Dear Louise,

Thank you for your letter of 21 November, about the European Court of justice ruling on the Vnuk case, which was published on 4 September 2014.

The case involved an accident on a farm in which Mr Vnuk was injured by a trailer, connected to a tractor, that was reversing into a barn. The Slovenian insurers had refused to pay Mr Vnuk’s claim because the accident took place on private property. They took the view that the accident was therefore not covered by the motor insurance policy. The Slovenian court referred the case to the ECJ. Their judgment confirmed that this accident should have been covered by compulsory insurance.

The wider effect of the judgment is that any vehicle that falls within the definition of a vehicle within the EU Directives should have a compulsory motor insurance policy in force wherever it is used. The definition of vehicle in the Directives states: “any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled”.

UK legislation requires compulsory insurance for accidents on a “road” or “other public place” and “any highway or road to which the public has access”. Until now, this meant that some vehicles that fell within the definition of vehicle under the Directive did not require compulsory motor insurance in the UK because they were not used on roads or places where the public has access - for example, ride-on lawn mowers, or possibly golf buggies. Other vehicles, such as mobility scooters, have developed in popularity in recent years and become more widespread in use/numbers, but had not come under the umbrella of compulsory insurance. (This tranche of vehicles are often used in public places, so were probably more of a grey area in terms of whether they should have had compulsory motor insurance).

(\* maybe also pedestrian controlled vehicles such as mowers! \*)
In May we submitted a request for an oral hearing in the ECJ proceedings because we disagreed with the direction of the Advocate General’s Opinion (AGO). Although our request was turned down, it raised our concerns with the Court. Ireland and Germany had similar concerns with this case. ECJ judgments are not appealable, so we have no opportunity to challenge or change it. The next steps are to work together with domestic stakeholders, the Commission and other Member States on implementation. We will amend the Road Traffic Act as soon as Parliamentary time allows to comply with the judgment to bring a wider range of vehicles into scope of compulsory motor insurance; and that vehicles already subject to compulsory motor insurance on public roads would also have to be insured for use on private land.

The effects of the judgment could also mean:

- Increased costs of insurance for many households that will have to pay to insure vehicles which previously did not have a requirement to be insured;
- Confusion over what should / should not be insured;
- Question marks over whether the Statutory Off Road Notification (SORN) scheme can continue;
- Consideration of how we enforce these changes.

The compensation scheme consisting of the Uninsured Drivers Agreement 1999 and the Untraced Drivers Agreement 2003 between the Department for Transport and the Motor insurers Bureau (MIB) ensures that victims of accidents involving a driver who is not insured and is deemed liable for the accident or who cannot be traced will receive compensation. Any company that sells motor insurance in the UK has to be a member of the MIB. The compensation scheme is funded by a levy charged by the MIB on every motor insurance policy sold in the UK. The levy currently averages out at £30.00 for each policy.

No levy has ever been charged on vehicles that are not required to be covered by motor insurance and consequently there is no compensation scheme for such vehicles. Some vehicles that are exempt from standard motor insurance, such as police vehicles, may be covered by other arrangements i.e. the police force will pay compensation in respect of an accident caused by any of their vehicles that is self-insured. However, other vehicles would need to be covered by the MIB and it is likely that in the short term the levy would have to be increased to cover the additional risk.

We are working against the background of a ticking clock: within a reasonable timescale we need to amend our domestic legislation to bring it in line with EU law as stated in the Vnuk judgment and avoid Francovich damages. Francovich damages are payable when there is a breach of EU law and that breach is considered a serious one.
Being out of step with implementation of the Motor Insurance Directives puts us at risk of Francovich claims. Anyone injured by a vehicle that does not currently require motor insurance who finds there is no insurance policy to fund compensation could, for example, claim that the UK has not implemented the Directives properly and claim damages. To do so, they would need to prove that the UK was (i) in breach of the Directives and (ii) that the breach was sufficiently serious.

DFT officials have engaged proactively with the Commission to seek further clarification on what is required and the timescales for putting measures into place. We have lobbied the Commission to arrange a meeting of Member States to discuss the effects of the judgment, along with implementation. Such a meeting is likely to take place in the first quarter of next year. We have also contacted other Member States for their views on implementation.

Officials have also been in regular contact during the legal proceedings and after the judgment with the Association of British Insurers (ABI), the British Insurance Brokers Association (BIBA) and The Motor Insurers Bureau. We have discussed the impact of the judgment and potential options, including exclusions in motor insurance policies.

Officials have also been in touch with other Government Departments with regard to the type of insurance that is currently used to cover the risk posed by vehicles that are not currently covered by standard motor insurance e.g. public/employer’s liability insurance, and bespoke insurance policies for mobility scooters which do offer some degree of cover for damage to third parties, although not to the limits required by the motor insurance directives. Advice has been sought at every stage from our lawyers in the General Counsel’s Office.

Officials are presently trying to identify the numbers of different types of vehicle which are now potentially in scope, along with numbers and seriousness of accidents. We need to do this research in order to inform the options further and develop a robust impact assessment with a view to commencing a consultation as soon as possible.

Yours sincerely

ROBERT GOODWILL