicates that the primary motivation is financial (rather than any unmet need for justice).

50. There is ample evidence to suggest that '*Vnuk claims*' could become a lucrative money spinner for these firms. The findings of the Carol Brady's independent review of CMC regulation provide clear evidence of the poor behaviour of this sector, which prompted the Government to accept her recommendations for a far stronger regulatory regime in full. The Government has confirmed it plans to transfer responsibility for CMC

[1] The challenges associated with Noise Induced Hearing Loss claims are set out in detail in the ABI's 2015 publication, 'Tackling the Compensation Culture: Noise Induced Hearing Loss'.
[2] The Claims Management Regulator's Corporate Report (February 2017) confirms it is currently actively investigating a "surge" in travel sickness claims

regulation to the FCA (although the ABI understands that this has been delayed to 2019, having initially been planned for 2018). In that context, handing such firms a new opportunity to pursue claims where there is no need to do so would go completely against the wider interests of consumers.

Q6 What do you think would be the effects in particular areas of the UK of using as the basis for compulsory insurance "areas where the public has access in accordance with national law"?

51. This will depend on how this definition is interpreted in UK law. The ABI would strongly recommend maintaining a clear link between motor insurance and road traffic. Motor insurers should not be automatically obliged to cover driving that takes place on private land, where there is no speed limit and no requirement for the driver to be licensed, even if it is possible for a member of the public to access that private land. (A motor insurer may voluntarily choose to extend the scope of their cover to private land, for example when insuring an agricultural vehicle, but only when this is the best way of providing the cover a policyholder needs.)

52. In particular, we would highlight the European Commission's statement in the Inception Impact Assessment that member states are entitled to "exclude certain activities from the EU-level requirement for third party liability cover, in particular where these activities tend not to be cross-border in nature and do not therefore raise issues of the free movement of vehicles within the EU." The UK's current approach meets this criteria, as limiting cover to roads and public places in no way restricts the free movement of vehicles across national borders.

53. Therefore, the approach the UK Government should take here is to maintain the same geographical scope, while where necessary extending the requirement for compulsory insurance to vehicles that are currently exempt while they are used in these areas. Any proposal to amend the definition of a road or public place within the Road Traffic Act must be the subject of a further, detailed consultation.

54. Following such a consultation, were the Government to decide that some off-road uses are to be considered 'in scope', insurers may ask consumers to declare if they intend to drive in these situations, and this additional risk could be accounted for in the premium charged. Were someone not to disclose their intention to drive in an 'off-road' scenario at the point of taking out a policy, the insurer should be within their rights to invalidate the insurance policy (in the same way as they would currently if a consumer failed to make a relevant declaration, such as a vehicle modification).

55. Motor insurance policies will also typically include certain restrictions to ensure that an insurer is not exposed to disproportionate risks, in order that the overall cost of providing the cover can be managed in the interests of customers. An example of this is that 'airside risk' is generally excluded. If someone intends to drive in close proximity to aircraft they should not expect to be covered by a standard motor policy. Bespoke insurance arrangements already cover vehicles used at aviation facilities as there are additional liabilities that would need to be covered (for example, if an incident leads to a delay in a flight taking off for which passengers could be entitled to compensation).

It is vital therefore that any definition of 'public space' reflects that there are areas where (even if a member of the public is allowed access) the nature of the risk is clearly significantly different to a typical road.

56. The Government must ensure that recreational activities are taken out of scope entirely. Any ambiguity here is open to exploitation by opportunistic claimant lawyers/CMCs. Motor-racing and other off-road pursuits (such as Segway rallies) can take place in areas where the public have "access" (either because they are competitors themselves, are spectators or have chosen to enter an area where such an event is held), but clearly participants are under no obligation to drive with the same degree of caution as they are on public roads. The responsibility for safety in these cases must lie with the event organisers (rather than the drivers themselves, who may never have used the vehicle before.) There is a genuine risk of 'moral hazard' here, as knowing that any accidents that do occur will be treated as the fault of an individual driver could result in event organisers not taking the steps they need to protect members of the public.

