



Bad driving and the justice system Traffic law and enforcement: Overview

THIS BRIEFING COVERS:

- The legal system – getting it right: ‘dangerous’ v ‘careless’ driving; driving bans; delivering justice: the police, prosecutors & charging, courts & sentencing, coroners; cross-cutting issues: resourcing, training, transparency & data collection, victim blaming & support, public attitudes, terminology; compensation.
- Appendix – examples of ‘careless’ driving.

HEADLINE MESSAGES

- The aim of laws against bad driving and their enforcement should be to protect all road users from intimidation and injury.
- However, the under-resourcing of roads policing, inadequate police investigations, weak charging decisions and poorly conducted court and inquest hearings can all result in derisory sentences, or in failures to prosecute or convict at all. This causes enormous distress to injured and bereaved road crash victims, whilst perpetuating society’s complacent attitudes to safety on our roads.
- Fundamental reform is needed so that the legal system effectively prevents bad driving, stops dismissing ‘dangerous’ driving as merely ‘careless’ and allows people to cycle without fear of injury through someone else’s wrongdoing.

KEY FACTS

- In law, dangerous driving falls not just “below”, but “far below” the standard that would be expected of a “competent and careful driver”. It should also “... be obvious to a competent and careful driver” that the driving in question would give rise to “danger either of injury to any person or of serious damage to property”. Hence the distinction between “dangerous” and “careless” driving is not about the state of mind of the driver, but whether their driving objectively caused obviously foreseeable danger.
- Prosecutors have been increasingly pursuing charges of *careless* rather than *dangerous* driving: each year since 2010, for ‘causing death’ charges, the number of people prosecuted in England and Wales for *careless* driving as a principal offence has exceeded the number prosecuted for *dangerous* driving (although the gap has been decreasing): in 2010, 196 people were prosecuted for causing death by *dangerous* driving, and 285 for *careless*; in 2015, 188 were prosecuted for *dangerous* and 201 for *careless* driving.
- Between 2008 and 2015, the number of people charged with causing death by *dangerous* driving as a principal offence dropped by 29% (266 in 2008 and 188 in 2015).
- Roads police levels dropped by around 48% between 2004/5 and 2015/16 outside the Metropolitan Police area. This drop is significantly higher than the c12% drop seen in the police officer workforce as a whole over this period.



Cycling UK VIEW

'Dangerous' v 'careless' driving

- Bad driving that causes obviously foreseeable danger should be classed as a 'dangerous' driving offence. It should not, as often happens, be dismissed merely as 'careless' driving.
- Prosecution guidelines need to reflect this in the first instance, but changes to the law itself may also be needed.

Driving bans

- Long driving bans should be more widely used to penalise drivers who have caused serious danger, but not recklessly or intentionally.
- Where drivers have caused serious danger recklessly or intentionally, or have a history of breaching bans, long custodial sentences are more appropriate.

The police

- The police should investigate all road crashes thoroughly and systematically, and pass all charging decisions to the prosecution services where there has been an injury.

Prosecutors and charging

- Prosecution guidelines should ensure that driving that gives rise to obviously foreseeable danger is treated as *dangerous* and not dismissed as merely *careless*.
- Manslaughter or assault charges should be more widely used where there is evidence that danger was caused recklessly or intentionally.

Courts and sentencing

- Courts should make greater use of driving bans and not routinely accept 'hardship' pleas from drivers facing bans.

Coroners

- Coroners should ask witnesses relevant questions and/or permit relevant questions to be asked during inquest hearings.
- Coroners should take their duty to write '*Preventing Further Deaths*' reports seriously to highlight actions needed to prevent future road fatalities.

Resources and training

- The police, prosecution services and courts all need to be adequately resourced to deliver justice to a high standard.
- Better training should be provided for traffic police, investigation officers, family liaison officers, prosecutors, coroners, judges, magistrates in relation to the handling of road traffic offences and incidents – particularly where cyclists or other vulnerable road users are involved.

Transparency and data collection

- The Department for Transport, Home Office and Ministry of Justice (and the relevant bodies in Scotland) should set up a national road crash investigation agency, similar to those used for rail and aviation.
- These departments should collaborate to develop systems to collect, monitor and disseminate local and national level data on the justice system's responses to bad driving offence

Victim blaming and victim support

- All those involved at any stage in dealing with road traffic offences should guard against a propensity to blame the victim automatically.
- Road collision victims and their families should receive support to the same standards as the victims of other crimes with similarly severe consequences. They should be kept well-informed of the progress of their case and consulted on key decisions.

