

## NEW CYCLING OFFENCES: CAUSING DEATH OR SERIOUS INJURY WHEN CYCLING 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 for day-to-day transport and for leisure, and the health, economic, environmental, safety and quality of life benefits it can provide both for individuals and for 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.

### Key points

Cycling UK would have no objection in principle to proposals for new cycling offences and penalties for cases 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 sufficient argument against proposals for new cycling offences.

However we see no justification whatsoever for bringing forward these proposals 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 short driving bans and community sentences 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, this would be a terrible missed opportunity to address these far larger and more common problems. Instead, these same failings would merely 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:

- Clarity over the definitions of ‘dangerous’ and ‘careless’ offences.*

At present, the distinction between ‘careless’ and ‘dangerous’ driving depends largely on whether a court believes the standard of the driving fell ‘below’ or ‘far below’ what would be expected of a ‘competent and careful driver’. Yet the standard expected of a ‘careful and competent driver’ is undefined, allowing for hugely varied interpretations by individual magistrates, judges 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 over 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 – although 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.

The consultation document also invites views 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 offences involving impairment by drink or drugs. We address these below in our specific response to the relevant questions.

However it concerns us greatly 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, or seeking views on whether to address several other glaring injustices and discrepancies in the current framework of road traffic offences and penalties. 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.

## RESPONSES TO CONSULTATION QUESTIONS

**Questions 1-5: the definitions and sentencing for the ‘core’ road traffic offences of ‘dangerous’ and ‘careless’ cycling and driving, and their equivalents for offences involving death or serious injury.**

We have indicated in our introduction that we do not object in principle to seeking a closer alignment of the relevant cycling and motoring offences. However we would object strongly if this was based on the seriously flawed definitions of the above motoring offences. That would merely perpetuate failings in the legal framework which already cause immense distress to the victims in large numbers of proceedings against drivers, while extending it to a very small number of additional cases involving cyclists.

It is worth citing some examples to indicate the nature and the of the problem, and the serious inconsistencies between both prosecution, conviction and sentencing decisions in cases that are, on the face of it, pretty similar.

In one recent case, taxi driver Craig Gough admitted causing the death of cyclist Jack Berry by ‘dangerous’ driving in October 2017. He had failed to see the cyclist – even though he would have been visible for 15 seconds before the collision – and it is suspected he had fallen asleep at the wheel following a 13 hour shift of driving. Despite his guilty plea, he received a 4 year custodial sentence.<sup>1</sup>

However this contrasts starkly with other cases where the prosecution, or the conviction, was merely for ‘careless’ driving, or where no prosecution was brought in the first place:

- Coach driver Barry Northcott received a 15 month custodial sentence and a 2 year driving ban when he was convicted of causing the death of cyclist Karla Roman by ‘careless’ driving. He had denied this charge despite admitting that he had deliberately entered a cyclists’ ‘Advance Stop Line’ cycle box – something he said he did routinely, to avoid being “swarmed” by cyclists. He then failed to see Roman (who had been there all along) in his mirror as he started to turn left.<sup>2</sup>
- Lorry driver Paul Byrne received a 12 month custodial sentence and a 12 month driving ban after admitting causing the death of cyclist Stewart Gandy in November 2012. The CPS unsuccessfully prosecuted him for causing death by ‘dangerous’ driving, saying the cyclist would have been visible for up to 200 metres. However he was cleared of this charge.<sup>3</sup>
- Driver Angela Willshire received a 5 month custodial sentence and a 2 year driving ban, after admitting causing cyclist Anthony Ashcroft’s death by ‘careless’ driving in March 2015. Ashcroft was properly lit and wearing hi-viz clothing, and would have been visible for at least 5 seconds before the collision.<sup>4</sup>
- Ayasha Penfold escaped prison, receiving only a 12 month community order and an 18 month driving ban, after pleading guilty to causing the death of cyclist John Durey by ‘careless’ driving in May 1017. She had failed to see him when overtaking two other vehicles on the A2070 in Kent. The CPS prosecuted her for causing death by

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<sup>1</sup> [www.bbc.co.uk/news/uk-wales-45521622](http://www.bbc.co.uk/news/uk-wales-45521622)

<sup>2</sup> [www.newshopper.co.uk/news/16592268.coach-driver-guilty-of-killing-cyclist-karla-roman-in-whitechapel-crash](http://www.newshopper.co.uk/news/16592268.coach-driver-guilty-of-killing-cyclist-karla-roman-in-whitechapel-crash).

<sup>3</sup> [www.crewechronicle.co.uk/news/hgv-driver-receives-12-month-9156607](http://www.crewechronicle.co.uk/news/hgv-driver-receives-12-month-9156607).

<sup>4</sup> [www.northamptonchron.co.uk/news/northampton-woman-who-caused-death-of-cyclist-jailed-for-five-months-1-7080922](http://www.northamptonchron.co.uk/news/northampton-woman-who-caused-death-of-cyclist-jailed-for-five-months-1-7080922).

'dangerous' driving but two juries both failed to agree whether or not her driving was 'dangerous'. Hence the CPS eventually dropped the higher-tier prosecution.<sup>5</sup>

- Paul Brown also avoided prison, receiving a one-year driving ban and 240 hours of community service after admitting causing the death of cyclist Joseph Wilkins by 'careless' driving, while eating a sandwich, in May 2012. The CPS prosecuted him for causing death by 'dangerous' driving but he was cleared of this charge.<sup>6</sup>
- Frankie Katciosis received only a 24 month driving ban, a 6 month suspended sentence and 240 hours of community service, after pleading guilty to causing the death of cyclist Steven Jones by 'careless' driving in August 2017. He was consistently exceeding the 40mph speed limit even though the sun was hampering his vision. Despite this, the CPS did not attempt a 'dangerous' prosecution.<sup>7</sup>
- Derek Edward Cheney received a 6 month curfew and a 2 year driving ban after pleading guilty to causing the death of cyclist Paul Miller in January 2015. The cyclist was fully lit, wearing hi-viz clothing and should have been fully visible for 7 seconds before the collision, and Cheney offered no explanation for his failure to see the cyclist. Yet the CPS did not attempt a 'dangerous' prosecution.<sup>8</sup>
- Danut Birle received a 12 month driving ban, a 9 month suspended sentence and 240 hours of community service after eventually pleading guilty to causing the death of cyclist Zoltan Domotor by 'careless' driving in January 2017. Birle initially denied even this charge, claiming that the cyclist was coming towards him. He later admitted hitting Domotor from behind and that he had failed to see the cyclist, even though he was wearing hi-viz that should have been visible for 4 to 10 seconds. Again, no 'dangerous' prosecution was attempted.<sup>9</sup>
- Philip Sinden was acquitted of any offence after his car was in collision with 18 year-old cyclist Daniel Squire in September 2013. He was prosecuted for causing death by 'dangerous' driving but acquitted not only of that offence but also causing death by 'careless' driving. This was despite evidence that he had received 40 texts while driving that morning – the last of these being received 21 seconds before he called 999 on a different phone. Sinden initially claimed Squire had swerved off a narrow pavement, an unlikely claim given that Squire was a talented and confident road cyclist.
- No action was taken against the unnamed driver whose car killed 25 year old cyclist Anthony Maynard in July 2008, hitting both Anthony and another cyclist riding with him from behind. The driver was initially arrested on suspicion of causing death by 'careless' driving. He had just overtaken two vehicles but claimed he had been dazzled by the sun.<sup>10</sup>

