

## Bad driving and the justice system

# Compensation for injured cyclists

**THIS BRIEFING COVERS:** Road collision facts; cyclists' compensation claims; 'presumed liability'; contributory negligence; special cases; legal costs; public liability insurance

### HEADLINE MESSAGES

- Cycling causes little harm to others, but the actions of those engaged in a hazardous activity (i.e. driving), can put cyclists at risk.
- Most drivers are generally considerate, but the fact remains that pedestrians and cyclists are disproportionately affected by road crashes and the compensation process is often complex and protracted.
- This imbalance could be corrected by introducing 'presumed liability' (also known as 'stricter liability'), a system already common in many west European countries. This is the legal presumption made in civil law that injured cyclists and pedestrians are entitled to compensation from drivers who hit them, unless the victim was obviously at fault.

### KEY FACTS

- In 2014 (GB), out of the 16,932 two vehicle collisions involving a car and cycle, no car occupant died. Fifty cyclists were killed, however.
- In road crashes involving pedal cycles and one other vehicle, cyclists are about half as likely to be at fault than the other party.
- In most western European countries, the bigger vehicle is presumed responsible in collisions, and/or motor vehicles are held strictly liable for injuries to non-motorised users (NMUs). The exceptions are the UK, Ireland, Cyprus and Malta.

### Cycling UK VIEW

- The UK should introduce 'presumed liability' rules to compensate cyclists and pedestrians for road crash injuries, as is normal in most west European countries. 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 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.
- Findings of 'contributory negligence' – i.e. a partial reduction in compensation where the injured party is at least partly at fault – should be exceptional, and certainly not be found against cyclists for: riding without a helmet; riding without high visibility clothing; not using a cycle facility; or for mere technical breaches of the Highway Code's non-statutory rules for cyclists.
- Particularly vulnerable people (e.g. children, the elderly and those with learning difficulties or physical disabilities), should receive full compensation from the driver's insurance in any event, unless they evidently wanted to harm themselves.
- 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.
- Taking out third party liability insurance is a sensible precaution for regular cyclists, but it should not be compulsory for everyone wanting to cycle.



## BACKGROUND INFORMATION

### 1. Background

Currently, injured cyclists have to prove that the driver acted negligently before they are entitled to compensation, if they can. They will still be entitled to compensation if they are partly at fault, but the value of this will be in proportion to the relative errors of the parties involved.

If cases have to go to trial for a decision (and only about 1% of them do – the vast majority of cases are settled out of court), these principles are generally upheld, but the work involved in pursuing a case as far as this is considerable because the burden of proof is on the injured party. This is particularly unfair on cyclists and pedestrians because they are disproportionately affected by road crashes, and pose very little threat to other road users.

#### a. Road crashes: who's at risk?

In Great Britain, in 2014:<sup>1</sup>

- Cyclists and pedestrians accounted for 31.5% of road fatalities – 113 cyclists, 446 pedestrians, 1,775 all road users. (In 2013, cyclists and pedestrians accounted for 29.6% of road fatalities - 398 pedestrians, 109 cyclists, 1,713 all road users).
- Cycling accounts for only about 1% of distance travelled,<sup>2</sup> but cyclists represented over 6% of fatalities and 15% of serious injuries.<sup>3</sup>

By contrast, the risk that cyclists pose to other road users is very small indeed.

- In 2014 (GB), out of the 16,932 two vehicle collisions involving a car and cycle (all areas), no car occupant died. Fifty cyclists were killed, however.<sup>4</sup>
- On average, each year from 2010-14, cycles accounted for about 2% of all urban, non-motorway vehicular traffic, but were involved in only just over 1% of pedestrian fatalities and 1.7% of serious pedestrian casualties.<sup>5</sup>
- Even allowing for the facts that there are far more cars than cyclists, and cyclists and pedestrians are more likely to travel in the same places as each other, cars still put pedestrians at greater risk, mile-for-mile: in urban areas from 2010-14, motor vehicles were more likely than a cycle to seriously injure a pedestrian, and about twice as likely to kill them.<sup>6</sup>
- For more on casualties involving cyclists, drivers, pedestrians and law-breaking, see Cycling UK briefings: *Road safety: Overview*; *Cyclists' behaviour and the law*; and *Cyclists and pedestrians*, all available at [www.cyclinguk.org/campaignsbriefings](http://www.cyclinguk.org/campaignsbriefings) (filter by 'Safe drivers and vehicles')