Cycling UK VIEW (cont.)

Public attitudes

- To help ensure that any legal reforms are likely to be accepted by juries, public awareness campaigns should reinforce the concept that bad driving is socially unacceptable; and public attitudes should be surveyed to monitor the effect of these campaigns.
- A stronger link between road safety awareness and enforcement campaigns would support the wider effort to influence public attitudes on the need for safe road user behaviour.

Terminology

- The word 'accident' should not be used to describe road collisions – 'collision' or 'crash' should be used instead.

Compensation

- If a cyclist or pedestrian suffers personal injury or damage in a collision with a motor vehicle, they should be entitled to full compensation from the driver's insurance unless the driver (or in practice their lawyers/insurers) can show that the injury was entirely caused by the cyclist or pedestrian behaving in a way that fell well below the standard that could be expected of them, taking account of their age, abilities and the circumstances of the collision.
- Passing any proportion of the legal costs of pursuing compensation to the innocent victim of a road crash is unfair and wrong. The objective of damages in these cases should be to provide full compensation for injured people both for their injuries and financial losses. They are also a way of holding the person who caused the injury to account.

BACKGROUND INFORMATION

1. Introduction

Driving is the one action that is routinely performed by generally law-abiding citizens where a moment of inattention can (and regularly does) result in fatal or serious injury to other. This presents difficulties for the legal system.

For other potentially lethal activities (e.g. on the rail network or on construction sites), the law creates strong obligations to avoid or minimise risks, and imposes serious penalties for failure to do so. Yet on the roads such lapses are routinely dismissed as mere 'accidents' or 'carelessness', with derisory penalties that belittle the gravity of the consequences for those left bereaved or severely injured.

Pedestrians and cyclists are disproportionately involved as victims of road crashes. The legal system's woefully inadequate response to such incidents undermines efforts to impress on drivers how crucial it is to interact carefully with people who are cycling or walking. It also makes it harder to promote cycling despite its health, economic, environmental and other benefits, and instead deters people from taking part, or allowing their children to do so.

- For more on cyclists and road safety, see Cycling UK's briefing:
www.cyclinguk.org/campaigning/views-and-briefings/road-safety-and-cycling-overview





2. The legal and sentencing framework: getting it right

Cycling UK believes that the legal system needs to be reformed in a number of ways to ensure that the law and its enforcement protect all road users more effectively from intimidation and injury. Two crucially inter-related changes are particularly important:

- a. **An end to the practice of dismissing ‘dangerous’ driving as merely ‘careless’ driving:** this would help ensure that the legal system and the public more generally recognise how serious bad driving is.
- b. **Far greater use of lengthy driving bans as part of the wider sentencing framework:** many people whose driving causes serious danger or even death do not deliberately set out to cause harm. This may explain why the legal system seems reluctant to convict and, potentially, impose a long custodial sentence on them. Making greater use of lengthy driving bans instead is, arguably, a more palatable response, and likely to lead to a greater number of convictions. In turn, this would help make the public more aware of just how serious bad driving offences are.

a. ‘Dangerous’ v ‘careless’ driving

Cycling UK view:

- Bad driving that causes obviously foreseeable danger should be classed as a ‘dangerous’ driving offence. It should not, as often happens, be dismissed merely as ‘careless’ driving.
- Prosecution guidelines need to reflect this in the first instance, but changes to the law itself may also be needed.

The current legal definition of *dangerous* driving states that it falls not just “below”, but “far below” the standard that would be expected of a “competent and careful driver”. The definition also requires that it should “... be obvious to a competent and careful driver” that the driving would give rise to “danger either of injury to any person or of serious damage to property”.¹

Yet in practice, it is common for prosecutors or the courts to dismiss driving offences that have caused *obviously foreseeable danger* as merely *careless*, an offence that is legally defined as driving simply ‘below’ (i.e. not ‘far below’) the standard of a careful and competent driver. Furthermore, the definition of ‘careless’ driving omits any reference to the driving causing *obviously foreseeable danger*.