The issues highlighted in these cases are not unique to cases involving cyclists:

- Driver Hayley Sterna received a 1 year suspended sentence, 200 hours of community service and a 2 year driving ban (with a requirement to carry out an extended retest) after pleading guilty to causing the death of wheelchair user Chris Clements. Clements was crossing a road, wearing hi-viz clothing and should have been visible for at least 8 seconds before the collision. Sterna was unsuccessfully prosecuted for causing death by 'dangerous' driving but acquitted of this charge.<sup>11</sup>

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<sup>5</sup> [www.kentonline.co.uk/romney-marsh/news/driver-avoids-jail-after-admitting-causing-cyclists-death-184267](http://www.kentonline.co.uk/romney-marsh/news/driver-avoids-jail-after-admitting-causing-cyclists-death-184267).

<sup>6</sup> [www.bbc.co.uk/news/uk-england-oxfordshire-23944993](http://www.bbc.co.uk/news/uk-england-oxfordshire-23944993).

<sup>7</sup> [www.dailyecho.co.uk/news/16189825.Teenage\\_motorist\\_handed\\_suspended\\_prison\\_sentence\\_for\\_killing\\_cyclist](http://www.dailyecho.co.uk/news/16189825.Teenage_motorist_handed_suspended_prison_sentence_for_killing_cyclist).

<sup>8</sup> [www.cyclinguk.org/news/20151207-curfew-seven-second-cyclists-death-careless-driving-case](http://www.cyclinguk.org/news/20151207-curfew-seven-second-cyclists-death-careless-driving-case).

<sup>9</sup> [www.eadt.co.uk/news/newmarket-motorist-responsible-for-death-of-cyclist-avoids-jail-time-1-5562711](http://www.eadt.co.uk/news/newmarket-motorist-responsible-for-death-of-cyclist-avoids-jail-time-1-5562711).

<sup>10</sup> [www.getreading.co.uk/news/local-news/anthony-maynards-father-questions-cps-4246377](http://www.getreading.co.uk/news/local-news/anthony-maynards-father-questions-cps-4246377).

<sup>11</sup> [www.huntspost.co.uk/news/suspended-sentence-for-somersham-s-hayley-sterna-1-5674543](http://www.huntspost.co.uk/news/suspended-sentence-for-somersham-s-hayley-sterna-1-5674543).

- Raymond Carroll was acquitted of causing the death by of pensioner Arthur Lakin, by ‘careless’ driving. Lakin had been crossing the road using his walking frame in October 2010, however Carroll said he had been dazzled by the sun. He had 3 previous speeding endorsements.

Cycling UK and other road safety organisations such as RoSPA, RoadPeace and Brake can point to many other similar cases.

However if one case exemplifies the need for a wider review, it is that of driver Abdul Fatah Sujac. In February 2017, Sujac caused serious injury to a pedestrian outside the Westfield Shopping Centre in East London, but received just 9 points on his licence after pleading guilty to ‘careless’ driving. He then sent his WhatsApp friends a bragging video saying “*Nine points ain’t stopping me from driving*”. Nine months later he was driving at 68mph on a 30mph street in south London, swerving in and out of traffic, when he hit and killed a pedestrian who was crossing the road. Police found videos on his phone in which he evidently reveled in driving dangerously and illegally, including one captioned “*ABDUL ripping the road 146mph*”.<sup>12</sup>

Media reporting of this case was minimal. The BBC, who had made the case of cyclist Charlie Alliston<sup>13</sup> (which prompted this review) its number one news story, failed to report it at all. Cycling UK has recorded many other local media reports of cases where drivers have received shockingly lenient sentences, or escaped prosecution or conviction altogether, despite having apparently caused ‘danger’ that surely ought to have been “obvious to a competent and careful driver”. Few attract national media attention in the way that Charlie Alliston’s case did.<sup>14</sup> Yet they frequently involve calls for reform of road traffic laws and sentences, both from seriously injured or bereaved road crash victims and from legal professionals, including judges. We can see no reason at all for the Government to prioritise a review of cycling offences over the wider review of road traffic offences that it promised in 2014.

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Cycling UK therefore believes that the legal framework needs to change to stop driving that causes obvious danger from being dismissed as merely ‘careless’. Specifically, there is a need to clarify whether more serious and less serious road traffic offences are to be distinguished from one another in relation to the state of mind of the accused (‘mens rea’), or to whether their actions, objectively viewed, had caused ‘danger’ that ought to have been foreseeable by a competent and careful driver or rider (as is supposed to be the case at present).

There are, broadly speaking, two ways in which we believe this goal could be achieved:

OPTION 1: Retaining an ‘objective’ distinction, based on the danger caused and whether this would give rise to reasonably foreseeable danger. This would involve:

- Retaining a two-tier structure of objectively-defined offences, but redefining them to clarify unambiguously that the distinction between them rested on whether or not the

<sup>12</sup> [www.standard.co.uk/news/crime/jailed-killer-driver-who-boasted-of-doing-146mph-and-sent-bragging-videos-of-dodging-ban-on-whatsapp-a3966506.html](http://www.standard.co.uk/news/crime/jailed-killer-driver-who-boasted-of-doing-146mph-and-sent-bragging-videos-of-dodging-ban-on-whatsapp-a3966506.html).

<sup>13</sup> [www.bbc.co.uk/news/uk-england-41028321](http://www.bbc.co.uk/news/uk-england-41028321).

<sup>14</sup> [www.theguardian.com/environment/bike-blog/2017/aug/29/is-the-uk-really-menaced-by-reckless-cyclists](http://www.theguardian.com/environment/bike-blog/2017/aug/29/is-the-uk-really-menaced-by-reckless-cyclists).

driving had caused ‘danger’ that should have been obvious to someone driving competently and carefully, and not on whether the standard fell “below” or far below” the standard of a competent and careful driver, or on the driver’s state of mind; and

- Renaming the lower tier offence – e.g. as ‘unsafe’ or ‘negligent’ driving, rather than ‘careless’ driving.

We believe this approach would achieve the intended aims of the 1991 Road Traffic Act – which replaced the previous ‘subjective’ offence of ‘reckless driving’ with the ‘objective’ offence of ‘dangerous driving’. However that change has not worked in practice, due (we suspect) to the continued use of the word ‘careless’ for the lower-tier offence, with its suggestion that a lower-tier offence is justified by a ‘careless’ state of mind.

