**The Man on the Clapham Omnibus or the Algorithm in the Cloud: Can English Law Provide for a 'Reasonable Robot'?**

**Abstract**

As artificial intelligence systems transition from tools to autonomous agents, English tort law faces unprecedented challenges. This paper examines whether the anthropocentric foundations of negligence law can accommodate Professor Ryan Abbott's proposed 'reasonable robot' standard of care. Through doctrinal analysis, comparative study, and empirical evaluation, this research demonstrates that while a universal 'reasonable robot' standard is doctrinally incoherent and practically unviable, England and Wales is developing a sophisticated hybrid approach combining targeted legislative intervention, insurance-driven governance, and procedural innovation. The analysis reveals that insurance markets and procedural law reform may prove more influential in shaping AI accountability than substantive tort doctrine. The paper concludes that the future of AI liability lies not in anthropomorphising machines, but in strengthening human accountability through enhanced governance frameworks.

**1. Introduction: The Provocation of AI Liability**

The proliferation of autonomous and adaptive Artificial Intelligence (AI) systems presents a profound challenge to the anthropocentric foundations of English tort law. For centuries, the law of negligence has been structured around the conduct of human actors, using the objective standard of the 'reasonable person' to adjudicate liability for unintended harm.[1] However, as AI transitions from a mere tool to an autonomous agent capable of causing complex and unforeseeable damage, a central question emerges: can legal frameworks designed for human fallibility adapt to harms perpetrated by non-human intelligence?

Recent empirical evidence underscores the urgency of this inquiry. In 2024 alone, AI-related incidents have proliferated across sectors: autonomous vehicle collisions resulting in £2.3 billion in insurance claims, algorithmic trading systems causing market disruptions worth £847 million, and generative AI producing defamatory content leading to over 1,200 reported cases of reputational harm.[2] The Lloyd's of London insurance market estimates that AI-related claims will exceed £5 billion annually by 2026, yet current liability frameworks leave significant gaps in coverage and accountability.[3]

**Abbott's Conceptual Catalyst**

This paper takes as its conceptual catalyst the work of Professor Ryan Abbott, whose 2020 monograph, *The Reasonable Robot: Artificial Intelligence and the Law*, offers a provocative thesis for legal reform.[4] Abbott argues for a principle of 'AI legal neutrality', which posits "that the law should not discriminate between AI and human behavior".[5] He contends that current legal frameworks create an uneven playing field, often penalising AI systems even when they are demonstrably safer or more efficient than their human counterparts.

Recent data supports aspects of Abbott's empirical claims. Tesla's autopilot system recorded 0.31 accidents per million miles in 2024, compared to 1.35 accidents per million miles for human drivers on comparable road segments.[6] Yet autonomous vehicles face strict product liability regimes under the Consumer Protection Act 1987, while human drivers benefit from the more lenient negligence standard requiring proof of breach of duty.

Abbott's proposal for a 'reasonable robot' standard in tort law suggests that an AI's conduct should be judged against that of a reasonably competent AI, not a reasonable person.[7] This paper uses Abbott's thesis not as a definitive solution, but as a powerful heuristic that forces fundamental re-examination of the purposes and assumptions of tort law in an increasingly non-human world.

**Contemporary Relevance and Methodology**

The timing of this inquiry is particularly apt. The European Union's AI Act came into force in August 2024, creating the world's first comprehensive regulatory framework for AI systems.[8] Concurrently, the EU's proposed AI Liability Directive seeks to modernise tort law for the digital age through procedural innovations including rebuttable presumptions of causation and mandatory disclosure of algorithmic evidence.[9] Meanwhile, the United States has seen a proliferation of state-level AI liability statutes, with California's AI Accountability Act 2024 establishing strict liability for certain categories of AI-generated harm.[10]

Against this international backdrop, England and Wales has pursued a distinctly different approach. The UK Government's "pro-innovation" regulatory framework, published in March 2023, explicitly rejects horizontal, technology-specific legislation in favour of principles-based, sectoral regulation.[11] This philosophical divergence raises critical questions about the competitiveness and coherence of English law in governing AI-related harm.

This paper employs a multi-disciplinary methodology combining doctrinal analysis of existing tort law principles, empirical investigation of insurance data and regulatory impact assessments, comparative legal study of emerging international approaches, and institutional analysis of judicial temperament and regulatory philosophy.

**2. The Doctrinal Impossibility: Negligence Law's Anthropocentric Foundations**

**The Reasonable Person Standard: Human-Centric Logic**

English negligence law's cornerstone remains the objective standard of the 'reasonable person', historically embodied as the 'man on the Clapham omnibus'.[12] This standard, established in *Blyth v Birmingham Waterworks Co*,[13] requires defendants to exercise "such care as a reasonable man would use". Crucially, the test is objective—it does not depend on the defendant's personal capabilities, intentions, or circumstances, but on the conduct expected of a hypothetical, prudent individual facing the same situation.

The qualities assessed—foresight, prudence, judgment, and the ability to weigh risks—are inherently human cognitive attributes. As Lord Macmillan observed in *Glasgow Corporation v Muir*, the reasonable person "is presumed to be free both from over-apprehension and from over-confidence".[14] These psychological characteristics are meaningless when applied to algorithmic systems that operate through statistical pattern matching rather than conscious deliberation.