## b. Road crashes: who's at fault?

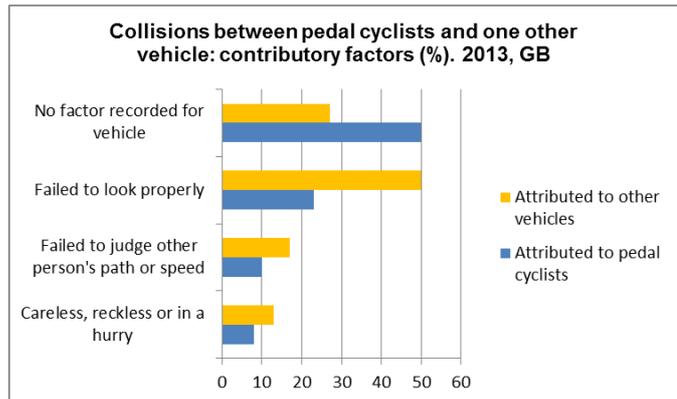
As explained above, the risk that cyclists pose to other road users is very small indeed. Cyclists are also far less likely to be at fault in collisions with motor vehicles:

In 2013, in crashes involving pedal cycles and one other vehicle:

- cyclists were more likely to have *no contributory factor* recorded in comparison to other vehicles (50% compared to only 27%);
- other vehicles were more than twice as likely to be recorded as 'Failing to look properly' (50% compared to only 23%).

Source: DfT, *Facts on Pedal Cyclists, 2015*.<sup>7</sup>

N.B. The police can attribute more than one contributory factor to one or more parties involved in a collision.



## c. Cyclists' claims for compensation: problems

Even though cyclists and pedestrians are:

- o most at risk on the road network
- o pose far less danger to others, and
- o less likely to be at fault in a collision with a motor vehicle

... it is usually much harder for them to claim compensation for injuries they sustain because:

- **The burden of proof lies with the injured cyclist/pedestrian:** as explained above, cyclists are more likely to be the injured party in collisions with motor vehicles, but less likely to be at fault. Currently, in order to gain the appropriate level of compensation, the burden of proof is theirs, i.e. they have to prove that the driver was negligent, has committed a tort (a breach of duty leading to liability for damages) and/or a criminal offence and, as such, was wholly or partly at fault. This is a costly, complex and time-consuming process.
- **As the injured party, cyclists/pedestrians may be not be good witnesses in court:** injuries may affect the ability to recall how the crash happened, especially in serious cases, and may compromise the likelihood of being a 'good witness'. This regularly leads to grave injustice, far more serious than anything that could possibly result from reversing the burden of proof.<sup>8</sup>
- **Injured cyclists/pedestrians don't have as much financial support:** motoring organisations and insurance companies have, in effect, limitless funds for employing lawyers etc., whereas most cyclists (especially those who are not members of a cycling organisation like Cycling UK) do not. This puts many injured cyclists at a significant disadvantage.
- **Cases take ages to resolve:** typically, it takes a long time to resolve personal injury cases – they can span four or five years, even with a solicitor. Compensation, for example, can depend on the severity of injury, which might take a while to confirm. This may require interim payment(s) and then further payment when diagnosis is more certain. Naturally, insurance companies tend to pay as little as they can at any time.

*"There should be liability without proof of fault. To require an injured person to prove fault results in the gravest injustice to many innocent persons who have not the wherewithal to prove it."*  
Lord Denning, British lawyer and judge, 1982

## 2. 'Presumed liability'

**Cycling UK view:** The UK should introduce 'presumed liability' rules to compensate cyclists and pedestrians for road crash injuries, as is normal in most west European countries. 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 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.

Introducing 'presumed liability' (also known as 'stricter liability') in the UK would make it much easier and quicker for cyclists/pedestrians to receive the compensation they deserve for personal injury or damage they suffer as a result of a collision with a motor vehicle. It would also 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*.