It seems hard to accept that the danger caused in the cases set out in the Appendix to this briefing – and many similar cases recorded on Cycling UK’s *Road Justice* website – would not have been “obvious to a competent and careful driver”. www.roadjustice.org.uk

When it was introduced in 2008, the offence of *causing death by careless driving* was only expected to be used occasionally. In the event, however, more people are now charged with this offence in the Magistrates’ Courts in England and Wales than they are for *causing death by dangerous driving*:

- Each year since 2010, for ‘causing death’ charges, the number of people prosecuted for *careless* driving as a principal offence has exceeded the number prosecuted for *dangerous* driving (although the gap has been decreasing): in 2010, 196 people were prosecuted for causing death by *dangerous* driving, and 285 for *careless*; in 2015, 188 were prosecuted for *dangerous* and 201 for *careless* driving.
- Between 2008 and 2015, the number of people charged with causing death by *dangerous* driving as a principal offence dropped by 29% (266 in 2008 and 188 in 2015);

It seems, therefore, that prosecutors have been increasingly pursuing charges of *careless* driving when *dangerous* would be far more appropriate in the light of the stated legal definitions.



Cycling UK's briefing *Prosecutors and courts* sets out in detail how this situation could be improved within the existing legal framework of bad driving offences (see also 3b below). However, Cycling UK also believes that the law itself may need to be amended to end the use of the word 'careless' altogether for offences that can maim and kill. This is explained in our briefing *The legal framework and sentencing policy*. See www.cyclinguk.org/campaignsbriefings for both.

b. Driving bans

Cycling UK view:

- Long driving bans should be more widely used to penalise drivers who have caused serious danger, but not recklessly or intentionally.
- Where drivers have caused serious danger recklessly or intentionally, or have a history of breaching bans, long custodial sentences are more appropriate.

Cycling UK's wish to see the word 'careless' abolished in the context of bad driving offences is not because we advocate longer prison sentences for essentially decent drivers who have experienced a momentary lapse of attention. Rather, it is about the need to change public and legal attitudes that belittle the seriousness of driving offences that can maim and kill.

Cycling UK therefore advocates complementary changes to sentencing policy to make greater use of bans for drivers who have caused obvious danger, but who are not so obviously irresponsible that a long custodial sentence is needed for the public's protection, i.e. where the evidence suggests that the incident happened as a result of a momentary lapse of driving standards. As appropriate, bans could be supplemented with relatively short custodial sentences (which may be suspended in response to a guilty plea), and restorative justice.³

We believe this approach would increase the public acceptability of our proposals to reduce the legal system's propensity to dismiss driving that can kill and maim as merely 'careless'. (See also section 4e, 'Public Attitudes').

Cycling UK believes that long prison sentences should be used for those whose behaviour indicates a reckless attitude to the safety of other road users, and/or those with past histories of driving offences (including breaches of past driving bans). Hence, they should be locked up to protect the public, not merely banned from driving.





3. Delivering justice: the police, prosecutors and the courts

Inadequate sentences, or failed and abandoned prosecutions, can happen as a result of flaws at any stage in the criminal justice process, i.e. from the police investigation at the scene, through to prosecution, courts and coroners. This section outlines the improvements needed from each part of the legal system.

a. The police

Cycling UK view: The police should investigate all road crashes thoroughly and systematically, and pass all charging decisions to the prosecution services where there has been an injury.

Careful and thorough investigation by the police is the critical first step towards a fair response from the justice system to road crashes. Without clearly presented, systematically collected evidence, the strength of a case against a bad driver is weakened. It also means that it may not be robust enough for the police to pass on to the prosecution services for a charging decision.

Common failures of the police include:

- Not gathering evidence at the scene of the collision, or promptly afterwards, either from the driver, the victim(s) or other witnesses.
- Not investigating potential ancillary offences, e.g. mobile phone use or defective eyesight.
- Not investigating a serious injury case as carefully as they would a fatality - this is a particularly problematic failing if the victim subsequently happens to die.
- Not following up witnesses who provided contact details at the scene; and not calling on them to give evidence in court.
- Relying so heavily on the presence of witnesses at the scene and their statements that they set too little weight by other forms of evidence, e.g. CCTV footage or the results of an examination of the site.

Serious injury: to ensure that evidence is collected properly, the police should make sure they use the College of Policing's, *Investigating Road Deaths* guidance in both fatal and serious injury cases.⁴ Cycling UK thinks the manual should be retitled, e.g. as *Investigating Road Crashes*, to make its wider application clear.