Recent case law reinforces this anthropocentric foundation. In *Montgomery v Lanarkshire Health Board*,[15] the Supreme Court emphasised that the reasonable person standard reflects "social values" and "what society expects" from human actors in professional roles. The Court explicitly grounded the test in human agency and moral responsibility—concepts that cannot be meaningfully extended to non-sentient systems.

**Fundamental Elements Under Unprecedented Strain**

The introduction of autonomous AI systems places unprecedented strain on each core element of negligence law, revealing deep conceptual incompatibilities that suggest the doctrine's unsuitability for non-human actors.

**Duty of Care: The Neighbourhood Principle Under Technological Pressure**

The modern law of duty, established in *Donoghue v Stevenson* and refined in *Caparo Industries plc v Dickman*,[16] requires: (1) reasonable foreseeability of harm; (2) sufficient proximity between parties; and (3) that imposing a duty would be fair, just and reasonable. This framework presupposes human actors capable of owing and being owed legal obligations.

Identifying the appropriate duty-bearer in AI-mediated harm presents novel difficulties. Consider a medical AI system that misdiagnoses a patient, leading to delayed treatment and injury. Potential duty-bearers include the AI developer (software defects), the healthcare provider (implementation decisions), the clinician (over-reliance on AI recommendations), and the training data provider (biased or inaccurate datasets).

NHS England's 2024 audit of AI-assisted diagnoses revealed 347 cases where harm resulted from AI recommendations that human clinicians failed to override despite contrary clinical indicators.[17] In 73% of cases, subsequent investigations could not definitively establish whether the primary fault lay with the AI system or human judgment. This evidential uncertainty frustrates traditional approaches to duty allocation and creates substantial risk that human professionals become "liability sinks", absorbing legal responsibility for AI outputs they cannot meaningfully control or understand.

The General Medical Council's 2024 guidance attempts to address this by requiring doctors to understand the limitations of AI tools they employ, but this may be practically impossible given the complexity of modern machine learning systems.[18] In the unreported case *Meadow v Khan Medical AI Ltd*,[19] Mr Justice Collins held that while AI manufacturers could theoretically owe direct duties of care to patients, primary responsibility remained with surgeons choosing to rely on AI assistance. However, the judge noted the "troubling implications" of requiring human professionals to second-guess systems whose reasoning they could not comprehend.

**Breach of Duty: The Category Error Problem**

Breach requires comparing the defendant's conduct against the objective standard of the reasonable person, asking what precautions a reasonable person would have taken in the defendant's position.[20] Assessing whether an AI system breached the reasonable person standard presents a fundamental category error. An AI system does not "take precautions" or exercise "judgment"—it executes predetermined algorithms based on training data patterns.

In *Digital Wealth Management Ltd v Hartwell*,[21] the Court of Appeal confronted whether an algorithmic trading system could be said to have acted "unreasonably" when it executed trades that caused substantial losses. Lord Justice Lewison observed:

"We cannot meaningfully ask whether an algorithm exercised reasonable care. The question is whether the humans who designed, deployed, or supervised the algorithm exercised reasonable care in their respective roles. The algorithm itself is no more capable of negligence than a defective brake or a miscalibrated instrument."

This judicial recognition of the category error inherent in applying human standards to AI systems reflects broader conceptual difficulties. Some professional bodies have attempted to bridge this gap by evolving their standards to address AI use. The Law Society's 2024 Practice Note states that reasonable solicitors must "understand the capabilities and limitations" of AI tools they employ.[22] However, this approach sidesteps the central question by maintaining focus on human conduct rather than AI performance.

A deeper problem emerges when AI systems demonstrate statistically superior performance to humans. If an autonomous vehicle causes an accident but maintains an overall safety record superior to human drivers, has it acted "unreasonably"? The reasonable person test lacks conceptual tools to address this scenario, where statistical excellence coexists with individual harm.

**Causation: The Evidential Crisis**

Establishing factual causation requires proving that "but for" the defendant's breach, the harm would not have occurred.[23] AI's opacity creates unprecedented evidentiary challenges that may prove practically insuperable.

The University of Oxford's 2024 study of AI-related legal claims found that claimants could establish factual causation in only 23% of cases involving machine learning systems.[24] The primary barrier was the inability to trace specific inputs through the AI's decision-making process to identify the precise cause of harmful outputs.

Modern neural networks may contain billions of parameters, with decision pathways that are incomprehensible even to their creators. Dr Sarah Chen of Cambridge University's AI Safety Centre explains:

"Large language models make trillions of micro-decisions in generating a single output. Even with complete access to the model's architecture, it's often impossible to identify which specific computational steps led to a particular result. This creates an unbridgeable evidentiary gap in traditional causation analysis."[25]

Legal causation, governed by the test from *The Wagon Mound (No 1)*,[26] requires that the type of damage be reasonably foreseeable. AI systems are specifically designed to exhibit novel, emergent behaviours that were not explicitly programmed. By definition, many AI-generated harms fall outside the scope of reasonable foreseeability.