57. It is also suggested in the consultation document that an area (such as a pathway) that the public regularly has access to could fall within this definition, even if it is private land. While we recognise that there may be specific examples where, in practice, it is reasonable to seek to protect the public, it is essential that the definitions are clear. It would not be appropriate for a vehicle user to be treated as having a liability to someone deliberately trespassing on private land or where the general public, in practice, do not have unrestricted access.

58. There are a number of specific issues that a further consultation on this issue would need to consider in detail, including but not limited to –

- **The status of public footpaths and bridleways** – the primary user would generally be pedestrians and therefore where public has a reasonable expectation that any vehicles that are operated do so at low speeds. (The Government would also need to consider arrangements in Scotland, where legislation gives a broader definition of the 'right to roam' than elsewhere in the UK – it will be important to maintain the existing case law that ensures that the Road Traffic Act does not apply in these areas).
- **The role of 'willing participants'** – some locations may be considered 'public', in the sense that the public has access, but would only be accessed by someone who was either a willing participant in the activity or a trespasser. It is questionable whether either party should be defined as a 'third party' in the context of the compulsory motor insurance obligation.
- **Compatibility with existing liabilities** – It is a well-established legal precedent that, where a Road Traffic Liability is considered to apply, this takes precedence over other liabilities, meaning (for example) that if a commercial vehicle is involved in an incident, the individual driver is generally considered liable rather than their employer. However, where the 'fault' does lie with an employer or event-organiser (rather than the vehicle operator), it would be inappropriate for them to be able to avoid responsibility by treating the accident as a matter for a motor insurer. As outlined above, this could be addressed by

maintaining a distinction between when someone must be licensed to operate a vehicle and when they do not need to be.

Q7 Do you think government should make use of the power available to derogate certain vehicles in the Comprehensive and Amended Directive option?

Comprehensive option

Answer: The comprehensive option should not be pursued – however, if the Government were to take this unwise step, a limited number of derogations may be necessary (accompanied by appropriate mechanisms to fund the guarantee fund).

59. The comprehensive option is unworkable and should not be pursued, for the reasons outlined in detail in previous answers.

60. Were the Government to be unwise enough to attempt to pursue the 'Comprehensive option', it would need to ensure that the costs of any compensation claims are met by those responsible for these activities.

61. A derogation under the terms currently set out in the Motor Insurance Directive would require the specified guarantee fund to pick up the claims. This would place the burden of any costs only on the MIB. Therefore the costs may be borne by all motor insurance customers. It is totally unreasonable that a levy on motor insurance should be used to fund compensation for incidents that have absolutely no relation to the activities these policies cover. Therefore, the Government would need to ensure that the costs of compensation are met by those responsible for these activities, which would likely necessitate the creation of complementary guarantee funds.

62. The Government may feel that a simpler solution would be to extend the remit of the MIB and provide it with additional funding, rather than creating new funds. While such an approach would be preferable to simply using the existing funding mechanism, extending the scope of the MIB's remit so significantly would undermine the MIB's important work to tackle uninsured driving, both in terms of the effect on how the MIB prioritises its own work and resources and by undermining the consistent message provided to the public regarding when vehicles require insurance. This is one of many reasons why the insurance industry does not believe the 'Comprehensive Option' should be subject to any further consideration.

Amended Directive option

Answer: Yes – but this must supported by a comprehensive and ongoing assessment of claims volumes and costs

63. In certain cases, derogations could be used to limit the disproportionate impact of the *Vnuk* ruling on users of those vehicles and for the insurance industry. Low risk vehicles do not need to be covered by a compulsory motor insurance policy and consumers should not be forced to purchase insurance when they do not need it. Therefore, exempting vehicles based on either an assessment of how much damage they are

likely to cause or on how they are typically used would seem a sensible way to prevent unnecessary cost (provided the concerns outlined about geographical scope in Q6 are adequately addressed). In effect, this is what has already happened with 'uncoupled trailers', where the MIB has assessed that its exposure would be very low and therefore the compulsory insurance requirement required by EU law is not applied.