### a. Precedent

Other areas of the law and, indeed, other European countries, already recognise the need to correct for imbalances in power or vulnerability. In fact, the system of civil compensation for personal injuries to non-motorised users (NMUs) in England is one of the least favourable:<sup>9</sup>

- In most European countries, the bigger vehicle is presumed responsible or motor vehicles are held strictly liable for injuries to NMUs.
- In France, Belgium and the Netherlands, any driver who injures an NMu is, essentially, responsible for compensating them, unless they can show that the NMu was at fault.
- The only other EU countries that have not adopted 'presumed liability' are Cyprus, Malta, Romania and Ireland.

'Presumed liability' has no implications for the established principle that a defendant is 'innocent until proven guilty' because compensation is a matter for civil, not criminal law. In any case, this principle is not completely enshrined in matters of liability relating to road traffic incidents – for example, drivers are generally held to be liable if they run into the back of another vehicle, even if the driver in front braked sharply or without warning. This is because they are expected to drive at a safe distance, just as they should be expected to exercise a high degree of care around NMUs, allowing for unexpected or erratic movement by them.

Common law on tort liability allows for the theory of *res ipsa loquitur* ('the thing speaks for itself'). Basically, this means that if it is circumstantially obvious that a claimant did nothing wrong, and that the incident must have resulted from negligence, it follows that the party who caused the harm must have acted negligently.

Provisions for imbalances in power or vulnerability are made in areas of the law such as consumer protection, employment contracts, public and employee health and safety (i.e. legislation places primary responsibility for employees' safety on employers).



### b. Benefits of 'presumed liability'

- The law would reflect the fact that NMUs are far more at risk of injury than motor vehicle occupants (see Section 1 above).
- It would promote cautious driving by reinforcing the message that drivers should exercise a high degree of care towards NMUs.
- It would be much easier and quicker for cyclists or pedestrians to obtain compensation following a collision with a motor vehicle; and would free the courts of much time-consuming litigation.
- Reversing the burden of proof transfers any injustice arising from failures in evidence from the innocent victim to the innocent driver. The latter only risks losing their no claims bonus, whereas under the current system the victim risks being unable to claim compensation even if maimed for life, simply because their injuries have left them unable to provide evidence that the driver was at fault.
- Reform of civil law along 'presumed liability' lines is not without the support of lawyers –CycleLaw in Scotland, for example, is calling for change in its Road Share campaign. [www.cycling-accident-compensation.co.uk/default.aspx](http://www.cycling-accident-compensation.co.uk/default.aspx)

#### 'Presumed liability should *not* involve...:

- ... giving NMUs '*carte blanche*' to act irresponsibly - Cycling UK would not support it if it did;
- ... making any change to the criminal law principle that the defendant is 'innocent until proven guilty' - this would be a change to *civil* law and does not have any implications for *criminal* liability, which would be judged in the same way as at present;
- ... automatically criminalising drivers if they collide with a cyclist or pedestrian - again, our proposal would only affect *civil* liability compensation cases;
- ... creating divisions between 'cyclists' and 'drivers' - most drivers walk and cycle too. It would simply reflect the fact that when people choose to walk or cycle, they are more vulnerable than drivers who put them most at risk.
- ... a significant increase in insurance premiums or motoring costs. It is more than likely that a change in compensation rules would lead to safer driving, hence fewer collisions and, in turn, reduced payouts (see also 'Legal costs', Section 4).

- For more on the criminal justice system and bad driving, see Cycling UK's 'Safe Drivers and Vehicles' briefings at: [www.cyclinguk.org/campaignsbriefings](http://www.cyclinguk.org/campaignsbriefings).

### 3. Contributory negligence

**Cycling UK view:** Findings of 'contributory negligence' – i.e. a partial reduction in compensation where the injured party is at least partly at fault – should be exceptional, and certainly not be found against cyclists for:

- riding without a helmet;
- riding without high visibility clothing;
- not using a cycle facility;
- or for mere technical breaches of the Highway Code's non-statutory rules for cyclists.