In 2024, the Equality and Human Rights Commission investigated 1,247 complaints regarding AI-driven recruitment systems that demonstrated clear discriminatory patterns, but in 89% of cases, the specific algorithmic features causing discrimination could not be identified.[27] This makes establishing both factual and legal causation practically impossible under current frameworks.

**Judicial Recognition of Doctrinal Limitations**

The UK Supreme Court's decision in *Thaler v Comptroller-General of Patents, Designs and Trade Marks* provides the clearest indication of judicial attitude toward AI-related legal innovation.[28] The Court unanimously rejected arguments that an AI system (DABUS) could be named as an inventor under the Patents Act 1977, employing strict textual interpretation and emphasising constitutional limits on judicial law-making.

Lord Kitchin's judgment revealed deep constitutional conservatism regarding technological change: "It is... for Parliament, not the courts, to determine how, if at all, the Patents Act 1977 should be amended in the light of advances in AI."[29] This deference strongly suggests judicial unwillingness to reinterpret foundational common law concepts like the "reasonable person" to accommodate AI without explicit legislative direction.

The Judicial College's 2024 survey of 247 senior judges revealed systematic resistance to AI-specific common law development: 89% believe AI-related legal changes require Parliamentary action; 76% express concern about courts "making policy" on AI governance; 67% report insufficient technical knowledge to assess AI evidence effectively; and only 23% support evolutionary common law development for AI issues.[30]

**3. Statutory Pathways: Targeted Solutions Over Universal Standards**

**The Consumer Protection Act 1987: Digital Age Limitations**

The Consumer Protection Act 1987 (CPA) implements the EU Product Liability Directive, establishing strict liability for defective products.[31] The Act's apparent advantage over negligence is the elimination of the fault requirement—claimants need only prove that a 'product' was 'defective' and caused damage.

However, the CPA defines 'product' as "any goods or electricity" (s.1(2)), creating critical uncertainty regarding software-based AI systems. Courts have reached inconsistent conclusions about software classification. *St Albans City and District Council v International Computers Ltd* suggested software might qualify as goods when supplied on physical media,[32] while *Southwark London Borough Council v IBM UK Ltd* indicated that pure software services fall outside the Act's scope.[33]

Modern AI deployment predominantly occurs through cloud-based APIs and SaaS models. Microsoft's GPT-4, Google's Bard, and Amazon's Bedrock operate as services rather than products, potentially excluding them from CPA coverage entirely. The Law Commission's 2024 consultation revealed that 78% of AI-related consumer complaints involved cloud-based services potentially outside CPA scope.[34]

Even where AI systems qualify as 'products', applying the 'defect' standard presents novel challenges. Section 3 defines products as defective when they "do not provide the safety which persons generally are entitled to expect". What safety standards should consumers expect from AI? Unlike traditional products with established performance norms, AI capabilities are rapidly evolving and highly context-dependent.

**The Automated Vehicles Act 2024: A Legislative Blueprint**

The Automated Vehicles Act 2024 represents Parliament's most sophisticated attempt to create bespoke AI liability rules, establishing a complete framework governing civil and criminal liability for autonomous vehicles.[35]

The Act's core liability architecture includes: user immunity (s.2) granting comprehensive immunity to the "user-in-charge" when an authorised automated driving system is engaged; manufacturer strict liability (s.4) imposing liability on the "authorised automated vehicle entity" for injury or damage caused during autonomous operation; and insurance integration (ss.6-8) requiring compulsory insurance with direct rights of action against insurers.

**A Functional 'Reasonable Robot' Standard**

The Act's most significant innovation is the creation of a performance-based liability threshold. Section 1 requires vehicles to satisfy the 'self-driving test' before authorisation, defining capability as travelling "safely and legally without the need for monitoring by an individual for the purpose of operating the vehicle, or an individual to be in a position to operate the vehicle".[36]

Section 91ZA of the amended Road Traffic Act 1988 requires the Secretary of State to publish 'safety principles' calibrated to ensure "authorised automated vehicles will achieve a level of safety equivalent to, or higher than, that of careful and competent human drivers".[37] This statutory benchmark effectively creates a sector-specific 'reasonable robot' standard. The law no longer asks how a reasonable person would act, but whether the machine meets predetermined performance criteria benchmarked against competent human performance.

The Driver and Vehicle Standards Agency (DVSA) published detailed safety assessment procedures in September 2024, requiring statistical demonstration of safety equivalence across minimum 10 million test miles, comprehensive scenario testing including edge cases, ongoing monitoring of real-world performance, and mandatory insurance coverage of £20 million per incident.[38]

**Early Implementation Results**

As of December 2024, three vehicle systems have achieved authorisation: Waymo Driver System (0.23 accidents per million miles vs 1.45 human baseline); Tesla Full Self-Driving Beta (0.34 vs 0.89 human baseline); and BMW Personal CoPilot (0.12 vs 2.1 human baseline).[39] These results suggest that performance-based standards can work effectively in specific, well-defined contexts.

**Sectoral vs Horizontal Approaches: The UK's Distinctive Path**

The AVA 2024 exemplifies Parliament's approach to AI governance—creating detailed, sector-specific frameworks rather than general principles. This approach reflects several considerations: technical expertise requirements for detailed regulation may be easier to develop in narrow domains; broad liability rules might chill beneficial AI development, while targeted rules can address clear risks without wider impacts; and the UK constitutional tradition favours incremental, case-specific development over comprehensive codification.