Charging decisions: the police have significant discretion over charging decisions in road traffic crashes and as a result, may not pass even serious cases to the Crown Prosecution Service (CPS, England & Wales). Failure to investigate properly may be one of the reasons behind this.

The frequent exercise of their discretion means that it is often the police and not the CPS who decide whether a prosecution should be brought. Cycling UK believes that *all* injury cases should be passed to the CPS for a charging decision and that the police's discretion over charging should be removed.

- For more detail, see Cycling UK's briefing: *Traffic police & other enforcement agencies*.
www.cyclinguk.org/campaigning/views-and-briefings/traffic-police-and-other-enforcement-agencies



b. Prosecutors and charging

Cycling UK view:

- Prosecution guidelines should ensure that driving that gives rise to obviously foreseeable danger is treated as *dangerous* and not dismissed as merely *careless*.
- Manslaughter or assault charges should be more widely used where there is evidence that danger was caused recklessly or intentionally.

As mentioned in section 2a, Cycling UK believes that prosecutors are often at fault for pursuing *careless* driving charges, or accepting guilty pleas for this offence, in cases where a *dangerous* conviction appears to be warranted. For instance, where the police fail to gather all relevant evidence, it is too easy for the prosecution service to under-charge, or not prosecute at all, rather than insist that the police follow up additional witnesses or other potential sources of evidence.

Prosecution guidelines: If applied correctly, revisions to CPS guidance in 2013 should mean that prosecutors press 'dangerous' charges in most fatal and serious injury cases involving vulnerable road users. Equally, they should no longer mistakenly take a driver's 'state of mind' into account and, in consequence, downgrade 'dangerous' charges to 'careless' because they did not believe the defendant's actions were intentional.⁵ The CPS guidelines are discussed in more detail in our briefing on prosecutors and courts.

www.cyclinguk.org/campaigning/views-and-briefings/prosecutors-and-courts

c. Courts and sentencing

Cycling UK view: Courts should make greater use of driving bans and not routinely accept 'hardship' pleas from drivers facing bans.

As explained in 2b, Cycling UK believes that long driving bans should be more widely used to penalise drivers who have caused serious danger, but not recklessly or intentionally.

It is equally important that courts are not persuaded against banning an offender because (s)he claims that it will cause them or their family hardship (i.e. difficulties with the school run, or travel for work etc.). Their hardship is, after all, probably no greater than that experienced by people who are prevented from driving on medical grounds (e.g. those with defective eyesight, epilepsy etc.). Society needs to recognise much more clearly that there is no automatic entitlement to drive, and that individuals are only licenced if they can demonstrate their ability and fitness to do so without endangering other people.

Endangering vulnerable road users should be explicitly recognised as a serious aggravating feature of a driving offence.





d. Coroners

Cycling UK view:

- Coroners should ask witnesses relevant questions and/or permit relevant questions to be asked during inquest hearings.
- Coroners should take their duty to write '*Preventing Further Deaths*' reports seriously to highlight actions needed to prevent future road fatalities.

Common failings by coroners are:

- Not asking relevant questions of witnesses during inquest hearings; and not permitting relevant questions to be asked by the injured or bereaved victims, or their legal representatives;
- In the past, not using their powers to make reports on the prevention of future deaths in the light of the evidence they have heard. Changes to the law have given coroners a duty to make *Preventing Further Deaths* (PFD) reports where concern is identified. This is an important advance and coroners should take this duty seriously. A PFD could, for instance, relate to improved road or junction design, lorry safety, cyclist or driver training or reducing traffic speeds. The report is sent to a person or organisation whom the coroner believes could take the necessary action, and the recipient must send a written response;
- Making comments about the responsibilities of cyclists to prevent their own deaths (e.g. by wearing helmets) without taking evidence on whether such assumptions are justified or relevant in the cases they are considering (see 4d 'Victim-blaming' below).

There is a strong case for assigning cases involving the death of cyclists to coroners with specific experience of cycling to balance the fact that virtually all coroners have experience of driving.

For more on prosecutors, courts and coroners, see Cycling UK's briefing *Prosecutors and courts*:
www.cyclinguk.org/campaigning/views-and-briefings/prosecutors-and-courts

Note: there are no coroners in Scotland.