Insurers routinely try to reduce cyclists' compensation claims by making a counter-claim of 'contributory negligence', i.e. they try to prove that the cyclist was at least partially to blame for his/her injuries. This does not necessarily mean that the cyclist acted illegally; 'contributory negligence' has been raised, for example, for cycling 'head down' or too fast, failing to signal or adopting a doubtful road position etc.<sup>10</sup>

**Helmets:** Not wearing a helmet continues to be cited against cyclists by motor insurers and their lawyers as grounds for 'contributory negligence', and hence for reduced compensation payments. Although the courts have so far rejected such claims, a general principle on the issue has not been established. Indeed, a judge considering the case of an un-helmeted cyclist who sustained head injuries in a collision with a motorcyclist (*Smith v Finch*, 2009<sup>11</sup>) said that he thought failure to wear a helmet could in principle be regarded as 'contributory negligence'. This was not a binding judgement, however, and the cyclist still gained full compensation because wearing a helmet would not have prevented his specific injuries.

Nevertheless, Cycling UK remains concerned about judicial attitudes towards helmet wearing. Judges tend to believe that cyclists ought to wear head protection and that not doing so is irresponsible.

For more on cycle helmets, see:

- Cycling UK's briefing: [www.cyclinguk.org/campaigning/views-and-briefings/cycle-helmets](http://www.cyclinguk.org/campaigning/views-and-briefings/cycle-helmets)
- *Cycle helmets and contributory negligence* by barrister Julian Fulbrook [www.cyclistsdefencefund.org.uk/files/fullbrook.pdf](http://www.cyclistsdefencefund.org.uk/files/fullbrook.pdf)

**Highway Code:** Cycling UK believes that some of the non-statutory<sup>12</sup> rules in the Highway Code that relate to cyclists are arbitrary and debatable (a briefing on this will be produced soon). Our view is therefore that mere technical breaches of these rules do not necessarily or automatically justify grounds for contributory negligence.

It is also worth bearing in mind that the Code recognises that cyclists are amongst the most vulnerable of road users and makes specific provision for motorists to take particular care of them (rules 187 & 188).

**Illegal behaviour:** Illegal behaviour by a cyclist who is hit by a motor vehicle may not necessarily contribute to their injuries. A cyclist who is riding without lights at night, for example, may still be perfectly visible to a driver who collides with them. Note, however, that Cycling UK does not condone illegal behaviour by cyclists, but where there is no evidence that this contributed to the injury it should not be cited as grounds for contributory negligence.

- For more on cyclists' behaviour, see Cycling UK's briefing *Cyclists' behaviour and the law*: [www.cyclinguk.org/campaigning/views-and-briefings/cyclists-behaviour-and-law](http://www.cyclinguk.org/campaigning/views-and-briefings/cyclists-behaviour-and-law).

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## 4. Special cases

**Cycling UK view:** Particularly vulnerable people (e.g. children, the elderly, and those with learning difficulties or physical disabilities), should receive full compensation from the driver's insurance in any event, unless they evidently wanted to harm themselves.

When deciding whether the NMU was responsible (either wholly or partly) for the collision, their mental and physical abilities should be taken into account. In consequence, children, senior citizens and people with learning or physical disabilities should obtain damages in any event, unless it is beyond all doubt that they deliberately put themselves in the way of harm.

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## 5. Legal costs

**Cycling UK view:** 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. Background

Following a review in 2010 by Lord Justice Jackson, the Government (England and Wales) introduced a number of significant reforms to civil litigation funding and costs in 2013. Essentially, the changes were designed to discourage compensation claims and save public funds.<sup>13</sup>

Before the reforms came into effect on 1st April 2013, the defendant (usually an insurance company) met a victim's legal costs. Subsequently, however, victims attempting to recover full compensation for their personal injury and consequential losses have to contribute out of their damages. Legal costs which are 'disproportionate' to the value of the claim are also unlikely to be recoverable against defendants.

The package of reforms also includes: the introduction of fixed fees for 'Fast Track' cases (claims worth less than £25,000); and the active management of litigation and cost control by the courts in 'Multi Track' cases (claims worth more than £25,000).