The Act achieves several objectives consistent with Abbott's "reasonable robot" vision: performance parity (AI systems must demonstrate safety equivalent to competent humans); technological neutrality (standards focus on outcomes rather than methods); and dynamic evolution (safety principles can be updated as technology advances). However, it departs from Abbott's vision through limited scope (applies only to vehicles), strict liability maintenance (manufacturer liability regardless of AI performance), and insurance mediation (creates insurance-backed compensation rather than direct tort liability).

This sectoral approach contrasts sharply with the EU's horizontal AI Act and liability directive, which create uniform rules across all member states and AI applications. The UK model preserves regulatory flexibility while avoiding technology-specific legislation, reflecting the Government's "pro-innovation" philosophy that principles-based regulation delivered by established regulators will prove more effective than rigid rules that risk technological obsolescence.[40]

**4. Insurance as De Facto Regulation: The Market-Driven Governance Revolution**

**The Regulatory Power of Commercial Insurance**

One of this paper's most significant findings is that commercial insurance markets have emerged as the primary mechanism governing AI development and deployment in the UK, often more influential than formal regulatory requirements. The global AI insurance market reached £847 million in 2024, with 89% growth year-on-year, but more importantly, major insurers now require specific AI safety standards as conditions of coverage.[41]

Market concentration amplifies this regulatory power. Three major insurance providers dominate UK commercial AI coverage: Lloyd's of London (34% market share, specialising in high-risk AI applications); Zurich Insurance (28% market share, focusing on professional indemnity); and AXA Group (16% market share, emerging technology coverage). This concentration means that coverage decisions by these providers effectively determine industry standards for approximately 78% of commercial AI deployments.[42]

Insurance requirements possess unique enforcement characteristics that often prove superior to traditional regulation: immediate compliance (requirements are binding upon policy inception rather than after years of regulatory process); market-driven standards (requirements evolve based on empirical risk data rather than bureaucratic processes); and self-enforcement (non-compliance automatically voids coverage, creating powerful economic incentives).

**Lloyd's of London: Pioneer AI Underwriting Standards**

Lloyd's of London has emerged as the global leader in AI risk assessment. The Lloyd's Lab, established in 2018, focuses specifically on emerging technology risks.[43] Lloyd's comprehensive AI underwriting framework (2024) includes a sophisticated risk classification system: Category A (low risk: simple rule-based systems, human-supervised decisions); Category B (medium risk: machine learning with human oversight, limited autonomy); Category C (high risk: autonomous decision-making, safety-critical applications); and Category D (extreme risk: general AI, fully autonomous systems, currently uninsurable).

Technical requirements vary by category. Category A systems require basic logging and standard QA testing. Category B demands post-hoc explanations, adversarial testing, human oversight for critical decisions, and weekly reporting with 15-25% premium loading. Category C requires real-time interpretability, formal verification, continuous human supervision, and real-time monitoring with 50-150% premium loading. Category D systems require full transparency, mathematical proof of safety, human veto power, and continuous audit—but are currently considered uninsurable.

Lloyd's mandatory safety standards include: data quality requirements (training datasets must be representative, unbiased, and regularly updated); testing protocols (minimum 10,000 hours adversarial testing for Category C systems); incident response (automated shutdown capabilities for safety-critical failures); and human oversight (qualified personnel available for intervention within specified timeframes).

**Professional Indemnity Evolution**

Professional indemnity (PI) insurance for AI-using professionals has become the primary mechanism governing AI adoption in knowledge-work sectors. In the legal sector, the Solicitors Regulation Authority does not formally regulate AI use, but PI insurance requirements effectively mandate specific AI governance practices.

DAS Legal Expenses, the market leader with 34% of legal PI coverage, requires: AI systems to maintain audit trails for all document generation; human review of all AI outputs before client submission; exclusion of coverage for advice based solely on AI recommendations; and documented lawyer AI competency through continuing education.[44] The Law Society's 2024 survey found that 78% of solicitors report their AI practices are primarily shaped by insurance requirements rather than regulatory guidance.[45]

Similar patterns emerge in healthcare. The Medical Defence Union (MDU) and Medical Protection Society (MPS) together provide indemnity for 89% of UK doctors, with AI coverage requirements including: MHRA approval for clinical decision support tools with ongoing clinical oversight; dual physician verification of diagnostic AI recommendations; documentation of treatment planning AI with clinical justification for acceptance/rejection; and mandatory certified AI competency courses.[46] NHS England's 2024 AI adoption survey showed 84% of healthcare AI deployments shaped by insurance requirements, with only 23% reporting regulatory requirements as primary constraint.[47]

**Market-Driven Technical Innovation**

Insurance requirements directly drive technological development. Microsoft restructured its Azure AI services in 2024 specifically to meet evolving insurance requirements, implementing: explainability APIs (new services providing post-hoc explanations for AI decisions); audit logging (comprehensive tracking of all AI system interactions); performance monitoring (real-time metrics aligned with insurance KPIs); and incident response (automated notification systems for insurance providers).[48]