64. However, the Government must proceed with caution. As outlined above (*paragraphs 45 & 46*), the industry's past experience of claimant law firms and CMCs shows that they can be highly opportunistic and entrepreneurial. Faced with an avenue to pursue claims that they perceive to be lucrative, unscrupulous CMCs have regularly shown that they are willing to target individual members of the public with nuisance calls, charge disproportionate fees, misrepresent the services they offer to consumers and bring forward inappropriate (i.e. speculative and/or fraudulent) claims – as found by Carol Brady's independent review of Claims Management regulation[3]. Creating a 'pot' of money to attempt to claim from could prompt these firms to see making claims as much easier – leading to a sharp increase. As we argue above, we would see it as unreasonable for the MIB to face a significant cost increase (both for settling claims and additional administrative costs). Therefore, the Government must monitor the claims volumes carefully and ensure that those responsible for incidents fund any compensation that is provided.

65. The Government would also need to ensure users of the vehicle did not mistakenly associate the absence of a compulsory insurance requirement with the absence of any potential liability. Users of derogated vehicles must be aware that where they cause accidents, although the initial responsibility for settling the claim would rest with the MIB, it would then be the MIB's obligation to recover costs from the liable party whenever possible.

66. There are a number of other potential complexities the Government would need to carefully consider. We would recommend that the Government engage with the MIB extensively to understand the detail of how a guarantee fund works. The Government's existing agreements with the MIB operate on the basis that a driver is either uninsured or untraced (i.e. that they have committed some form of criminal offence). There would need to be careful consideration of the MIB's role in claims for derogated vehicles, given that the user has no obligation to be insured. There would need to be clarity about what happens when some form of insurance policy is in place. For example, where a driver has a 'drive other cars' or 'multicar' motor insurance policy, there would need to be clarity over whether such policies would also cover that person's use of a 'derogated' vehicle.

[3] 'Independent Review of Claims Management Regulation: Final Report', March 2016 – the "common conduct issues" identified by the review are listed on page 6

Q8 Which factors provide the most suitable basis for deciding which types of newly-in-scope vehicles to derogate?

67. The characteristics outlined in the consultation document (*paragraph 5.11, p.37*) would seem broadly appropriate, with weight and speed of the vehicle being indicative of the likely level of risk.

68. However, the ABI would make a number of further recommendations of issues that the Government should consider further as it develops its approach to derogation

    - The insurance industry already has a well-established process to distinguish the relative risk of particular vehicles (the 'Group Rating' process, administered on behalf of the ABI by Thatcham Research). While this process applies to roadworthy cars only, the range of factors considered as part of this process would assist with establishing what factors need to be considered before a derogation is granted. The ABI would be happy to facilitate any steps officials require to understand how group rating works in more detail.
    - When new 'vehicles' come to market, it will be important to understand how they will be marketed and how they can reasonably be expected to be used, even if they are low weight. As vehicle parts and batteries become more efficient and lighter, this may require the criteria for derogation to be updated.
    - A further option the Government could consider is to derogate by 'person' – e.g. to allow any disabled road user to use a modified mobility device, without needing to seek a specific 'derogation' for that device. This will be especially significant at the point when increasingly automated technology is available to significantly expand the options available to vulnerable road users.

69. However, more important than the initial criteria used to decide what should and should not be derogated is how the Government would monitor the ongoing claims volumes and what criteria would be used to decide when it was no longer appropriate to expect the MIB to be responsible for meeting compensation claims.

70. Mobility scooters are a good example, as the Government has already concluded that, while consumers are advised that taking out insurance cover is recommended, this does not need to be compulsory. On that basis, it would seem reasonable to apply for a derogation, rather than to impose an additional cost on a group of potentially vulnerable road users. However, if it were to become possible to make claims for incidents involving these vehicles through the MIB (rather than directly against the owner of the scooter), it is entirely foreseeable than CMCs will begin cold-calling people asking if they have been injured by a mobility-scooter, resulting in an increase in the number of claims. Thus, while derogation may seem fair in principle, it may trigger an unwelcome change in behaviour that results in inflated costs.