In 2015, the Chancellor said he intended to raise the small claims limit for personal injury claims from £1,000 to £5,000 for all road traffic claims, meaning that such claims would be transferred to the small claims court.<sup>14</sup>

### b. The impact of the reform on injured cyclists/pedestrians:

- Approximately 25% of a claimant's compensation will be used to meet legal fees.
- While the Government's desire to reduce the fees claimed by lawyers (some of them from legally-aided claims) may save taxpayers' money, injured victims will inevitably suffer. Eroding their damages to finance their case is deeply unfair, and the prospect may even put them off making a claim for the compensation they deserve.
- Extending the small claims limit would be particularly unjust for cyclists and pedestrians. The motivation behind this proposal was to put a stop to fake whiplash claims, i.e. claims that cyclists and pedestrians are highly unlikely to make. It is most unfair, therefore, to include them in this measure. Also legal costs are not recoverable in the small claims jurisdiction, which means that injured people with far from insignificant claims would have to fight for the rightful compensation against an insurer or incur non-recoverable legal fees.

Law firms also reckon that the reforms will have repercussions for the way they handle victims' cases. They say that:

- They may have to cut their overheads by hiring less experienced staff, which may lead to cases not being investigated properly and to cases being under-settled;
- They may be unwilling to pursue complex claims if it is likely that the costs that they would incur would be disproportionate to the value of the claim.

### C. The solution

The introduction of 'presumed liability' (Section 2) would be a sensible solution. It would either transfer legal costs to motorists' insurance or, preferably, improve road safety, thereby reducing the need to make claims in the first place. In the event of collisions occurring, it would also make compensation much more straightforward to pursue, cutting down on litigation, court time and the expenditure associated with it.

- See: [www.justice.gov.uk/civil-justice-reforms/main-changes](http://www.justice.gov.uk/civil-justice-reforms/main-changes) for more on the reforms.

## 6. Public liability insurance for cyclists

**Cycling UK view:** Taking out third party liability insurance is a sensible precaution for regular cyclists, but it should not become compulsory for everyone wanting to cycle.

Cycle insurance is a controversial issue. Many car drivers feel that since they have to be insured to drive legally on the road network then so should cyclists who use the same roads. However, the limited damage that cyclists inflict on others (see Section 1) suggests that making it compulsory is unnecessary and disproportionate. In particular, it would act as a barrier to occasional cyclists and to newcomers to cycling, including children.

In answer to a parliamentary question (June 2016), Lord Ahmad of Wimbledon (then Parliamentary Under-Secretary of State for Transport), said: *"We have no plans to make insurance compulsory for cyclists. We encourage all cyclists to take out some form of insurance. In fact, many cyclists do through membership of cycling organisations, such as Cycling UK."*<sup>15</sup>

- Cycling UK offers *free* third party insurance to its members: [www.cyclinguk.org/insurance](http://www.cyclinguk.org/insurance)

## POLICY BACKGROUND

### UK

In the UK, primary legislation would be required for any reform to drivers' liability in the civil (and indeed, the criminal) courts.

The concept of drivers' liability is not new. In 1934, *The Road Traffic (Compensation for Accidents) Bill*, introduced by Lord Danesfort and unanimously approved in its principles by the Select Committee of the House of Lords, proposed that the victims of a road crash caused by a motor vehicle should be able to recover compensation without needing to prove that the driver was guilty of negligence. Obviously, the proposal did not make its way onto the statute books.

In 1978, a Royal Commission recommended that road crash victims should benefit from a social insurance system, being compensated for any injury without having to go to court. The idea was rejected, as was a 1991 proposal from the Lord Chancellor for a limited no-fault system.

The Safer Streets Coalition – which included Cycling UK – unsuccessfully proposed that provisions relating to driver liability in collisions with NMUs be incorporated into the *Road Safety Act 2006*.<sup>16</sup>

Historically, much importance has been attached in the UK to private insurance for motorists. As a result, insurance companies are highly influential in matters of liability. If a road user is injured by an uninsured driver, they can submit a claim for compensation to the Motor Insurers' Bureau to which all companies offering motor insurance have to pay a levy.

## Europe

As mentioned above (Section 2a), there are other countries in Europe that have introduced the proposal for compensation that Cycling UK would like to see adopted in the UK.

In 2002 the EU's draft 5<sup>th</sup> *Motor Insurance Directive*<sup>17</sup> proposed that any European driver should have a minimum amount of insurance cover for causing possible personal injury to cyclists and pedestrians, including findings of liability under the compensation rules that apply in other EU countries. In other words, if a UK driver on a visit to Holland injures a Dutch pedestrian and is held liable for it under Dutch law, their British insurance scheme could not refuse to pay out on the grounds that the driver had not been shown to be at fault. Nonetheless, the Directive was widely misinterpreted in the media as an attempt to make drivers automatically liable for road crashes involving cyclists and pedestrians regardless of their innocence, including in the UK.