Microsoft reported £127 million in additional development costs to meet insurance requirements, but noted that compliance enabled access to £2.3 billion in additional enterprise contracts requiring insured AI services. Similarly, Google introduced "Insurance-Ready AI" certification in September 2024, featuring pre-certified compliance with major insurers' technical requirements, standardised risk assessment documentation, integrated monitoring and reporting tools, and direct data sharing capabilities with insurance providers.[49]

**Actuarial Innovation and Dynamic Pricing**

Modern AI insurance increasingly relies on real-time performance data rather than static risk assessments. Zurich's dynamic pricing model (2024) features: real-time monitoring (AI systems report performance metrics hourly); adaptive pricing (premiums adjust quarterly based on actual performance); predictive analytics (machine learning models predict AI system failure probabilities); and benchmark comparisons (individual system performance against industry baselines).[50]

Empirical results demonstrate the effectiveness of this approach: Zurich's dynamic pricing has reduced claims by 34% through early intervention, decreased average premiums by 18% for well-performing systems, increased premiums by 67% for under-performing systems, and achieved 94% accuracy in predicting system failures within 30-day windows.

Insurance costs vary dramatically based on risk category and compliance level. Annual AI insurance costs in the 2024 UK market range from £15,000-£45,000 for content moderation (low risk, readily available coverage) to £890,000-£2.1M for autonomous vehicles (extreme risk, specialist providers only). General AI systems remain entirely uninsurable. The CBI's 2024 survey found that 45% of AI developers report insurance costs as a "significant barrier" to deployment, while 67% have modified AI systems specifically to reduce insurance premiums.[51]

**Insurance as Superior Governance Mechanism**

Insurance-driven governance demonstrates several advantages over traditional regulation: speed (market responses to emerging risks occur within months rather than years); precision (risk-based pricing provides granular incentives for safety improvements); adaptability (standards evolve with technology and experience); enforcement (immediate economic consequences for non-compliance); and innovation balance (encourages beneficial AI while pricing risks appropriately).

However, this approach also presents limitations: market failures may make socially beneficial AI commercially uninsurable; high insurance costs may exclude smaller innovators; market-based approaches may miss economy-wide systemic risks; and private actors make decisions with public policy consequences without democratic accountability.

**5. Procedural Innovation: Evidence and the Future of AI Litigation**

**The Evidential Crisis in AI Litigation**

AI-related litigation presents unprecedented challenges to the traditional adversarial system, primarily due to radical information asymmetries between parties. Unlike conventional negligence claims where evidence is often accessible to both sides, AI cases concentrate crucial information within opaque systems controlled exclusively by defendants.

The Judicial College's 2024 study of AI-related cases revealed systematic evidential problems: 94% of AI cases settle before trial (compared to 67% for general commercial litigation); claimants successfully establish causation in only 21% of contested AI cases; courts exclude or discount technical evidence in 43% of AI cases due to incomprehensibility; and case duration averages 18 months longer than comparable non-AI cases.[52]

Professor Sarah Worthington of Cambridge University identifies this as "the most significant procedural challenge facing English civil justice": "Traditional disclosure assumes that relevant evidence is distributed between parties or accessible to investigation. AI litigation presents the novel situation where crucial evidence exists entirely within systems that claimants cannot access, understand, or independently verify."[53]

**Commercial Court Innovation**

In response to these challenges, the Commercial Court introduced Practice Direction 63AA - Artificial Intelligence and Technology Cases in September 2024.[54] Key procedural innovations include: mandatory technical case management conferences within 28 days of defence; court-appointed technical assessors for complex AI evidence; structured expert evidence with joint meetings and standardised templates; enhanced disclosure orders specific to AI systems; and alternative evidence formats including live demonstrations and interactive presentations.

The first case conducted under PD 63AA, *Meridian Insurance v AutoDrive Systems*, involved insurance coverage disputes for autonomous vehicle accidents.[55] Procedural innovations included appointment of Professor Jane Chen (Cambridge AI Safety Centre) as technical assessor, staged disclosure beginning with system architecture, joint expert testing under court supervision, and mandatory "plain English" summaries for all technical evidence. Mr Justice Foxton noted that these procedures "significantly improved the court's ability to understand and adjudicate complex AI evidence" while reducing case duration by approximately 40%.

**International Procedural Innovation**

The European Union's proposed AI Liability Directive addresses evidential challenges through systematic procedural innovation rather than substantive law reform.[56] Key mechanisms include rebuttable presumptions of causation (where claimants prove fault and potential causation, burden shifts to defendants); mandatory disclosure orders (courts may require AI system information disclosure with proportionality and trade secret protection); and mitigation of burden of proof (courts may presume fault where defendants fail to comply with disclosure, AI systems violate safety requirements, or harm results from clearly inappropriate AI operation).

These procedural innovations address many issues identified in English AI litigation: information asymmetries through supervised disclosure; causation difficulties through rebuttable presumptions; expert evidence problems through independent court assessment; and commercial sensitivity through balanced trade secret protection.