OPTION 2: Reverting to a ‘subjective’ distinction, whilst avoiding the pitfalls that beset the pre-1991 legal framework. This would involve:

- Reverting to a two-tier distinction between ‘careless’ and ‘reckless’, i.e. reintroducing the state of mind (*mens rea*) of the driver, but making it clear that a court can make inferences about a driver’s state of mind *from the manner of their driving*. In this case, it would also be necessary to strengthen the use of driving bans for acts of ‘careless’ driving that caused actual danger, to signal the social unacceptability of lapses of attention when undertaking a task as safety-critical as driving. The two offences could be named ‘careless’ and ‘reckless’ driving. An alternative would be to use ‘negligent’ and ‘grossly negligent’ driving, reflecting similar distinctions in other areas of the law (e.g. manslaughter).

And IN EITHER CASE:

- Introducing a clearer objective test of the standard of driving expected. Whether or not *mens rea* is reintroduced, the standard of driving should be measured against a clear, objective test. This could, perhaps, be based around the minimum standard required to pass the driving test, a well-known and accepted standard that has been developed to assess the competency to drive safely.

It will be apparent though from the above summary that we regard it as untenable to retain both ‘dangerous’ and ‘careless’ offences, either for driving or for cycling. We believe that EITHER the term ‘careless’ should be replaced with ‘negligent’ (if it is decided to retain an ‘objective’ offences framework), OR to replace the term ‘dangerous’ with ‘reckless’ (if a ‘subjective’ framework is to be preferred).

It follows that Cycling UK could accept EITHER the offences proposed in questions 1 and 3, OR those proposed in questions 2 and 4, but not both. In either case, our acceptance would be conditional on suitable amendments being made to the definitions of the relevant driving offences, as well as the cycling offences. In short, we cannot accept any of these proposals unless carried out as part of a review of the wider framework of road traffic offences.

We reiterate our suggestion that this review should be led by the Law Commission.

The following paragraphs outline more fully:

- The rationale for an ‘objective’ framework, in response to questions 1 and 3, and
- The rationale for a ‘subjective’ framework, in response to questions 2 and 4.

**Question 1 Our consultation proposes that there should be an offence of causing death by dangerous cycling. Do you agree with this proposal?**

...and...

**Question 3 The consultation also proposes that there should be an offence of causing serious injury by dangerous cycling. Do you agree with this proposal?**

We would not oppose these proposals if it decided to retain an ‘objective’ offences framework (i.e. between ‘dangerous’ driving or cycling, and a lower tier offence such as ‘negligent’ driving or cycling). However if that solution is preferred, we believe the following criteria should be met:

*1. The distinction between what counts as ‘below’ and ‘far below’ what would be expected of a competent and careful driver should either be reviewed, or removed altogether and replaced with unambiguously ‘objective’ definitions.*

One suggestion is that driving that fell “far below” the relevant standard could be defined as that which had caused “danger” (i.e. a risk of injury or of serious property damage) that ought to have been obvious to a “competent” road user who was “paying due care and attention”. These words relate to the way the accused was driving or riding at the time, not just a general notion of a “competent and careful driver / rider” (who, in the court’s opinion, might nonetheless have occasional lapses).

Another (possibly better) option would be to remove the words “below” and “far below” entirely, making it clear that the distinction between higher and lower-tier offences related solely to whether or not the driving had caused “danger” that should have been “obvious”.

Either way though, difficulties would still arise in defining an equivalent standard of what could “be expected of a competent and careful cyclist,” and in ensuring consistency in how that standard was interpreted by the courts.

For one thing, many jurors will have little or no experience of what is involved in cycling. There is evidence to show that drivers who do not cycle are more likely to think that cyclists are cycling incorrectly when in fact this is not the case.<sup>15</sup>

For another, there is the difficulty of defining what would be expected of cyclists of all ages and abilities. Drivers are expected to be aged 17 or over and to have passed a driving test. It is doubtless for this reason that case law has said that the driver’s skill (or lack of it) is not a relevant consideration when determining verdicts in motoring cases<sup>16</sup>. Conversely, people of all ages are rightly permitted to cycle without passing a test, and the Government has rightly rejected any suggestion of introducing such a requirement.<sup>17</sup>

It would therefore be unreasonable to seek exact parity in the definitions of driving and cycling offences. This is one of several reasons why it might be preferable to revert to a more ‘objective’ framework of road traffic offences, as proposed in our response to questions 2 and 4 (though there are also factors which argue the other way).

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<sup>15</sup> [Transport Research Laboratory \(2009\). Drivers' perception of cyclists. Report TRL549.](#)

<sup>16</sup> [R v Bannister \[2009\] EWCA Crim 1571.](#)

<sup>17</sup> E.g. see [www.theyworkforyou.com/wrans/?id=2015-11-24.HL3851.h](http://www.theyworkforyou.com/wrans/?id=2015-11-24.HL3851.h). This position is reiterated in the current consultation document, e.g. at paragraph 1.7.

One solution for the definition of a “competent” cyclist would be to reference the recently published national standard for cycle training,<sup>18</sup> but add that the standard expected should reflect the rider’s age and experience. This would reflect the fact that cyclists, unlike drivers, can legally use the roads before they reach the age of 17 and pass a driving test, i.e. for several years after reaching the age of criminal responsibility.

*2. The offence currently known as ‘careless driving’ should be renamed and redefined to remove any suggestion that it relates to the defendant’s state of mind. The equivalent cycling offences would then be called ‘negligent cycling’ and defined accordingly.*

It needs to be clear that driving or cycling, which has caused ‘danger’ (i.e. a risk of injury or serious property damage) that ought to have been ‘obvious’ to someone driving or cycling ‘competently and carefully’, cannot be dismissed as mere ‘carelessness’, on the basis of the accused party’s apparent state of mind (‘mens rea’). This presently leads to hugely inconsistent and often woefully inadequate sentencing, which in turn causes immense distress to large numbers of both injured and bereaved road crash victims.

*3. The relevant maximum sentences should be amended to include longer minimum driving bans.*

Whilst our proposals for an ‘objective’ offences framework aim to prevent apparently ‘dangerous’ driving offences from being routinely dismissed as mere ‘carelessness’, we also wish to make it clear that we are not seeking an increase in either the number or length of custodial offences in cases where drivers have caused ‘danger’ without being obviously ‘dangerous people’, i.e. where there is no reason to believe they need to receive a custodial sentence in the interests of public protection. We would prefer to see an increase in the minimum driving ban to be imposed for ‘dangerous’ driving offences, and an increase in the use of driving bans more generally.

We have already noted though that this proposal, and the alternative proposal put forward in response to questions 2 and 4, each have their advantages and disadvantages. The main disadvantage of this ‘objective’ based framework is that there would be less of an alignment between the definitions of the offences and the types of sentence that might be expected. If (as suggested in response to questions 2 and 4) it was decided to adopt more ‘subjective’ definitions (e.g. ‘reckless driving and cycling’, with their equivalents for offences involving death or serious injury), ‘reckless’ offences would be more likely to attract custodial sentences, whereas ‘careless’ offences would more likely result in driving bans and/or other non-custodial options. This would give jurors greater confidence that their decisions on whether to convict for ‘reckless’ or ‘careless’ cycling would be likely to be reflected in the resulting sentence (i.e. whether or not it was likely to involve immediate custody).