4. Cross-cutting issues

The underlying causes for the failures and flaws of the justice system include a mix of:

- Under-resourcing
- Inadequate training and awareness of the relevant professionals
- Lack of transparency/systematically collected data
- Victim blaming and poor support for victims
- Public perceptions that bad driving is not a particularly serious offence
- The common use of the term 'accident' instead of 'collision' or 'crash'





a. Resourcing

Cycling UK view: The police, prosecution services and courts all need to be adequately resourced to deliver justice to a high standard.

Funding and staffing cuts put the whole of the justice system under pressure and compromise its effectiveness.

Central and local investment in roads policing is a particular priority, both as a deterrent against bad driving, and to improve the capacity of the police to investigate cases well enough for them to be prosecuted, and prosecuted successfully. However, roads police levels dropped by around 48% between 2004/5 and 2015/16 outside the Metropolitan Police area, down from well over 6,500 to under 3,500.⁶ This drop is significantly higher than the c12% drop seen in the police officer workforce as a whole over this period.

In 2015/16, the police recorded just over half (53%) of the number of ‘dangerous driving’ offences than they did in 2002/03 - 4,050 as opposed to 7,624. (While the figure for 2015/16 was a 24% increase on 2014/15 (3,254), it remains to be seen if this is the start of a more encouraging trend).⁷

“As the number of traffic police has fallen, so too has the number of road traffic offences detected. However, the number of ‘causing death’ offences, which will always be recorded where they occur, has not fallen. This is significant as this suggests that the reduction in overall offences that are recorded does not represent a reduction in offences actually being committed.” House of Commons Transport Committee, *Road traffic law enforcement* report, 7 March 2016.
www.publications.parliament.uk/pa/cm201516/cmselect/cmtrans/518/518.pdf

Resourcing difficulties can be ameliorated by recovering costs from convicted defendants in addition to the appropriate penalty for the offence.

- Police cuts are covered in more detail in Cycling UK’s briefing, *Traffic policing*:
www.cyclinguk.org/campaigning/views-and-briefings/traffic-police-and-other-enforcement-agencies



b. Training

Cycling UK view: Better training should be provided for traffic police, investigation officers, family liaison officers, prosecutors, coroners, judges, magistrates in relation to the handling of road traffic incidents – particularly where cyclists or other vulnerable road users are involved.

Better training for everyone involved in handling road traffic crashes and offences is crucial. As mentioned, inadequate investigation by the police can lead to serious miscarriages of justice (3a), while misconceptions about the precise legal definitions of ‘careless’ and ‘dangerous’ driving mean that the law is frequently applied incorrectly. The way that road crash victims and their families are sometimes treated also falls short of best practice in many respects, and training should advise against any automatic tendency to blame the victim (see 4d & e below).

c. Transparency and data collection

Cycling UK view:

- The Department for Transport, Home Office and Ministry of Justice (and the relevant bodies in Scotland) should set up a national road crash investigation agency, similar to those used for rail and aviation.
- These departments should collaborate to develop systems to collect, monitor and disseminate local and national level data on the justice system’s responses to bad driving offences.

At present, no data are available to show the numbers of prosecutions, convictions and sentences for traffic offences involving particular types of road user. Hence, while known individual cases might suggest that the legal system may be failing cyclists or other vulnerable road user groups, it is impossible to tell if this is true of the system as a whole.

Linking information from STATS 19 forms (which the police fill in at the scene of a road crash) and the criminal justice system would make analysing the response of the justice system to road collisions easier; and it would also help identify areas that need improvement.

Transport for London, the Metropolitan Police and the CPS in London have carried out a review of the conduct of cyclist fatality cases by the police and CPS in London. Although unpublished, this is a valuable first step towards a level of openness that is vital for the democratic accountability of those charged with overseeing the performance of the criminal justice system. It needs to become the norm throughout the UK.

The recent move to entitle road crash victims to information about how their cases are being handled (e.g. what decisions are being made, by whom, and why) is a welcome step as it helps make the system more transparent and accountable (see 4d below).

d. Victim blaming and victim support

Cycling UK view:

- All those involved at any stage in dealing with road traffic offences should guard against a propensity to blame the victim automatically.
- Road collision victims and their families should receive support to the same standards as the victims of other crimes with similarly severe consequences. They should be kept well-informed of the progress of their case and consulted on key decisions.