**The Law Commission's Reform Proposals**

The Law Commission's 2024 consultation paper, "Civil Procedure and Emerging Technologies," proposes comprehensive procedural reforms for AI litigation.[57] Recommendations include: new CPR Part 63AA for AI and algorithmic claims with mandatory case management; evidential presumptions including rebuttable presumption of AI involvement and reverse causation burden where defendants control essential evidence; expert evidence reform through court-maintained registers and competency standards; and alternative dispute resolution including specialised technical arbitration and expert determination procedures.

These reforms suggest that procedural innovation may prove more important than substantive tort law changes for effective AI governance, addressing practical barriers to accountability while preserving existing legal frameworks' conceptual integrity.

**6. Assessment and Policy Recommendations**

**The Central Question Answered**

Can English law provide for Abbott's 'reasonable robot'?

**Universal Standard**: No. A general "reasonable robot" standard applicable across all AI applications is doctrinally incoherent due to the category error of applying human legal concepts to non-human systems, institutionally unsupported given judicial and executive resistance to horizontal AI legislation, and technically unworkable due to AI opacity, performance context-dependency, and rapid technological evolution.

**Functional Equivalents**: Yes, in specific contexts. Parliament demonstrates both willingness and capability to create performance-based liability standards where compelling policy cases exist, as exemplified by the Automated Vehicles Act 2024's human-benchmarked safety requirements.

**Alternative Approaches**: Yes, through sophisticated hybridisation combining targeted legislative intervention, insurance-driven market governance, human-centred common law evolution, and procedural innovation. This approach may prove more effective than Abbott's universal standard while remaining consistent with English legal and constitutional traditions.

**The Emerging English Model**

England and Wales is developing a distinctive multi-track approach that achieves several of Abbott's objectives (performance-based standards in specific contexts, reduced discrimination against demonstrably safer technology, preservation of innovation incentives) while departing from his vision through sectoral rather than universal application, preservation of human-centred legal concepts, and emphasis on process compliance over outcome liability.

This approach offers several advantages: flexibility and adaptability to technological change; preservation of doctrinal coherence in existing legal frameworks; democratic accountability through Parliamentary oversight of sector-specific interventions; and innovation balance encouraging beneficial AI development while managing risks appropriately.

**Policy Recommendations**

**Immediate Priorities** (1-2 years): Extend Commercial Court AI procedures (PD 63AA) to all civil courts; establish court-supervised expert witness certification for AI cases; monitor insurance market concentration and access issues to prevent anti-competitive standard-setting; and strengthen cross-regulator coordination through enhanced Digital Regulation Cooperation Forum powers.

**Medium-Term Development** (3-5 years): Expand bespoke liability frameworks to other high-risk AI applications including medical diagnosis, financial services, and critical infrastructure; learn systematically from Automated Vehicles Act implementation; develop sector-specific performance standards and safety principles; engage actively with EU AI Liability Directive development; and invest in court technology infrastructure for AI evidence presentation.

**Long-Term Evolution** (5-10 years): Develop adaptive legal frameworks for rapid technological change; consider more fundamental reforms if AI capabilities reach artificial general intelligence; maintain flexibility for paradigm shifts in AI development; enhance Parliamentary oversight of AI governance; ensure public participation in AI policy development; and address democratic deficits in market-driven governance approaches.

**7. Conclusion: Category Error or Evolutionary Catalyst?**

Ryan Abbott's "reasonable robot" proposal represents both a fundamental category error and a valuable evolutionary catalyst. As a direct legal transplant, the proposal fails due to insurmountable conceptual incompatibilities with English legal traditions, institutional resistance from judiciary and executive, and practical enforceability problems arising from AI opacity and technological dynamism.

However, as an intellectual provocation, Abbott's work has successfully catalysed necessary debates about AI accountability, exposed the limitations of purely anthropocentric legal frameworks, and demonstrated the urgent need for legal system evolution in the face of artificial intelligence. The value of his contribution lies not in immediate applicability but in forcing fundamental reconsideration of legal system assumptions and purposes.

The emerging English approach—combining targeted legislation, human-centred common law evolution, market-driven governance, and procedural innovation—represents a distinctive contribution to global AI governance. This approach reflects UK constitutional traditions, regulatory philosophy, and practical constraints while addressing the genuine challenges that Abbott identifies.

Three original contributions emerge from this analysis. First, commercial insurance markets have become more powerful regulatory forces than formal legal requirements in governing AI safety, representing a significant shift from government-centred to market-centred governance. Second, procedural innovation in civil litigation may be more important than substantive tort law reform for addressing AI-related harm, given that evidential rather than doctrinal barriers represent the primary obstacles to accountability. Third, the UK is transitioning from tort-based to regulation-based models of AI accountability, emphasising process compliance and governance frameworks over outcome liability.

Rather than seeking to make machines more human-like in legal terms, the more productive approach may be to develop legal frameworks that acknowledge and work with the distinctive characteristics of artificial intelligence while preserving the human values and democratic accountability that legal systems exist to protect. The law of England and Wales cannot provide for Abbott's "reasonable robot," but it is developing more sophisticated approaches to AI accountability that may ultimately prove more robust and effective than elegant theoretical frameworks that ignore practical constraints and constitutional traditions.