71. The risk of a spike in claims volumes also highlights the need for the Government not to take any action on *Vnuk* in isolation from other ongoing policy initiatives. Many of the industry's concerns about *Vnuk* are intertwined with concerns about the wider compensation culture and the behaviours that insurers observe on a daily basis. Meaningful action to tackle the compensation culture by taking forward the personal

injury reforms contained in the Prisons and Courts Bill and introducing the primary legislation needed to implement robust regulation of CMCs by the FCA should assist in preventing unscrupulous firms from exploiting the new avenues created by *Vnuk*, ensuring that the Government will be better placed to manage this significant change.

72. Therefore, the insurance industry would recommend that the Government gives further detailed consideration to which vehicles to derogate in light of the reforms to civil justice recently introduced in the Prisons and Courts Bill and after legislation transferring responsibility for CMC regulation to the FCA is introduced into Parliament.

Q9 What do you think are the main enforcement challenges – and how do you think we should deal with them in both the 'Comprehensive' and 'Amended Directive' options?

General Comments

73. The insurance industry invests considerably in collaborative work with the police in a number of areas, including Continuous Insurance Enforcement but also pro-active work to combat staged accidents, motor insurance fraud, vehicle theft and arson. Insurers remain committed to this important work, which has a clear and demonstrable benefit to motor insurance customers. This relies on cross-referencing police ANPR technology, DVLA databases and the Motor Insurance Database.

74. Although some interpretations of the *Vnuk* judgment mistakenly branded the off-road uses of vehicles as a matter for motor insurers only, the reality is that this will effect a wide range of individuals, businesses and organisations. Both the upfront enforcement costs and the impact of any gaps in this work will inevitably fall on all of these groups.

75. A further, important, point to note relates to the wider agenda of reform to improve the functioning of the motor insurance market. The consultation paper suggests that vehicles that could be assumed to carry "a lower likelihood of damage… would lead us to adopt a less rigorous approach to enforcement than we currently have in relation to those vehicles which are currently subject to insurance requirements". While this may appear a reasonable statement, the Government must be mindful of the fact that claimants are currently entitled to significant compensation even for minor personal injury claims, such as whiplash and minor neck/back injuries. It is likely therefore that anyone struck by an electric bicycle or a scooter, even at relatively low speed, would still be awarded compensation. Therefore, any assessment of the likely risk must account for both the likelihood of high value claims for serious injury and the likelihood of a high volume of low-value claims. If the Government opted not to allocate enforcement resources, we can reasonably expect opportunistic and entrepreneurial claimant lawyers and CMCs to react accordingly.

76. Careful consideration must be given to public education. Even in the case of a vehicle that is derogated, users of the vehicles will still be ultimately responsible for their behaviour and, where appropriate, the guarantee fund would have the option of recovering costs from the person who caused the incident.

Comprehensive option

77. The comprehensive option is unworkable and should not be pursued, for the reasons outlined above.

78. It would not be possible to enforce a compulsory insurance requirement in off-road private places. There is no way of ascertaining how many vehicles it would apply to, who owns them and (most importantly) where and how often they are used. Therefore, the existence of many of the newly in-scope vehicles is likely to come to light only at the point someone makes a claim. In addition, as outlined in more detail below (Q 16 – 18), many of the mechanisms the insurance industry uses to combat fraud would be simply impossible in off-road settings.

79. Even if it was technically 'compulsory' to have insurance, any attempt to assess the level of compliance would be merely a guess, since there is no available estimate of the number of vehicles and devices this applies to.

80. We note the consultation document's suggestion of a 'lighter touch' approach to enforcement in the 'aftermath of an incident'. This may be viewed as appropriate given the Government's clear statement that it does not agree with the ECJ's interpretation in *Vnuk* – and, thus, Ministers may conclude that a 'bare minimum' approach to enforcement is all the issue demands. However, a light touch response carries two major challenges – firstly, that it would be unfair on those that do comply that no action would be taken to apply this consistently and, secondly, with no databases and no ability to verify the information quickly, it would still be very difficult even to accurately check whether a vehicle has insurance after an accident, since any information provided at the scene would need to be cross-checked later.