Now in effect, the Directive does strengthen legal protection for victims of road traffic incidents by providing that *"the minimum amount of cover for personal injury should be calculated so as to compensate fully and fairly all victims who have suffered very serious injuries"*, and mandating a minimum amount of cover for personal injury claims and damage to property. This has had no impact on the legal requirement in the UK that the person making the claim has to prove negligence on the part of the driver.

- The Motor Insurers' Bureau explains the impact of the 4<sup>th</sup> & 5<sup>th</sup> EU Motor Insurance Directives [http://miic.org.uk/documents/general\\_docs/The\\_Fifth\\_EU\\_Motor\\_Insurance\\_Directive\\_0806.pdf](http://miic.org.uk/documents/general_docs/The_Fifth_EU_Motor_Insurance_Directive_0806.pdf)
- A note<sup>18</sup> from the European Parliament summarises the liability regimes for road traffic incidents in each European country. *Compensation of Victims of Cross-Border Road Traffic Accidents in the EU: Assessment of selected options*. March 2007.  
[www.europarl.europa.eu/comparl/juri/hearings/20070319/background\\_en.pdf](http://www.europarl.europa.eu/comparl/juri/hearings/20070319/background_en.pdf)



## FURTHER READING/WEBSITES

- *Options for Civilising Road Traffic*. Davis, Eden & Stein. Environmental Law Foundation. 1999
- *The Compensation of 'Vulnerable' Road-accident Victims*. Groutel, Hubert. Academy of European Law, Trier, 2001.
- *Cyclists and Liability*. Bence, Sue. [www.cyclistsdefencefund.org.uk/cyclists-and-liability](http://www.cyclistsdefencefund.org.uk/cyclists-and-liability)
- *Cycle Helmets and Contributory Negligence*. Fulbrook, Julian. <http://www.cyclistsdefencefund.org.uk/cycle-helmets-and-contributory-negligence>
- [www.cyclistsdefencefund.org.uk](http://www.cyclistsdefencefund.org.uk) - charity that works to raise awareness of the law relating to cyclists. Includes information on liability.
- [www.roadpeace.org](http://www.roadpeace.org) - RoadPeace, the UK charity providing support for victims of road crashes and campaigning for justice, road safety and road danger reduction.
- [www.roadjustice.org.uk](http://www.roadjustice.org.uk) - Cycling UK's online resource/reporting tool for cyclists who have been the victims, or near victims, of bad driving.
- [www.cyclelaw.co.uk/strict-liability-for-cycling-claims](http://www.cyclelaw.co.uk/strict-liability-for-cycling-claims) - Cycle Law Scotland's 'Road Share' campaign.

## REFERENCES

<sup>1</sup> All the casualty figures in this section come from DfT. *Reported Road Casualties Great Britain (RRCGB): 2014*. September 2014. Table RAS30010.

<https://www.gov.uk/government/collections/road-accidents-and-safety-statistics>

<sup>2</sup> DfT. *National Travel Survey: Cycling travel factsheet 2014*. 2015.

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/342160/nts2013-01.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/342160/nts2013-01.pdf). Note: until 2013, the NTS covered all of Great Britain, but thereafter England only. However, trip rates for GB as a whole and England in particular are similar, so we quote the figures from the NTS for England as a simple proxy.

<sup>3</sup> DfT defines “serious injury” as: “An injury for which a person is detained in hospital as an “in-patient”, or any of the following injuries whether or not they are detained in hospital: fractures, concussion, internal injuries, crushings, burns (excluding friction burns), severe cuts, severe general shock requiring medical treatment and injuries causing death 30 or more days after the accident.”

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/467465/rrcgb-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/467465/rrcgb-2014.pdf)

<sup>4</sup> DfT. *Reported Road Casualties Great Britain: 2014*. Sep 2015. Table RAS40004. (Link above).

<sup>5</sup> Casualty figures from DfT, *Reported Road Casualties Great Britain 2014*. Sept 2015. RAS40004.