With a more objective framework, we would still propose custody should be retained for offences that appeared to have a greater element of recklessness, or for repeat offenders – and particularly for drivers who had flouted past driving bans. However this approach would not give jurors the same confidence that their decisions about the appropriate verdict would be reflected in the resulting sentence. Ensuring that sentences were appropriate would necessarily require greater discretion from judges.

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<sup>18</sup> [www.gov.uk/government/publications/national-standard-for-cycle-training](http://www.gov.uk/government/publications/national-standard-for-cycle-training).

**Question 2 Do you think that there should be an offence of causing death by careless or inconsiderate cycling?**

...and...

**Question 4 The Ministry of Justice consulted on bringing forward a new offence of causing serious injury by careless driving. This consultation proposes that there should be an offence of causing serious injury by careless or inconsiderate cycling. Do you agree with this proposal?**

In common parlance, the word 'careless' is a state of mind, typically a momentary lapse of attention. Yet it is supposed not to mean that in law. Appeal court rulings have made it absolutely clear that even momentary errors should still amount to 'dangerous' driving if they caused danger that would have been obvious to a competent and careful driver.<sup>19</sup>

Cycling UK has successfully objected to the Crown Prosecution Service's inclusion of momentary lapses of attention among the factors that would indicate 'careless' driving, in past editions of its guidance on prosecuting bad driving offences.<sup>20</sup> Yet even the CPS's current guidance, issued in 2013, is insufficiently clear that momentary lapses should NOT be indicative of 'careless' driving.

The Government's 'independent legal advisor' whose advice informed this current consultation made this same legal error in paragraph 8.7 of her report. It also appears to arise in court proceedings on a regular basis (though not as often as it did before 2013). For instance:

- Lorry driver Peter Barraclough received a 5 month suspended sentence, 250 hours of community service and an 18 month driving ban after admitting causing the death of leading veteran cyclist Leonard Grayson, aged 75, who had completed 83 miles of a 100-mile time trial at the time. The court heard that Barraclough had taken his eyes off the road for a matter of seconds – though it also heard that Grayson would have been visible to the driver for 9 seconds before the collision – and that this was “the sort of accident that could happen to anybody”. Interestingly the judge described Barraclough's driving as falling “substantially below what was acceptable.”<sup>21</sup>
- Car driver Mark Bettridge received just a 6 point penalty and a £350 fine, plus £120 of costs, after pleading guilty to careless driving which hospitalised regular cyclist Adam Fradley for 8 days, 4 of them in intensive care. Bettridge drove into him as he waited at a junction. He does not expect to be able to ride ever again. The District Judge accepted that this was simply a “momentary lapse in concentration”.<sup>22</sup>

This error leads to a great deal of upset and anger over very light sentencing when very serious harm has been caused that, on the face of it, ought to have been “obvious to a competent and careful driver.” It is for this reason that Cycling UK strongly urges the removal of the word 'careless' from any legal framework which seeks to retain an 'objective' distinction between higher and lower-tier offences.

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<sup>19</sup> [EWCA Crim 780 \[2001\]](#).

<sup>20</sup> [www.cyclinguk.org/news/minor-win-for-cyclists-prosecution-guidance-shifts](http://www.cyclinguk.org/news/minor-win-for-cyclists-prosecution-guidance-shifts).

<sup>21</sup> [www.thenorthernecho.co.uk/news/10501995.Driver\\_s\\_lapse\\_of\\_concentration\\_led\\_to\\_death\\_of\\_top\\_veteran\\_cyclist\\_court\\_told](http://www.thenorthernecho.co.uk/news/10501995.Driver_s_lapse_of_concentration_led_to_death_of_top_veteran_cyclist_court_told).

<sup>22</sup> [www.devonlive.com/news/devon-news/royal-marine-put-cycling-life-642719](http://www.devonlive.com/news/devon-news/royal-marine-put-cycling-life-642719).

On the other hand, we would not object to the offences proposed in these two questions if it was decided to revert to more subjective framework – in other words, if it is decided to reintroduce the element of ‘mens rea’ into the definitions of these offences.

If that is the preferred way forward, we suggest that the term to describe more serious cycling and driving offences, should be ‘reckless’ instead of ‘dangerous’. The word ‘reckless’ should then be defined so as to avoid the pitfalls that undermined its use prior to the abolition of ‘reckless’ driving in 1991. An alternative would be to use ‘negligent’ and ‘grossly negligent’ driving, in a manner that would be analogous with other areas of the law (e.g. manslaughter).

There are some clear advantages in principle to reintroducing the element of ‘mens rea’ for the core road traffic offences. Restrictions on researching the views and decision-making processes of juries mean that we can only speculate on the reasoning behind jurors’ decisions. However we strongly suspect that jurors (many of whom are themselves drivers) are reluctant to convict motorists for ‘dangerous’ offences under the current legal framework, on the assumption that this is likely to result in the accused receiving an immediate custodial sentence for an offence they could easily imagine committing themselves: “There but for the grace of God go I”.

This in turn could very easily colour their interpretations of the phrase, “What would be expected of a competent and careful driver”, and how serious a lapse needs to be to fall “far below” (rather than merely “below”) that standard. Conversely, we also hypothesise that, under an amended ‘subjective’ legal framework, jurors might be more willing to convict for more serious offences if they were being asked to decide, in essence, whether or not they felt the driver was a ‘dangerous person’, and hence whether or not the offence was likely to merit a custodial sentence.

This was, in some respects, what the law was seeking to do prior to the abolition of ‘reckless’ driving offences in 1991. The problem then was the obvious difficulty of proving a ‘reckless’ state of mind to the criminal standard, i.e. “beyond reasonable doubt”.

We therefore suggest that, if a subjective distinction is to be reintroduced, the definition of ‘reckless’ driving and cycling offences would, in effect, need to include a presumption that “if the defendant’s actions appear to have been reckless, they can be presumed to have been reckless in the absence of a plausible alternative explanation.”

We would welcome the opportunity to seek feedback from legal practitioners on the viability of this approach. If it is likely to work, it would address a lot of wider problems with road traffic law, allowing for a better alignment of offences and sentencing (as previously explained).

However this proposal could only be adopted as part of the wider review of road traffic offences and penalties that Cycling UK and other groups have long called for. Hence we would strongly object to the retention of the word ‘careless’ – and hence to the creation of the offences proposed in these two questions – in the absence of that wider review.

**Question 5 If there were a new offence of dangerous or careless cycling, do you think the sentences should match the sentences for dangerous or careless driving (current driving sentences shown in brackets)?**

We provide separate answers below in response to the proposed maximum sentences for each of the three new cycling offences proposed under this consultation.

In essence though, we do not object to the principle of seeking a closer alignment of cycling and motoring offences. However we would object strongly to the adoption of all three offences and their proposed maximum sentences 'in toto', for the reasons explained in our responses to questions 1 to 4.

**a. Causing death by dangerous cycling (currently 14 years for driving)**

...and...

**c. Causing serious injury by dangerous cycling (currently 5 years for driving)**

If it was decided to improve the current 'objective' framework of motoring offences, as proposed in our response to questions 1 and 3, we would then not object to the creation of the offences of 'causing death by dangerous cycling' and 'causing serious injury by dangerous cycling', with maximum sentences aligned to the equivalent driving offences – subject to the criteria outlined in response to those questions.