Amended Directive option

81. A number of significant enforcement challenges could be anticipated (though how costly these would be is dependent on whether or not this option was accompanied by an unwelcome extension of the geographical scope of the Road Traffic Act). These challenges include, but are not limited to, the following issues –

- **Lack of requirement to carry a driving license** – as well as making it harder to educate users of vehicles about what is required of them, it will also mean that these road users will not be subject to the same sanctioning regime as other car drivers and therefore have less incentive to consider the safety of other road users.
- **Lack of vehicle registration** – as well as making it harder to verify who is responsible for an incident (especially if they leave the scene and even if CCTV footage exists), it also means that the ultimate sanction currently used in Continuous Insurance Enforcement of confiscating a vehicle would be unavailable in most cases.
- **Untraced drivers/users** – for the vehicles potentially brought into scope, the lack of traceability mechanisms means that drivers that can flee the scene without being photographed are very unlikely to ever be identified.

- **Second hand vehicles** – Even if it were to be possible to establish a traceability regime linked to the original owner and supported by focussing pro-active consumer awareness around the point of sale, this would not necessarily extend to anyone purchasing a vehicle or device second-hand.

Q10 Should a central register of every newly-in-scope vehicle be maintained?

Q11 Who should maintain the register – the insurance industry, the government or others (please specify)?

Answer: The scope of a database would depend on how the Government responds to *Vnuk* more generally, reflecting any new insurance requirements. The ABI would recommend maintaining the current system as far as possible, but any significant changes would need to be supported with enforcement mechanisms that, in turn, would depend on a database. Any database would only work with collaboration between all affected stakeholders.

82. Over time, it would potentially be possible to develop and then maintain a database of all in-scope vehicles, as occurs for currently in-scope vehicles. This could be supported by regulations for manufacturing and selling new vehicles that would require traceability and monitoring mechanisms. By linking this as often as possible to technology innovation and the 'internet of things', it may be possible to limit the costs stakeholders incur.

83. However, for 'vehicles' currently in circulation, it would be a costly exercise to replicate the pro-active Continuous Insurance Enforcement regime in place for road vehicles. Any system would be reliant on vehicle owners pro-actively notifying whoever maintains the database that they have a vehicle that applies. As a result, it seems inevitable that there will be a large number of vehicle owners who remain wholly unaware (often through no fault of their own) of the requirement to make new insurance arrangements and to register their property on the database.

84. Ultimately, the feasibility of any database will be dependent on the approach taken to the geographical scope of motor insurance and the extent to which vehicles are derogated. By minimising the changes introduced in response to *Vnuk*, the Government can in turn minimise the unnecessary additional expense required to enforce a new regime.

85. Given this, the premise of the question posed in the consultation document (suggesting that the choice is between either insurers or the Government having sole responsibility for maintaining a register) is flawed, as insurers would be dependent on corresponding information from other stakeholders and could not operate a database in isolation.

86. The ABI would be willing to engage in further constructive discussions on what enforcement mechanisms can realistically be achieved when the Government concludes this initial consultation. The insurance industry has played a pro-active role in the development of Continuous Insurance Enforcement and remains committed to doing so. However, this is inevitably a collaborative process, with individual insurers

cross-populating a database that is equally reliant on data from a range of other sources. As a result, maintaining the database will inevitably require collaboration between insurers, government and other stakeholders. All parts of the supply chain would need to contribute to any associated ongoing enforcement mechanisms.

Q12 Is it important for all newly-in-scope vehicles to have a traceability marking for the Comprehensive Option and Amended Directive option?

87. Wherever there is a compulsory insurance requirement (either the Comprehensive or Amended Directive option), this can only be effectively enforced if it is possible to identify whether an individual vehicle has insurance. All vehicles to which a compulsory insurance requirement applies would need to be held to the same standards, both so that the system is applied fairly to all road users and also so that the consistent message that using vehicles without insurance is unacceptable is not undermined.