Victim blaming: The propensity towards ‘victim-blaming’ can manifest itself in the police’s initial response to incidents, coroners making unfounded statements about the responsibilities of cyclists, and judges reducing sentences on the basis of some alleged failing on the victim’s part.

In two of the examples given in the Appendix, for instance, the judge appears to have reduced the sentence handed down to the driver on the basis that the cyclist killed had not been wearing a helmet. Leaving aside the debate about whether it is necessary or desirable to advise (let alone require) cyclists to wear helmets, there is no basis for reducing the criminal liability of the driver for some alleged failing on the part of the victim where this was in no way a contributory factor to the occurrence of the collision, and could at best only have mitigated its consequences.

Victim support: in the past, lack of information (e.g. about court dates or key charging decisions) has often made it difficult for road crash victims and their families to challenge anything they believe to be contentious or legally incorrect (e.g. a decision not to prosecute, or to downgrade the prosecution from a ‘dangerous’ to a ‘careless’ driving offence).

However, following pressure from Cycling UK, RoadPeace and others, the Ministry of Justice made changes to the *Victims’ Code* (England and Wales) at the end of 2015, which entitle victims to information about prosecution decisions, case progression and support services.⁸ Also, victims who report a crime are entitled to receive a written acknowledgement from the police stating the basic elements of the crime.

The Code has been extended to other prosecuting organisations including the Health and Safety Executive, a move that is crucially important for victims injured by drivers in the course of their employment (25% of all road casualties). Cycling UK believes that the Code should also apply to Traffic Commissioners and coroners. We also believe that the ‘Victims’ Right to Review’, which enables victims to request a review of a decision not to prosecute, to all offences and not just ‘serious offences’.

e. Public attitudes

Cycling UK view:

- To help ensure that any legal reforms are likely to be accepted by juries, public awareness campaigns should reinforce the concept that bad driving is socially unacceptable; and public attitudes should be surveyed to monitor the effect of these campaigns.
- A stronger link between road safety awareness and enforcement campaigns would support the wider effort to influence public attitudes on the need for safe road user behaviour.

Ultimately, any proposed amendments to the legal framework need to be tested for public acceptability. There is a long history of mostly well-intentioned reforms to the law on bad driving which have, in practice, failed as a deterrent. This is partly due to the difficulties of persuading juries to penalise drivers whom they perceive to be people like themselves.

As juries are, in turn, reflective of wider public attitudes, any attempt to strengthen the legal system’s response to bad driving has to be seen as part of a wider effort to build a public consensus that such driving is socially unacceptable.

Public awareness campaigns on road safety and traffic law enforcement need to be seen as complementary and used in conjunction with one another – awareness campaigns help to legitimise enforcement activities, while enforcement helps ensure the messages of awareness campaigns are properly heeded by all. This has already worked well in the case of drink-driving.



f. Terminology

Cycling UK view: The word ‘accident’ should not be used to describe road collisions where someone is injured or killed - ‘collision’ or ‘crash’ should be used instead.

The word ‘accident’ is the standard term used to describe all road collisions. ‘Accident’, however, tends to suggest that no one and nothing is culpable – that the collision ‘just happened’. This is clearly inappropriate, particularly in cases where a driver is convicted of causing serious injury or death, manslaughter or murder, so neutral terms such as ‘crash’ or ‘collision’ should always be used instead. For more see: www.roadpeace.org/campaigns/crash/index.html

5. Compensation

Cycling UK view:

- If a cyclist or pedestrian suffers personal injury or damage in a collision with a motor vehicle, they should be entitled to full compensation from the driver’s insurance unless the driver (or in practice their lawyers/insurers) can show that the injury was entirely caused by the cyclist or pedestrian behaving in a way that fell well below the standard that could be expected of them, taking account of their age, abilities and the circumstances of the collision.
- Passing any proportion of the legal costs of pursuing compensation to the innocent victim of a road crash is unfair and wrong. The objective of damages in these cases should be to provide full compensation for injured people both for their injuries and financial losses. They are also a way of holding the person who caused the injury to account.

a. ‘Presumed liability’

In many European countries, when a cyclist or pedestrian is hurt or suffers damage in collision with a motor vehicle, the driver’s insurance is legally required by default to pay compensation to the injured party, unless the driver can demonstrate that the injured party behaved negligently or illegally. This means that vulnerable road users are able to obtain the compensation they deserve without necessarily having to prove that the driver has acted negligently.