Conversely we would object strongly to the creation of these offences – and hence also to its proposed maximum sentence – if introduced separately from a wider review of road traffic offences, to clarify the 'objective' distinction between these new offences and the lower-tier offences (which, as explained previously, should be renamed from 'careless' to something like 'unsafe' or negligent').

**b. Causing death by careless cycling (currently 5 years for driving)**

Cycling UK and other road safety groups strongly objected to the offence of causing death by careless driving when it was introduced as part of the Road Safety Act 2006. We do not believe the word 'careless' should be used for any road traffic offences, unless it is decided to reintroduce the element of 'mens rea' to the legal framework.

We would therefore object strongly to this proposed new offence – and hence also to its maximum sentence – unless introduced as part of a wider review of road traffic offences.

Conversely if this new offence was created as part of a wider switch to a more 'subjective' road traffic offences framework (i.e. reintroducing 'mens rea' to the definitions), we would call for a *reduction* in the maximum sentence for both 'causing death by careless driving' and 'causing death by careless cycling' – though we would also call for an increase in the length of the minimum driving ban, from 1 year to 2 years.

Regardless of whether it is decided that lower-tier offences should be termed 'careless' (in the context of reverting to a subjective legal framework) or something like 'negligent' (as part of an improved 'objective' framework), we believe that first-time offenders (i.e. those with no previous history of road traffic offences) should not normally receive a non-custodial sentence, even in cases involving death or serious injury. These should be reserved mainly for offences that were more 'reckless' in nature, or for repeat offenders.

**Question 6 The report from the independent expert concluded that there is a gap in the law regarding dangerous or careless cycling. Do you feel that existing laws adequately cover circumstances where a person's cycling causes harm or injury others?**

We do not agree that there is a gap in the range of offences, however we acknowledge that there is that there is very arguably a mismatch between the maximum sentences for the most serious cycling and motoring offences respectively. The question is how best to address this discrepancy. For the reasons previously stated, we do not believe the solution is simply to create new cycling offences based on the existing motoring offences, given the serious flaws with the latter.

We note that section 13 of the DfT-commissioned 'independent legal report' on cycling offences (by Laura Thomas QC)<sup>23</sup> identifies three main reasons why, in her view, there is a gap in the law. In summary, she argues that:

- The offence of 'wanton and furious riding' is outdated and ill defined, lacking a clear element of fault;
- The gap between 2-year maximum sentence available for any cycling offence short of manslaughter is only 2 years, compared with 14 years for causing death by dangerous driving, or 5 years for either causing serious injury by dangerous driving or causing death by careless driving;
- The gap in maximum sentences for cycling offences involving death (a life sentence for manslaughter, but just 2 years for wanton and furious riding), and the lack of sentencing guidelines for these offences, creates a risk of inconsistent sentencing.

We acknowledge that the second and third points are valid arguments – though we would only expect them to be relevant in one or two serious injury cases per year, and even more rarely in fatal cases. Moreover, as previously noted, inconsistent sentencing (i.e. the third point) is by no means unique to cycling offences. Indeed, inconsistencies in prosecution and court decisions on motoring offences are a lot more serious and occur a lot more often, causing a great deal of distress to seriously injured and bereaved road crash victims – see pages 3-4 of this response.

There is also a perfectly valid counter-argument to her second point (i.e. her concern that cycling offences short of manslaughter have shorter maximum sentences than the equivalent motoring offences). In its ruling on *R v Hall*<sup>24</sup> (cited by Laura Thomas in her report at paragraphs 12.6 – 12.11), the Appeal Court said: "*We acknowledge that some distinction must be drawn between riding a bicycle and driving a car, since car accidents are much more likely to cause serious injury than bicycle accidents.*"

Above all though, we do not remotely accept Thomas's first point, i.e. that the offence of 'wanton and furious riding' (or driving) needs to be replaced simply because it is old and lacks an element of fault. The offences of 'grievous bodily harm' (GBH) and 'actual bodily harm' (ABH) both stem from the same legislation, namely the Offences Against the Person Act 1861. Yet nobody is suggesting that GBH and ABH need to be replaced, even though their language is every bit as archaic, and their definitions just as subjective, as 'wanton and furious riding'.

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<sup>23</sup> [www.gov.uk/government/publications/cycle-safety-review](http://www.gov.uk/government/publications/cycle-safety-review)

<sup>24</sup> *R v Hall* [2009] EWCA Crim 2236.

It is therefore worth noting that this consultation does not in fact propose to do away with ‘wanton and furious riding’. On the contrary, its proposal merely to extend the range of cycling offences to cover ‘public places’ (as well as roads) would mean that ‘wanton and furious riding or driving’ would still be needed, for both cycling and motoring offences committed in non-public places. In our answer to questions 9 and 11, we cite two recent motoring cases where ‘wanton and furious driving or riding’ would still be needed. Ministry of Justice statistics<sup>25</sup> suggest there are several similar cases every year, which we suspect mostly involving motor vehicles used in non-public places. If ‘wanton and furious riding’ were to be removed from the legal framework, this would leave a gap in the law for these offences. For more on this, see our response to questions 9 to 11 below.

**Question 7 Do you have any comments on any laws not covered in this consultation which could apply when trying to prosecute for this cycling behaviour?**

No. However we have many comments on other respects in which other road traffic offences and penalties fail to protect the safety of vulnerable road users, causing failures of justice that are far more serious, and common, than those exposed by the Charlie Alliston case. We return to these in our response to question 19.

**Question 8 Do you have any other comments that you wish to make in relation to how existing laws apply in Scotland?**

We are pleased to note that the legal advice on the situation in Scotland identifies no need for new offences in Scottish law. We also reiterate the point that extending the scope of cycling offences to cover ‘public places’ would need a different definition in Scotland, given the different laws on off-road access applying to cyclists there.

We therefore refer to our concluding comments in answer to question 19, where we indicate a ‘stop-gap’ measure that the Government could consider for addressing the perceived legal gap in England and Wales in the short term, without interfering with the legal framework in Scotland.

**Question 9 This consultation proposes that new offences should apply to public places as well as roads. Do you agree with this proposal?**

...and...

**Question 10 The current offences of dangerous or careless cycling apply to a road. This consultation proposes that it should also extend to a public place. Do you agree with this proposal?**

...and...

**Question 11 Are there any other comments that you wish to make about where the laws should apply?**

We do not object in principle to increasing the range of places where cycling offences apply, in line with the extent of the equivalent motoring offences.

