



Only 22% of highway defect claims are successful

Left: Robert Spanning

COLLISIONS: CARELESSNESS & CLAIMS

We are owed a duty of care by all other road users. The standard of care owed is that which should be exercised by a reasonably careful person. We are all obliged to avoid posing a reasonably foreseeable risk of harm and injury to others. Failure to do so is negligence.

Negligence is a simple test of carelessness. If, on the balance of probabilities, an incident that could have been anticipated results in injury or loss, the careless individual may be liable and culpable. The Highway Code is frequently cited in support of allegations of negligence.

The standard of proof in civil cases is different from that in criminal cases. Criminal prosecutions must prove guilt "beyond all reasonable doubt". In civil cases the claimant need only prove "on the balance of probabilities" (51% or more) that there has been negligence. In the event of a driver-cyclist collision, even if the police or Crown Prosecution Service decide against prosecuting the driver, the cyclist is not precluded from bringing a civil claim for damages.

However, a successful criminal prosecution shifts the burden of proof: the erring party is required to show that the conviction is not relevant to the issue of negligence. So it's better for you if you can get the police to investigate an injury collision. Their involvement may prevent procrastination by the third party's insurer. Video camera footage is a great aid to a possible prosecution and for any civil claim (see sidebar).

“ IT IS OBLIGATORY TO REPORT ANY COLLISION INVOLVING INJURY TO THE POLICE ”

HIGHWAY DEFECTS: INSPECTION RULES

A highway authority will be in breach of its statutory duty, as defined by S41 of the Highways Act 1980, if it fails to maintain the road to a reasonable standard. An authority has a duty to inspect the roads in its area at regular intervals to ensure that the surface is safe and free from defects likely to present reasonably foreseeable hazards to all road users. Inspection frequency is linked to the status of the road. For example, A-roads are checked more often than country lanes.

Road defects that aren't dangerous to motor traffic can still present a clear hazard to cyclists. Authorities must take reasonable precautions to address them. Note well that word 'reasonable'. If the highway authority can prove that a regular system of inspection (appropriate to the road category) is in operation, and that the defect arose between such inspections, the statutory defence provided by S58 of the Highways Act may permit it to escape liability.

Insurers' own records show that only 22% of highway defect claims result in a payment. That's a reflection of the technical details and specialist knowledge required to attack the statutory defence. So it's worth getting informed advice before reporting a defect.

Since 2016, the definition of a dangerous defect has been left to individual authorities; specific dimensions aren't provided in the National Code. As a rule of thumb, a dangerous pothole is at least 40mm deep and 300mm across. That doesn't address edge deterioration, longitudinal cracks, level differences, depressions, utility covers, gully covers, protuberances above the surface, or reduced friction, or snow and ice, but it's a start. ▶

Caught on camera

Camera footage is increasingly useful in both criminal and civil cases. It can also be used to report careless, dangerous and downright incompetent drivers even where no collision has occurred.

If you have footage of an incident, make sure it won't be overwritten. Some cameras film on a loop and you'll need to press a button or switch the camera off entirely for the footage to be saved. At the earliest opportunity, back up the footage to your home computer. Then back up that so you've got a copy somewhere other than your camera.

If the police are involved in investigating an incident, they may ask you if you have video footage. If they don't, ask them how best to provide it. Don't give the police your only copy of footage. Upload it or (if they prefer, say, a DVD) give them a copy.

You can upload footage of careless or dangerous driving even if the police are not initially involved. Start with the force's web pages and look for the section dedicated to the upload of material. It's probably called OpSnap and will require contact as soon as possible, as the police (under Notice of Intended Prosecution provisions) must notify the registered keeper within 14 days.

Another way to upload footage is via the National Dashcam Safety Portal: nextbase.co.uk/national-dash-cam-safety-portal/.