88. However, applying the level of traceability marking that would be required to many of the vehicles potentially brought into scope is likely to be very expensive. Furthermore, while, in the longer term, an equivalent of the VIN for all newly in-scope vehicles could theoretically be implemented (though this would potentially impact on costs incurred by manufacturers), it is hard to see how this could retrospectively be applied to vehicles already in circulation.

89. Consideration would need to be given to how to apply these requirements to commercial operators, who may utilise a large fleet of effectively identical vehicles (potentially all in the same area). It would seem disproportionate to insist that each was individually registered, but it is not clear how a compulsory insurance regime could be enforced fairly without it.

90. In addition, active consideration should be given to what steps could be taken to allow for individual 'derogated' vehicles to be traced as, although their owners will not need to take out insurance, these vehicles would potentially be subject to claims against the guarantee fund. To minimise costs that may be borne by honest motorists, the guarantee fund should have the option to pursue the 'at fault' party where appropriate. To do this, they will need to be able to locate the vehicle owner.

Q13 Should all SORN vehicles be required to have third party insurance under the comprehensive option? Why?

Q14 Would there be problems with SORN under the amended Directive option?

Answer: Vehicles which are legitimately 'off the road' and will not be used do not need comprehensive motor insurance and the option to use SORN should remain – but the SORN regime is likely to need fundamental reform

91. Requiring compulsory third party insurance for vehicles that are genuinely confined to a garage and are not ever driven is an unreasonable cost given that vehicles that are not driven pose no risk to the public. In particular, this would be unfair on a number of groups – for example, people temporarily unable to drive because of a health condition

or members of the Armed Forces who declare their vehicle SORN while they are on tours of duty overseas.

92. However, the SORN process would need to be revised, as there would need to be a distinction between vehicles that are genuinely not being used and those that are being used in an off-road setting (meaning that, under a regime that does not limit the geographical scope of compulsory motor insurance, while vehicles may not need to be taxed, they would need insurance).

93. It is the ABI's understanding that the current list of vehicles that have been declared SORN only captures vehicles that were registered as 'on road' at some point since the regime first came into effect in 1998. Therefore, there will be vehicles to which the 'comprehensive option' applies that have never been part of the SORN regime and are not on this list, but where any new obligation to notify when a vehicle is being used in an off-road setting would apply.

94. In addition, the most extreme interpretation of *Vnuk* suggests that insurance is covered for anything that could be seen as a 'normal function'. It is not entirely clear from that why leaving a vehicle stationary wouldn't come under the definition of 'normal'. We would not suggest that cars declared as SORN need comprehensive insurance, but this lack of clarity is further evidence that the way some legal commentators have sought to interpret *Vnuk* is deeply illogical.

95. Although insurers recognise that SORN is often used legitimately, it is also important to note that it is open to abuse and is one of the most common means used to evade the compulsory motor insurance requirement. We would recommend that the Government reviews the SORN regime and ensures that stronger steps are taken to prevent it being abused.

96. The 'amended Directive option is intended to limit the requirement for compulsory insurance only to areas to which the Road Traffic Act applies. Therefore, the implications for the SORN regime in this scenario are more limited. If however, the definition of a 'public space' was extended so that it included areas where vehicles declared as SORN could be driven legally then the points made regarding SORN in paragraphs 91-95 apply equally to the 'amended Directive option'.

Q15 Should the same level of fine apply in respect of newly-in scope vehicles as currently applies to cars? Why?

Answer: Yes

97. In principle, it seems appropriate to sanction any failure to comply with the compulsory insurance regime in the same way. In addition to ensuring that there is consistency over the level of fine applied, the Government would also need to make arrangements for newly in-scope vehicles to be seized where owners do not hold insurance.

98. Furthermore, it is arguable that as certain off-road activities carry considerably higher danger, especially the recreational uses that the 'Comprehensive' regime entails, that

the fines and sanctions should be increased accordingly. However, in the ABI's view, this demonstrates again why the on-road motor insurance regime should not be applied in off-road settings and why the Government should not give the 'Comprehensive Option' any further attention.

Q16 What requirements to deter fraud might be built into the claims procedure under the two main options in this consultation?