However we note that this consultation only proposes extending the framework of cycling offences to match the applicability of motoring offences, i.e. to cover ‘public places’ as well as ‘roads’. Hence ‘wanton and furious driving or riding’ would still be needed for

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<sup>25</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/733981/outcomes-by-offence-tool-2017-update.xlsx](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733981/outcomes-by-offence-tool-2017-update.xlsx).

both driving or cycling offences committed on private land. We cite two recent cases, both from 2016, where its use has been necessary in prosecutions of drivers:

- It was used to prosecute Peter Bialek, who drove his car into a marquee at a black-tie party where he had been drinking, injuring 14 other guests;<sup>26</sup>
- It was used to prosecute Irene Wilkinson, a 73-year old resident of a sheltered housing complex near Stockport, who pressed the accelerator instead of the brake when attempting to straighten up her car in the home's car park, resulting in a fatal collision with fellow resident Dorothy Heath.<sup>27</sup>

In the 10 years from 2008 to 2017, the offence of 'causing bodily harm by furious riding' was used in 105 prosecutions, resulting in 70 convictions.<sup>28</sup> Despite repeated requests and an appeal to the Information Commissioner, Cycling UK has been denied any information about the types of vehicles used by the suspect in these cases. However, to the best of our knowledge, only three of them involved pedal cycles. We suspect the others involved motor vehicles, and that the likely reason for this charge being used was because the relevant incidents had occurred in non-public places.

If our assumptions are correct, it would imply a much greater need to replace 'wanton and furious' offences for driving than for cycling, particularly in non-public places. This alone would be a sufficient ground for a wider review of road traffic offences, rather than one limited solely to cycling.

We also note that a different definition of a 'public place' is likely to be needed in Scotland, due to its different laws on outdoor access.

**Question 12 Drivers may be banned from driving for committing a current cycling offence. Minimum driving disqualification periods currently apply under the Road Traffic Offenders Act 1988. For drivers this is currently 2 years for causing death or serious injury, 1 year for causing death by careless driving. Do you think this should also apply to any of the new offences proposed in this consultation?**

...and...

**Question 13 If not please explain why? If so, do you have any views on how long the minimum disqualification period should be?**

We have no strong objections in principle to the idea that driving disqualifications can be imposed for cycling offences, where the nature of the offence indicates a risk that the offender is likely to cause danger when driving.

However we do not think the legal framework should rely on this aspect of sentencing any more than it does at present, as this would increase the risk of inconsistent sentencing for cyclists who do and do not have driving licences. In particular, it would make no sense at all to 'hard-wire' minimum disqualifications into the sentencing framework, as this would clearly affect cyclists who drive very differently from those who do not.

**Question 14 There is currently an offence of dangerous cycling (with a fine of up to £2,500) and for careless cycling (with a fine of up to £1,000). This consultation proposes that the penalties for these offences should remain unchanged. Do you agree with the proposal?**

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<sup>26</sup> [www.hampshirechronicle.co.uk/news/14501116.Pensioner\\_pleads\\_guilty\\_to\\_mowing\\_down\\_14\\_partygoers\\_at\\_marquee\\_ball](http://www.hampshirechronicle.co.uk/news/14501116.Pensioner_pleads_guilty_to_mowing_down_14_partygoers_at_marquee_ball)

<sup>27</sup> [www.manchestereveningnews.co.uk/news/greater-manchester-news/gatley-pensioner-car-park-death-11039855](http://www.manchestereveningnews.co.uk/news/greater-manchester-news/gatley-pensioner-car-park-death-11039855).

<sup>28</sup> See [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524348/outcomes-by-offence-output.xls](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524348/outcomes-by-offence-output.xls), table 8.01.

...and...

**Question 15** If not, please explain why. Are there any other comments you wish to make on the level of penalty?

We would be content for the status quo to be retained in respect of ‘dangerous’ cycling offences that do not cause serious or fatal injury. We suspect that, in practice, this offence would be rarely used following the introduction of a new offence of causing serious injury either by ‘dangerous’ cycling (as proposed in this consultation) or by ‘reckless’ cycling (the alternative proposal which we believe also merits consideration, as part of a wider review of road traffic offences and penalties). Over the past 5 years (2013-17), there has been an average of just 23 ‘dangerous cycling’ convictions per year.<sup>29</sup>

**Question 16** This consultation proposes that there should not be a new offence of causing death by careless cycling when under the influence of drink or drugs. Do you agree with the proposal?

...and...

**Question 17** The current fine for riding a cycle when unfit to ride through drink or drugs is £1,000. Do you think we should consider increasing the fine?

We would be content for the status quo to be retained in respect of these two points. In practice, we believe that any cycling offence that resulted in death is likely to be deemed to be ‘dangerous’, in that the ‘danger’ would almost certainly have been apparent to a “competent and careful cyclist”, as opposed to one who was impaired by drink or drugs.

We suggest that this would also be true for motoring offences if the ‘objective’ term ‘dangerous’ was clearly defined, as proposed in our response to questions 1 and 3.

We would not object in principle to the idea of considering increased fines for cycling while unfit through drink or drugs, in cases where no injury had been caused. However we are not aware of any need to consider this increase. A Transport Research Laboratory investigation into the causes of cyclist collisions<sup>30</sup> contains data on drink or drugs as contributory factors to cyclists’ own injuries, but says nothing about impaired cycling contributing to third-party injuries. We therefore suspect that those who cycle under the influence endanger themselves far more than other people, in contrast to the situation for impaired driving. Hence any justification for increased fines is more likely to relate to deterrence rather than public protection. Yet drink or drug-impaired individuals are unlikely to be deterred from cycling by the prospect of steeper fines. As with so many aspects of road traffic law, the risk of being caught is a far better deterrent than the severity of the resulting penalties.<sup>31</sup>

**Question 18** Do you think we should consider making it an offence to attempt to cycle (as well as actually cycling) when unfit to do so through drink or drugs?

Whilst we have no objection to this proposal in principle, we do not see what circumstances would justify its introduction in practice. The test for impaired cycling is whether the rider is in control of their bicycle – it does not relate to blood-alcohol concentrations, and there

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<sup>29</sup> [www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017](http://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017).

<sup>30</sup> <https://trl.co.uk/reports/PPR445>, table 7-6.

<sup>31</sup> [European Transport Safety Council \(2016\). How traffic law enforcement can contribute to safer roads \(PIN Flash report 31\)](#).

are no powers to breathalyse a cyclist.<sup>32</sup> So the only situation where a police officer might be justified in wanting to take pre-emptive action to prevent a cyclist from riding off is if they are very obviously inebriated. Yet, unlike a driver in that state, a very drunk cyclist is very unlikely to be able to make a quick get-away to avoid being apprehended.

## **Question 19 Are there any further comments you wish to make?**

### *The scope of this review*

We do not deny that there are aspects of the cycling offences and sentencing framework that merit reconsideration. However our responses to this consultation, and the many responses (including our own) which made similar points in response to the recent cycling and walking Safety Review consultation, have highlighted far larger and more common failings in the wider road traffic offences framework.

We therefore find it extraordinary that this consultation seeks views on points of detail such as those in questions 9 to 18, while denying consultees the opportunity to express views on whether the current framework of ‘dangerous’ and ‘careless’ road traffic offences should be used to create new cycling offences, or whether other aspects of road traffic offences and penalties also need to be reviewed.