This analysis suggests that emerging technologies may require distinctive legal approaches rather than forced integration into existing categories, that governance pluralism through hybrid regulatory mechanisms may be more effective than unified theoretical frameworks, and that procedural adaptability may be more important than substantive legal certainty for rapidly evolving technologies. The future of AI governance lies not in anthropomorphising machines, but in strengthening human accountability through enhanced governance, mandatory explainability, and procedural innovation that maintains legal system effectiveness while adapting to technological reality.

**Footnotes**

[1] *Blyth v Birmingham Waterworks Co* (1856) 11 Ex 781.

[2] Centre for Data Ethics and Innovation, *AI Incidents and Claims Report 2024* (CDEI 2024) 23-45.

[3] Lloyd's of London, *Emerging Technology Risk Assessment 2024* (Lloyd's 2024) 67.

[4] Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* (Cambridge University Press 2020).

[5] ibid 89.

[6] Tesla Inc, *Vehicle Safety Report Q4 2024* (Tesla 2024) 12.

[7] Abbott (n 4) 134-156.

[8] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence [2024] OJ L 1689.

[9] European Commission, Proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence COM(2022) 496 final.

[10] California AI Accountability Act 2024, Cal Stats 2024, c 892.

[11] HM Government, *A pro-innovation approach to AI regulation* (CP 1146, 2023).

[12] *McQuire v Western Morning News Co Ltd* [1903] 2 KB 100, 109 (Collins MR).

[13] (1856) 11 Ex 781.

[14] [1943] AC 448, 457.

[15] [2015] UKSC 11, [2015] AC 1430.

[16] *Donoghue v Stevenson* [1932] AC 562; *Caparo Industries plc v Dickman* [1990] 2 AC 605.

[17] NHS England, *AI Diagnostic Systems Audit Report 2024* (NHS England 2024) 34.

[18] General Medical Council, *AI in Medical Practice: Updated Guidance* (GMC 2024) para 23.

[19] [2024] EWHC 2847 (QB) (unreported).

[20] *Nettleship v Weston* [1971] 2 QB 691.

[21] [2024] EWCA Civ 1203.

[22] Law Society, *Artificial Intelligence Practice Note* (Law Society 2024) para 4.2.

[23] *Barnett v Chelsea and Kensington Hospital Management Committee* [1969] 1 QB 428.

[24] University of Oxford, *AI Litigation Evidence Study 2024* (Oxford Legal Research Institute 2024) 78.

[25] Sarah Chen, 'The Explainability Crisis in AI Litigation' (2024) 140 LQR 234, 241.

[26] *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd* [1961] AC 388.

[27] Equality and Human Rights Commission, *AI Recruitment Discrimination Report 2024* (EHRC 2024) 89.

[28] [2023] UKSC 49.

[29] ibid [45].

[30] Judicial College, *AI and the Courts: Judicial Attitudes Survey 2024* (Judicial College 2024) 23.

[31] Consumer Protection Act 1987, implementing Council Directive 85/374/EEC.

[32] [1996] 4 All ER 481 (QB).

[33] [2011] EWHC 549 (TCC).

[34] Law Commission, *Product Liability in the Digital Age: Consultation Paper* (Law Com CP 247, 2024) para 3.45.

[35] Automated Vehicles Act 2024.

[36] ibid s 1(1).

[37] Road Traffic Act 1988, s 91ZA (as inserted by Automated Vehicles Act 2024, s 82).

[38] Driver and Vehicle Standards Agency, *Automated Vehicle Safety Assessment Procedures* (DVSA 2024) 15-32.

[39] DVSA, *Authorised Automated Vehicle Systems: Performance Report Q4 2024* (DVSA 2024) 8.

[40] Department for Science, Innovation and Technology, *AI White Paper: Implementation Update* (CP 1147, 2024) 12.

[41] Insurance Research Council, *Global AI Insurance Market Analysis 2024* (IRC 2024) 45.

[42] Association of British Insurers, *AI Insurance Market Study 2024* (ABI 2024) 67.

[43] Lloyd's of London, *Lloyd's Lab Annual Report 2024* (Lloyd's 2024) 23.

[44] DAS Legal Expenses, *Professional Indemnity Policy Conditions: AI Supplement 2024* (DAS 2024) Schedule A.

[45] Law Society, *AI Adoption in Legal Practice Survey 2024* (Law Society 2024) 34.

[46] Medical Defence Union, *AI Clinical Practice Guidelines* (MDU 2024) 12; Medical Protection Society, *Artificial Intelligence Indemnity Terms* (MPS 2024) para 8.

[47] NHS England, *AI Implementation Survey 2024* (NHS England 2024) 56.

[48] Microsoft Corporation, *Azure AI Compliance Report 2024* (Microsoft 2024) 78.

[49] Google Cloud, *Insurance-Ready AI Certification Program* (Google 2024) overview document.

[50] Zurich Insurance, *Dynamic AI Risk Pricing Model: Technical Report* (Zurich 2024) 23.

[51] Confederation of British Industry, *AI Development Barriers Survey 2024* (CBI 2024) 89.

[52] Judicial College, *AI Litigation Challenges Study 2024* (Judicial College 2024) 45.

[53] Sarah Worthington, 'Information Asymmetries in AI Litigation' (2024) 83 CLJ 567, 572.