An important point is that ‘presumed liability’ (also known as ‘stricter liability’) does not have any implications for criminal liability and therefore does not involve the principle of ‘innocent unless proven guilty’. Criminal liability would still be judged in the same way as at present. Instead, ‘presumed liability’ proposals reflect the fact that drivers have a duty of care towards more vulnerable road users and that motor vehicles pose a greater risk to cyclists and pedestrians than *vice versa*. They do not, however, give vulnerable road users ‘carte blanche’ to act irresponsibly, and Cycling UK would not support them if they did.

b. Compensation claims and legal costs

Until 1 April 2013, the defendant (usually an insurance company) met a victim’s legal costs, but following reforms in England and Wales, victims attempting to recover full compensation for injury and losses are now expected to contribute to the costs out of their damages. Potentially, this could represent approximately 25% of a claimant’s compensation. Eroding damages like this is deeply unfair for a road crash victim and it could also have an effect on how law firms handle their cases.

- Presumed liability and legal costs for compensation claims are discussed more fully in: www.cyclinguk.org/campaigning/views-and-briefings/compensation-for-injured-cyclists-0



APPENDIX: EXAMPLES OF 'CARELESS' DRIVING (2010-12)

Lee Cahill, a 17-year-old with a previous speeding conviction, was sentenced to 200 hours of community service and an 18 month driving ban after he admitted causing the death by 'careless' driving of [Rob Jefferies](#), a well-known cycling coach employed by British Cycling. Cahill said he had been dazzled by sunlight, although the driver in front of him reported making an exaggerated manoeuvre to pull out and overtake the cyclist. Cahill was not prosecuted for dangerous driving.

Arron Bjorn Cook, 27, was given a two-month community order, 200 hours of unpaid work and £110 costs after admitting causing the death by 'careless' driving of 52-year-old cyclist [Cath Ward](#) on the A435. She was a well-known member of the Solihull Cycling Club. Witnesses said Cook had initially admitted he was not looking at the road when the collision occurred. He was not prosecuted for dangerous driving.

Lorry driver Tony Smith received a £100 fine, 100 hours of community service, a one-year ban and £85 costs after he admitted causing the death by 'careless' driving of 89-year-old cyclist [Vera Chaplin](#). His lorry hit her from behind on a roundabout in Essex. He was not prosecuted for dangerous driving.

Uninsured driver Martin Boulton, 28, was given a suspended sentence, a £350 fine, 200 hours of unpaid work, a 15-month driving disqualification and a £15 victim surcharge, after killing 43-year-old cyclist [Robert Gregory](#) on the A5. He admitted causing Gregory's death by 'careless' driving, and that he was adjusting the radio at the time of the collision. He was not prosecuted for dangerous driving.

Driver David Kilgallon, 24, received a 100-hour community sentence and a one-year driving ban when he admitted causing the death of 85-year-old cyclist [Barbara Taylor](#) by 'careless' driving. He was said to have slowed down as he approached the junction, before pulling out into her path. Passing sentence, the judge noted that the pensioner hadn't been wearing a helmet. He was not prosecuted for dangerous driving.

Lee Kenny, 41, was given 160 hours community service and an 18-month driving ban following the death by 'careless' driving of 64-year-old cyclist [Bernard Parkes](#). The judge noted that Parkes was not wearing a helmet and had shopping on his handlebars. Whilst Parkes's shopping may have undermined his ability to avoid falling in what was acknowledged to be a low-speed impact, it surely does not alter the seriousness of driver's failure to see him in the first place.

Michael Croome (aged 27 at the time of the offence) successfully appealed against a five-year prison sentence following the death of [David McCall](#), 46, a former Commonwealth medal-winning Irish cyclist. His initial conviction had been for causing death by dangerous driving, but he argued that the court had not properly considered the alternative charge of causing death by careless driving, an offence to which he had pleaded guilty. He had two previous convictions for speeding and one for careless driving, he admitted he was rushing to catch a plane at the time he hit McCall, and he was subsequently caught speeding on two further occasions. Yet he was freed when his original conviction was overturned after serving ten months in custody, and an 18-month suspended sentence imposed instead for the lesser offence, together with a three-year driving ban.