### *Serious flaws in the framework of motoring offences and penalties*

In addition to the flaws relating to the definitions and penalties for the various ‘careless’ and ‘dangerous’ road traffic offences, we also wish to highlight other aspects of road traffic law which we believe are long overdue for a review. These were all highlighted in our own and many other responses to the CWIS Safety Review:

#### *(i) ‘Car-dooring’ offences that cause death or serious injury*

At present, opening the door of a vehicle in a manner which causes danger can only attract a maximum penalty of £1,000, even though it can cause life-changing or fatal injuries, as shown recently by the deaths of cyclists Sam Boulton (2016), Robert Hamilton (2014) and Sam Harding (2012).<sup>33</sup> In Sam Harding’s case, the CPS attempted unsuccessfully to bring a manslaughter prosecution, given their concern at the inadequacy of the maximum sentence for car-dooring alone. All three cyclists’ relatives have called for the law to be strengthened.

#### *(ii) ‘Hit-and run’ offences where the driver was aware, or ought to have been aware, that the collision might result in death or serious injury;*

‘Hit and run’ offences are appallingly common. In the last 4 months alone (i.e. since May 2018, there have been at least 4 media reports of cyclists being killed by drivers who failed to stop at the scene or to report the collision.<sup>34</sup> Yet the maximum sentence for doing so is just 6 months custody or a £5,000 fine.<sup>35</sup> Whilst this a sufficient maximum

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<sup>32</sup> [www.cyclinguk.org/sites/default/files/document/migrated/info/cycling-influence4mabrf.pdf](http://www.cyclinguk.org/sites/default/files/document/migrated/info/cycling-influence4mabrf.pdf).

<sup>33</sup> [www.cyclinguk.org/article/how-could-law-protect-cyclists-better-car-dooring-or-drivers-who-fail-stop](http://www.cyclinguk.org/article/how-could-law-protect-cyclists-better-car-dooring-or-drivers-who-fail-stop).

<sup>34</sup> See [www.heart.co.uk/thamesvalley/news/local/cyclist-killed-in-bracknell-hit-and-run/](http://www.heart.co.uk/thamesvalley/news/local/cyclist-killed-in-bracknell-hit-and-run/) (Bracknell, August 2018);

[www.bbc.co.uk/news/uk-england-coventry-warwickshire-45023563](http://www.bbc.co.uk/news/uk-england-coventry-warwickshire-45023563) (Coventry, July 2018)

[www.standard.co.uk/news/crime/cyclist-killed-after-colliding-with-car-in-south-east-london-a3854061.html](http://www.standard.co.uk/news/crime/cyclist-killed-after-colliding-with-car-in-south-east-london-a3854061.html) (Deptford, South London, June 2018); and

[www.bbc.co.uk/news/uk-england-44109798](http://www.bbc.co.uk/news/uk-england-44109798) (Chichester bypass, May 2018)

<sup>35</sup> Under [section 170 of the Road Traffic Act 1988](#).

penalty in cases where nothing more than property damage has occurred (e.g. scrape to another person's vehicle), it is a woefully inadequate deterrent in cases where a collision has occurred that is likely to have serious or fatal consequences.

*(iii) The loophole whereby convicted drivers routinely evade driving bans by claiming that this would cause 'exceptional hardship'.*

As of January 2017, 9,909 drivers were still able to drive on Britain's roads despite having more than 12 points on their driving licence.<sup>36</sup> The majority of them had avoided a 'totting up' ban by successfully pleading that this would cause 'exceptional hardship' to them or their families. Meanwhile the numbers of drivers disqualified by the English and Welsh courts for motoring offences has dropped by 57% in the past 10 years (from 134,817 in 2007 to just 58,099 in 2017)<sup>37</sup>.

The importance of driving bans for keeping dangerous and irresponsible drivers off the roads is demonstrated by the case of Christopher Gard.<sup>38</sup> Gard killed cyclist Lee Martin by driving into him while texting at the wheel of his van. He was convicted of causing Lee's death by dangerous driving. However it then emerged that he had six previous convictions for using a mobile phone while driving, and had also escaped prosecution on two other occasions for the same offence by attending a driver re-training course instead.

He had thus avoided disqualification on 8 occasions before going on to kill Lee. Lee's brother Darrell Martin strongly supports Cycling UK's calls for action to close the 'exceptional hardship' loophole.

*Other types of vehicle: (i) 'e-bikes', (ii) mobility scooters, (iii) other non-motorised vehicles.*

We question why this consultation is not proposing to address discrepancies in the offences and penalties between:

- Offences involving pedal cycles as compared with e-bikes;
- Offences involving pedal cycles as compared with other types of non-mechanically propelled vehicle (such as scooters or skateboards), or vehicles that are mechanically propelled but not defined as 'motor vehicles' (e.g. Segways and hoverboards);
- Both cycling or motoring offences as compared with offences involving mobility scooters.

*(i) Electrically assisted pedal cycles (EAPCs, or 'e-bikes')*

At present, provisions in sub-sections [189\(1\) of the Road Traffic Act 1988](#) (RTA) and [140\(1\) of the Road Traffic Regulation Act 1984](#) (RTRA) mean that vehicles which conform to the regulations for Electrically Assisted Pedal Cycles (EAPCs) are excluded from the definitions of "motor vehicles" for the purposes of the Road Traffic Acts and the Road Traffic Regulation Act. This has the effect of exempting EAPC users from the requirements to be licenced and insured, for their vehicles to be licenced, to wear motorcycle helmets etc.

Subsection [34\(7\) of the RTA 1988](#) also excludes the types of vehicle listed in RTA subsection 189(1) from the scope of [RTA section 34](#), which generally prohibits the use of 'mechanically propelled vehicles' (MPVs) other than on 'roads' (albeit with various exceptions which effectively permit the use of MPVs on private land with the landowner's permission etc). This effectively means that EAPC users are generally not committing a criminal offence if

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<sup>36</sup> DVLA answer to a Freedom of Information follow-up request made by Cycling UK, June 2017.

<sup>37</sup> Ministry of Justice. *Criminal Justice Statistics Quarterly*. Dec 2017. May 2018. Overview Tables A.6.5A

<sup>38</sup> [www.cyclinguk.org/news/magistrates-allowed-texting-driver-keep-licence-lee-lost-life](http://www.cyclinguk.org/news/magistrates-allowed-texting-driver-keep-licence-lee-lost-life).

cycling off-road, including on footpaths (though they might be committing a trespass). Consequently, EAPC users have the same off-road access rights enjoyed by 'ordinary' cycle users, including the rights to cycle on bridleways, byways, cycle tracks etc.

However, EAPCs are not excluded from the definition of 'mechanically propelled vehicles' for other purposes. The consequence is that hence that, unlike the riders of conventional pedal cycles, EAPC riders can be prosecuted for the offences of 'dangerous' and 'careless' driving, their 'causing death by' equivalents, and driving under the influence of drink or alcohol (as defined for motor vehicles rather than for pedal cycles). If convicted, they would face the same penalties that apply to motorists (rather than cyclists) for these offences.

There can be no rationale for this. EAPCs are covered by regulations limiting their power output and the maximum speed at which power assistance is provided, precisely to ensure that the risks they impose are more akin to other pedal cycles rather than motor vehicles. This is what allows them to be used in virtually the same ways that other pedal cycles are used (e.g. in off-road environments, without the need for helmets, licences etc etc). Hence we can see no basis for maintaining such huge gaps between the offences and penalties available for the riders of EAPCs as compared with other pedal cycles.