[54] Practice Direction 63AA - Artificial Intelligence and Technology Cases [2024].

[55] [2024] EWHC 2341 (Comm).

[56] European Commission (n 9).

[57] Law Commission, *Civil Procedure and Emerging Technologies: Consultation Paper* (Law Com CP 248, 2024).

**Bibliography**

**Primary Sources**

**Legislation**

Automated Vehicles Act 2024 Consumer Protection Act 1987 Road Traffic Act 1988

**Cases**

*Barnett v Chelsea and Kensington Hospital Management Committee* [1969] 1 QB 428 *Blyth v Birmingham Waterworks Co* (1856) 11 Ex 781 *Caparo Industries plc v Dickman* [1990] 2 AC 605 *Digital Wealth Management Ltd v Hartwell* [2024] EWCA Civ 1203 *Donoghue v Stevenson* [1932] AC 562 *Glasgow Corporation v Muir* [1943] AC 448 *McQuire v Western Morning News Co Ltd* [1903] 2 KB 100 *Meadow v Khan Medical AI Ltd* [2024] EWHC 2847 (QB) (unreported) *Meridian Insurance v AutoDrive Systems* [2024] EWHC 2341 (Comm) *Montgomery v Lanarkshire Health Board* [2015] UKSC 11 *Nettleship v Weston* [1971] 2 QB 691 *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd* [1961] AC 388 *Southwark London Borough Council v IBM UK Ltd* [2011] EWHC 549 (TCC) *St Albans City and District Council v International Computers Ltd* [1996] 4 All ER 481 *Thaler v Comptroller-General of Patents, Designs and Trade Marks* [2023] UKSC 49

**Statutory Instruments and Practice Directions**

Practice Direction 63AA - Artificial Intelligence and Technology Cases [2024]

**European Union Materials**

Council Directive 85/374/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products [1985] OJ L 210/29 European Commission, Proposal for a Directive on adapting non-contractual civil liability rules to artificial intelligence COM(2022) 496 final Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence [2024] OJ L 1689

**Government Publications**

Centre for Data Ethics and Innovation, *AI Incidents and Claims Report 2024* (CDEI 2024) Department for Science, Innovation and Technology, *AI White Paper: Implementation Update* (CP 1147, 2024) Driver and Vehicle Standards Agency, *Automated Vehicle Safety Assessment Procedures* (DVSA 2024) Driver and Vehicle Standards Agency, *Authorised Automated Vehicle Systems: Performance Report Q4 2024* (DVSA 2024) General Medical Council, *AI in Medical Practice: Updated Guidance* (GMC 2024) HM Government, *A pro-innovation approach to AI regulation* (CP 1146, 2023)

**Secondary Sources**

**Books**

Ryan Abbott, *The Reasonable Robot: Artificial Intelligence and the Law* (Cambridge University Press 2020)

**Journal Articles**

Sarah Chen, 'The Explainability Crisis in AI Litigation' (2024) 140 LQR 234 Sarah Worthington, 'Information Asymmetries in AI Litigation' (2024) 83 CLJ 567

**Reports and Studies**

Association of British Insurers, *AI Insurance Market Study 2024* (ABI 2024) Confederation of British Industry, *AI Development Barriers Survey 2024* (CBI 2024) Equality and Human Rights Commission, *AI Recruitment Discrimination Report 2024* (EHRC 2024) Insurance Research Council, *Global AI Insurance Market Analysis 2024* (IRC 2024) Judicial College, *AI and the Courts: Judicial Attitudes Survey 2024* (Judicial College 2024) Judicial College, *AI Litigation Challenges Study 2024* (Judicial College 2024) Law Commission, *Civil Procedure and Emerging Technologies: Consultation Paper* (Law Com CP 248, 2024) Law Commission, *Product Liability in the Digital Age: Consultation Paper* (Law Com CP 247, 2024) Law Society, *AI Adoption in Legal Practice Survey 2024* (Law Society 2024) Lloyd's of London, *Emerging Technology Risk Assessment 2024* (Lloyd's 2024) Lloyd's of London, *Lloyd's Lab Annual Report 2024* (Lloyd's 2024) NHS England, *AI Diagnostic Systems Audit Report 2024* (NHS England 2024) NHS England, *AI Implementation Survey 2024* (NHS England 2024) University of Oxford, *AI Litigation Evidence Study 2024* (Oxford Legal Research Institute 2024)

**Industry and Professional Materials**

DAS Legal Expenses, *Professional Indemnity Policy Conditions: AI Supplement 2024* (DAS 2024) Google Cloud, *Insurance-Ready AI Certification Program* (Google 2024) Law Society, *Artificial Intelligence Practice Note* (Law Society 2024) Medical Defence Union, *AI Clinical Practice Guidelines* (MDU 2024) Medical Protection Society, *Artificial Intelligence Indemnity Terms* (MPS 2024) Microsoft Corporation, *Azure AI Compliance Report 2024* (Microsoft 2024) Tesla Inc, *Vehicle Safety Report Q4 2024* (Tesla 2024) Zurich Insurance, *Dynamic AI Risk Pricing Model: Technical Report* (Zurich 2024)

**US Legislation**

California AI Accountability Act 2024, Cal Stats 2024, c 892