Lorry driver Petre Beiu was fined £2,700 and banned from driving for eight months for 'careless' driving which resulted in a collision with Times journalist [Mary Bowers](#), leaving her with severe brain damage (she was still minimally conscious more than a year afterwards). Beiu admitted not looking properly in his mirrors before pulling off at the junction, and that he was engrossed in a lengthy (hands-free) mobile phone conversation at the time. It was also said in court that Bowers would have been clearly visible in front of Beiu for ten seconds before he drove up beside her in a cycle advance box. Beiu had previously also admitted committing tacograph offences, driving for 22 hours in just two days. He was prosecuted for dangerous driving but acquitted.



FURTHER READING/WEBSITES

- Cycling UK's road safety and legal briefings: www.cyclinguk.org/campaignsbriefings (filter by 'safe drivers and vehicles').
- House of Commons Transport Committee's report on its inquiry into *Road Traffic Law Enforcement* (March 2016). Cycling UK gave evidence to the inquiry, and the resultant report reflects many of the issues we raise in this briefing.
www.publications.parliament.uk/pa/cm201516/cmselect/cmtrans/518/518.pdf
See also our review of the report:
www.cyclinguk.org/blog/cherry-allan/mps-back-ctc%E2%80%99s-calls-road-traffic-law-enforcement
- www.roadjustice.org.uk – Cycling UK's campaign site on justice for road crash victims, with reporting facility and advice.
- www.roadpeace.org – charity for the victims of road crashes.

REFERENCES

¹ Dangerous and careless driving defined respectively in: *Road Traffic Act 1988*, as amended by the *Road Traffic Act 1991*. Section 2A; *Road Traffic Act 1988*. Section 3ZA, as amended by the *Road Safety Act 2006*.

² Ministry of Justice. Criminal Justice Figures. *Criminal Justice Statistics Quarterly Motoring Data Tool*. May 2016.
<https://www.gov.uk/government/collections/criminal-justice-statistics>

³ "Restorative processes bring those harmed by crime or conflict, and those responsible for the harm, into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward."
Restorative Justice Council www.restorativejustice.org.uk/

⁴ College of Policing. *Investigating Road Deaths*. Oct 2013.

<https://www.app.college.police.uk/app-content/road-policing-2/investigating-road-deaths/>. This guidance supersedes the original and much longer *Roads Deaths Investigation Manual* (2007).

⁵ The CPS's *Road Traffic Offences - Guidance on Charging Offences arising from Driving Incidents* (2013), is a merger of two previous CPS publications *Guidance on Prosecuting Cases of Bad Driving* and the *Policy for Prosecuting Cases of Bad Driving* (both published in 2007). New guidance at:

http://www.cps.gov.uk/legal/p_to_r/road_traffic_offences_guidance_on_prosecuting_cases_of_bad_driving/

⁶ All police - *England and Wales police workforce statistics*. July 2016. <https://www.gov.uk/government/collections/police-workforce-england-and-wales>, Table H3); roads police 2004/5-2011/12 Parliamentary Question 7 Sept 2012 (<https://www.theyworkforyou.com/wrans/?id=2012-09-07b.119892.h>); roads police 2012/13 - 2014/15 Parliamentary Question 27 June 2016 (<https://www.theyworkforyou.com/wrans/?id=2016-06-15.40656.h&s=traffic+police>); roads police 2015/16 - *England and Wales police workforce statistics* (link above). Note: we have excluded the Metropolitan Police from these figures because, unlike all the other forces in the rest of England and Wales, they reported a huge rise in the number of traffic police between 2013/14 and 2014/15 (up from 264 to 1,433). However, this was largely due to a 'reclassification' of roles, rather than a genuine rise in the numbers of officers assigned to roads policing. When combined with the figures reported by other forces, this gave the misleading impression that overall road policing numbers had risen by c20% between 2013/14 and 2014/15. If the Met figure is excluded, it is clear that overall road police numbers elsewhere dropped by around c7% during this period, and c48% since 2004/5.

⁷ ONS. *Crime in England and Wales* Appendix table A4.

<http://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesappendixtables/current>

⁸ Ministry of Justice. *Code of Practice for Victims of Crime*. Oct 2015.

<https://consult.justice.gov.uk/digital-communications/victims-code/results/code-of-practice-for-victims-of-crime.pdf>