

NEW CYCLING OFFENCES: CAUSING DEATH OR SERIOUS INJURY WHEN CYCLING Summary of the consultation response from Cycling UK

About Cycling UK

Cycling UK was founded in 1878 and has 65,000 members and supporters. Our central mission is to make cycling a safe, accessible, enjoyable and 'normal' activity for people of all ages and abilities. We were historically known as CTC or the Cyclists' Touring Club. Our interests cover cycling both as a form of day-to-day transport and as a leisure activity, which can deliver health, economic, environmental, safety and quality of life benefits, both for individuals and society. Our activities include representing the interests of current and would-be cyclists on public policy matters, and running practical projects to enable people of all ages, backgrounds and abilities to experience the benefits of cycling.

The need to clarify or amend the definitions of 'dangerous' and 'careless' traffic offences and their associated penalties

Cycling UK would have no objection in principle to proposals for new offences and penalties for cycling offences involving death or serious injury, if considered as part of a broader review of road traffic offences and penalties. We agree that all road users need to act responsibly, and that the legal system should respond to dangerous and irresponsible behaviour in a broadly consistent manner.

We welcome the consultation document's recognition that fatal or serious pedestrian injuries involving cyclists are rare. For our part, we acknowledge that this, in itself, is not a valid argument against considering new cycling offences.

However, we see no justification whatsoever for bringing these forward independently of a long-promised wider review of road traffic offences. More than 98% of pedestrian injuries, and over 99% of fatalities, involve motor vehicles. Yet sentences of a few hundred pounds and short driving bans are common, even where fatal or life-changing injuries have occurred. Given the Government's stated aim to protect vulnerable road users, it is surely a far higher priority to tackle the legal system's routine yet spectacular failures to deliver justice in so many other road traffic cases, in which pedestrians and cyclists are so often the victims.

Worse still, the current consultation proposals are essentially to create new cycling offences using the existing definitions of 'careless' and 'dangerous' driving. These definitions, and the associated sentencing framework, are sorely lacking in clarity and are very inconsistently applied. They regularly cause deep additional trauma to road crash victims who have already faced serious injuries or, in some cases, bereavement. If we merely create new cycling offences based on those same flawed definitions, we miss a critical opportunity to address these far larger and more common problems. Instead, the very same issues would be replicated in a tiny number of additional cases where the defendant was a cyclist.

There are three main respects in which the framework of core road traffic offences and penalties (i.e. 'careless' and 'dangerous' driving, and their variants for cases involving death or serious injury) needs to change:

- *Lack of clarity in the definitions of 'dangerous' and 'careless' offences.*
At present, the distinction between 'careless' and 'dangerous' driving depends largely on whether the magistrates, judge or jury believe the standard of the driving fell 'below' or 'far below' what would be expected of a 'competent and careful driver'. Yet the expected standard of a 'careful and competent driver' is entirely subjective, allowing for hugely varied interpretations by individual magistrates and jurors. Even greater variability is likely to arise in cycling cases. While most jurors will have some experience of driver training and the

requirements to pass a driving test, many will have little or no experience of on-road cycling, or the training or advice given to cyclists. Research shows that drivers who do not cycle are more likely to think that cyclists are acting irresponsibly when in fact they are riding perfectly correctly. The law must therefore be amended either to define these terms, or to provide wholly new definitions of more serious and less serious road traffic offences respectively.

- *Clarity on whether the respective definitions of serious and less serious offences are supposed to relate to the level of danger caused by the defendant's actions (an 'objective test') or their state of mind (a 'subjective test').*

At present, the legal distinction between 'dangerous' and 'careless' offences is supposed to be based on whether the defendant's actions objectively caused danger that ought to have been obvious to a competent and careful driver or rider. Yet the continued use of the word 'careless' gives the impression that the defendant's state of mind is still a relevant factor, despite its removal from the legal framework in 1991. This is manifestly confusing: a moment of 'careless' inattention can clearly result in very serious and obvious 'danger'. The resulting inconsistencies and weaknesses in how these offences are used, by both prosecutors and the courts, causes immense distress to both injured and bereaved victims of road collisions. A comprehensive rethink is long overdue.

- *The accompanying sentencing framework needs to focus more on public protection rather than retribution, including greater use of driving bans.*

Far from seeking increased use of custodial sentencing, Cycling UK has long believed that far greater reliance should instead be placed on driving bans - albeit with custody still being the main sentencing option for more obviously 'reckless' offenders, notably those who have flouted driving bans in the past. One possible advantage of reverting to a 'subjective' distinction (e.g. between 'reckless' and 'careless' driving) is that it would then be easier to align the sentencing framework with the offences themselves (however an 'objective' distinction may be legally preferable in other ways). What does not make sense though is to simply align the penalties for new cycling offences with the current, seriously flawed sentencing framework for motoring offences.

Cycling UK's full response also addresses the consultation document's questions on several other points of detail – e.g. whether these cycling offences should apply "in a public place" as well as on the public highway, and whether there should be a closer alignment of cycling and motoring offences involving drink or drugs.

It concerns us greatly, however, that the consultation asks such specific questions while not inviting comments on whether or not any new cycling offences should be based on the hopelessly flawed definitions of the core motoring offences. Nor does it seek views on possible remedies for several other glaring injustices and discrepancies in the current framework of road traffic offences and penalties. These include:

- New offences for causing serious or fatal injury by 'car-dooring'. At present the only penalty available for this potentially lethal offence is a maximum fine of £1,000.
- Tougher penalties for 'hit and run' drivers who leave the scene of a collision where they knew, or ought to have known, that the collision was likely to have resulted in serious or fatal injury.
- Closing the loophole which routinely allows offending drivers to evade bans by claiming that this would cause 'exceptional hardship'.

These too are issues which regularly result in unacceptably weak responses from the legal system, to the great distress of injured or bereaved road crash victims. We see no justification whatsoever for limiting the scope of the consultation in this way.

We therefore reiterate our call for a wider review of road traffic offences and penalties. We suggest this could be undertaken by the Law Commission.