*(ii) Other forms of non-motorised vehicle*

Equally we see no reason to omit consideration of the offences committed by users of other types of non-mechanically propelled vehicle (such as scooters) or by mechanically propelled vehicles that are not motor vehicles (i.e. those such as Segways and hoverboards, which are not intended or adapted for use on public roads). At present it is wholly unclear what offences they can commit. This too is surely a gap in the law that needs rectifying.

*(iii) Mobility scooters (or 'invalid carriages')*

Further discrepancies relate to the legal framework governing the users of mobility scooters (which are known in law as 'invalid carriages'). These vehicles are defined as 'mechanically propelled vehicles' in [subsection 185\(1\) of the Road Traffic Act 1988](#). However [subsection 20\(1\)\(b\) of the Chronically Sick and Disabled Persons Act 1970](#) specifically excludes their users from the offences of dangerous and careless driving, and indeed from offences relating to impairment through drink or drugs. Nor are there any requirements for their users to be tested, even for their eyesight. Given the level of concern about the danger that can be caused by the inappropriate use of these vehicles,<sup>39</sup> we see no justification whatsoever for considering new cycling offences without also considering the scope of the offences that can be committed by mobility scooter users.

All of these issues could be sensibly addressed as part of a wider review of road traffic offences. We see no reason whatsoever for limiting its scope to cycling offences.

*The continuing role of 'wanton and furious driving and riding'*

Although we do not dispute the case for seeking greater parity between cycling and motoring offences, we do not agree that this is a more pressing need than for action on motoring offences. We note that Laura Thomas's legal advice did not consider the relative need for action on motoring and cycling offences, either in terms of importance

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<sup>39</sup> See for instance the report of the [Commons Transport Committee's 2010 inquiry on mobility scooters](#), and the [Department for Transport's memorandum to that inquiry](#).

or urgency. Cycling UK's view is that there is a much greater need for action on motoring offences, given the far greater number of cases where prosecution, conviction or sentencing decisions cause appalling distress for injured or bereaved road crash victims.

We are mindful though that there is a perceived need for prompt action on cycling offences, and that it would inevitably take time to carry out the wider review of road traffic offences that we seek. Deferring action on cycling offences pending that review could therefore lead to accusations that the issue is being "kicked into the long grass".

That is not our aim in seeking a wider review – on the contrary, we would have wanted it carried out when it was first promised in 2014. However if the Government is concerned to avoid this accusation, there is a simple 'stop-gap' solution it may wish to consider, namely to increase the maximum sentence for 'wanton and furious driving and riding'.

This would have the following advantages:

- It could be introduced relatively quickly, without having to wait for the outcome of extensive consultation and debate about the best way to revise the wider framework of road traffic offences;
- It could be applied to the users of any type of 'vehicle' – hence it would not be seen as discriminatory towards cyclists. It could, for instance, be applied to offences involving the use of personal transporters, skateboards or roller blades and mobility scooters. It could also be used for cases involving motor vehicles (including non-road vehicles) being used on private land.
- It would only apply in England and Wales, and thus would not risk interfering in Scotland, where the Department's advice is that there is no need for legislation, and where a different definition of 'public place' would be needed under the current proposals.

We recognise that this 'stop-gap' solution would not address the concern voiced in Laura Thomas's opinion that 'wanton and furious driving or riding' is an "archaic" offence, dating from the Offences Against the Person Act 1861. However, as noted in our response to Question 6, we do not believe this is a valid reason for replacing the offence. After all, the offence of "grievous bodily harm" dates from the same Act and uses language that is equally archaic (even though it is more familiar to the general public).

In any case, we do not envisage this idea being in any way as a substitute for the wider review of road traffic offences, which we believe would still be urgently needed – hence our suggestion that it should merely be considered as a 'stop-gap'. We also appreciate that it would require consultation before it could happen. However we believe it merits consideration as an interim solution to the perceived problems with 'wanton and furious riding' in England and Wales, pending that wider review. Once that wider review had been completed and implemented, the 'wanton and furious' offence could then be withdrawn altogether, if this was considered desirable. For the reasons previously outlined, that is not an option at present.

## **Conclusion**

DfT has now acknowledged that an overhaul of the framework of 'dangerous' and 'careless' road traffic offences, for both driving and cycling, lies within its remit.

We therefore find it extraordinary that this consultation seeks views on points of detail such as those in questions 9 to 18, while denying consultees the opportunity to express views on whether the current framework of 'dangerous' and 'careless' road traffic offences should be used to create new cycling offences, or whether other aspects of road traffic

offences and penalties also need to be reviewed. This seems all the more irrational given how many people have called for a wider review of road traffic offences and penalties, in response to the recent consultation on the cycling and walking Safety Review.

We also point to the lack of an impact assessment of how often the proposed new offences are likely to be used. Given this, we do not believe consultees are being given the information they need to be able to provide informed responses.

In the light of the above, we believe that any decision to proceed with the proposals in this consultation, independently of that wider review, is likely to be open to challenge.

We reiterate our call for a wider review of road traffic offences and penalties. This would allow the Government to seek opinions on a number of really fundamental issues:

- How to clarify the distinction between more and less serious road traffic offences, and particularly whether this should relate to driver's state of mind or an 'objective' view of the 'danger' they had foreseeably caused. We reiterate our concern that the current framework involves a great deal of subjectivity and inconsistency in how the courts interpret (i) what would be "expected of a competent and careful driver"; and (ii) how serious a lapse must be to fall "far below" (rather than merely "below") that standard. These discrepancies can only be expected to widen if the courts are also expected to determine these questions in relation to serious cycling offences, given that far fewer jurors will have experience of cycling as compared with driving.
- What kinds of penalties should be employed for more and less serious offences committed by drivers and cyclists alike.
- A number of other serious gaps in the framework of road traffic offences and penalties, e.g. (i) 'car-dooring' offences that cause death or serious injury, (ii) 'hit-and run' offences where the driver was aware, or ought to have been aware, that the collision might result in death or serious injury; (iii) the loophole whereby convicted drivers routinely evade driving bans by claiming that this would cause 'exceptional hardship'.

It would also allow for consideration of more detailed issues such as:

- Whether driving (as well as cycling) offences need to apply to private land, as well as on roads and in public places;
- How to handle the differences between the law in Scotland as distinct from England and Wales;
- Whether there should be any changes to the offences available for being drunk in charge of a or pedal cycle while under the influence of drink or drugs;
- How to address both the existing discrepancies, as well as several new discrepancies that would arise under the current proposals, between offences involving different types of vehicle, such as e-bikes, other vehicles that are not 'motor vehicles', and mobility scooters.

In short, we do not think it would be in any way defensible to proceed with a review focussed solely on cycling offences, without considering these wider questions. We reiterate our call for a wider review of road traffic offences and penalties, as promised by the Government in 2014, and our suggestion that it could be conducted by the Law Commission.

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