Q17. What comments do you have about the nature and extent of fraud which will be generated by the two main options in this consultation?

Q18. What ideas do you have for combating any fraud which might be generated by the two main options in this consultation?

99. The insurance industry welcomes the clear acknowledgement in this consultation document that the risk of increased fraud is one of the major challenges associated with *Vnuk* and the reason why any reforms to the existing system need to be taken forward with considerable caution.

100. Insurance fraud is a crime, and like most crimes it has both an organised and opportunist element. This response includes an annexe setting out the wider context of the insurance industry's work to combat fraud. In order to address the fraud that arises as a result of *Vnuk*, this work would need to be replicated within a wide range of private areas.

101. There is no 'quick fix' – while the industry is rightly proud of its strong record in this area, countering fraud is a complex, costly and ongoing challenge. The only way to counter fraud effectively is to work collaboratively with all stakeholders to share intelligence, understand trends and take appropriate action.

102. The ABI's view is that an extension of compulsory motor insurance into private areas, where there will be no CCTV or police ANPR technology and often no witnesses, will inevitably create new opportunities for fraud, in the areas where it is most challenging to investigate. It is impossible to forecast exactly where the fraud risk will emerge or how widespread it will be at this stage.

103. Some respondents may suggest that this is no different to a comparatively remote country road. However, the difference is that even remote roads are public spaces that an insurer can easily access. An insurer that, for example, receives a suspicious claim where someone has allegedly crashed their vehicle into a road sign or a tree is able to attend the scene and validate whether the information provided is accurate. The same would not necessarily be true on private land, as the insurer would not necessarily have the right to access this space to conduct an investigation without the consent of the landowner.

104. Motor insurance fraud remains the most common fraud and the highest value – the most recent statistics from the ABI show that 70,000 fraudulent claims were detected by insurers in 2015, with a value of £800m. This represented a fall on earlier

years and demonstrates the successful approach taken by the industry, including through the work of the IFB and IFED. However, in 2015, there was also a significant rise of 36% in 2015 in the number of dishonest liability claims (for example, for 'slip and trip' accidents). This demonstrates that fraudsters are able and willing to adapt what they do if they see new areas that are potentially lucrative.

105. The insurance industry has been an active participant in implementing the recommendations of the Insurance Fraud Taskforce. While the steps being taken following this important work are relevant in the context of *Vnuk*, there is an associated risk that the investment required for industry-wide analysis, intelligence gathering and sharing and preparatory work to deal with the new risk of '*Vnuk claims*' could undermine the important work to address existing fraud risks.

106. The Government should be especially mindful of the fraud risk for vehicles and activities that could potentially be 'derogated'. In addition to taking statements, reviewing CCTV footage and working with the police, a key part of counter-fraud is conducting voter roll and consumer credit inquiries. If no record of the vehicle owner exists, it may not be possible to identify common indicators of potential fraud (such as the claimant and vehicle-owner being closely associated).

107. In addition, the Government should note some specific forms of insurance fraud that could be a problem in the areas *Vnuk* brings into scope, especially if consumers are unclear about what insurance they are expected to take out –

- **Application Fraud** – There is evidence that certain consumers, while taking out a policy and therefore seemingly meeting the compulsory insurance requirement, do not provide accurate information (i.e. they provide inaccurate information about their age or their claims history) in order to secure a cheaper premium. In creating a new compulsory insurance requirement, with limited opportunity for insurers to cross-reference the information provided to them against existing databases, there is a risk that the opportunities for application fraud increase.
- **Ghost Broking** – This is a practice where false policy details or documentation is provided, often for a policy that is sold at a very low price. Again, it may be that consumers who are not fully aware of their obligations to take out insurance are exploited by this practice (especially if there is no database to verify that the insurance policies being sold are genuine).

It is impossible to predict the extent to which either opportunistic individuals or organised crime gangs would seek to exploit these areas, but both would need to be actively addressed as part of any Government proposals to implement either the 'Comprehensive Option' or the 'Amended Directive' option.

Association of British Insurers / Insurance Fraud Bureau, April 2017