[www.gov.uk/government/collections/road-accidents-and-safety-statistics](http://www.gov.uk/government/collections/road-accidents-and-safety-statistics); road traffic figures from DfT, *Road Traffic Estimates in Great Britain: 2014*. May 2015. Tables: TRA0402 (pedal cycles); TRA0104 (motor vehicles).

[www.gov.uk/government/collections/road-traffic-statistics](http://www.gov.uk/government/collections/road-traffic-statistics)

<sup>6</sup> DfT figures show that in 2013, 6 pedestrians were hit and killed by cycles, twice as many as the annual average from 2005-2013. None of these incidents happened on the footway/verge. (Two pedestrians were hit and killed by cycles in each of the two previous years - none on the footway/verge).

<sup>7</sup> <https://www.gov.uk/government/statistics/road-safety-factsheets-and-ad-hoc-statistics>

<sup>8</sup> To give an example: the injustice suffered by a child who cannot claim damages despite being maimed for life by a dangerous driver, because s/he cannot provide adequate witness evidence that the driver was at fault, is far greater than the injustice that an entirely blameless driver might suffer in the reverse situation – this would usually be no more than the loss of a no claims bonus.

<sup>9</sup> Groutel, Hubert. *The Compensation of ‘Vulnerable’ Road-accident Victims*. Academy of European Law, Trier, 2001.

<sup>10</sup> For a useful summary of the key contributory negligence arguments run against claimant cyclists, see article by Sue Bence on *Cyclists and Liability* at: [www.cyclistsdefencefund.org.uk/cyclists-and-liability](http://www.cyclistsdefencefund.org.uk/cyclists-and-liability)

<sup>11</sup> See [www.cyclinguk.org/blog/admin/your-head-be-it](http://www.cyclinguk.org/blog/admin/your-head-be-it) for more on this case

<sup>12</sup> i.e. the rules that are not legal requirements, denoted in the Code by the words ‘should/should not’ rather than ‘MUST/MUST NOT’. [www.gov.uk/highway-code/introduction](http://www.gov.uk/highway-code/introduction)

<sup>13</sup> The reforms were in part a result of changes in legislation (Part 2 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012* - ‘LASPO Act’).

<sup>14</sup> Chancellor’s *Spending review and autumn statement 2015*. Nov 2015.

<https://www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents/spending-review-and-autumn-statement-2015>

<sup>15</sup> Written answer. 17 June 2016. <https://www.theyworkforyou.com/wrans/?id=2016-06-06.HL475.h>

<sup>16</sup> Safer Streets Coalition. *Road Safety Bill 2006 – a briefing for the House of Commons Standing Committee*. SCC’s proposed new clause on ‘Driver liability in collisions with vulnerable road users’:

(1) This section applies when recompense is being sought by or on behalf of a person who was not a person to whom in the circumstances which give rise to recompense being sought section 143 of the Road Traffic Act 1988 applies, or would apply but for the exceptions from a duty to insure or give security contained in that Act or elsewhere, and the person from whom recompense is being sought is a person to whom section 143 of the Road Traffic Act 1988 applies, or would apply but for the exceptions from a duty to insure or give security contained in that Act or elsewhere.

(2) When this section applies, a Court shall find for the person seeking recompense or on whose behalf recompense is sought, unless the person from whom recompense is sought shows that he has no responsibility for any of the circumstances giving rise to recompense being sought.

(3) The Court may make reduction in recompense if in all the circumstances of the case (including the age and any physical, sensory or mental disabilities of the person seeking recompense or on whose behalf recompense is sought) it considers it just to do so. It shall in any case not make any reduction in recompense if recompense is sought on behalf of a person under ten years of age at the time of the first event giving rise to recompense being sought.

<sup>17</sup> Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005. “Personal injuries and damage to property suffered by pedestrians, cyclists and other non-motorised users of the road, who are usually the weakest party in an accident, should be covered by the compulsory insurance of the vehicle involved in the accident where they are entitled to compensation under national civil law. This provision does not prejudice the civil liability or the level of awards for damages in a specific accident, under national legislation.”

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2005.149.01.0014.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2005.149.01.0014.01.ENG)

<sup>18</sup> European Parliament. *Compensation of Victims of Cross-Border Road Traffic Accidents in the EU: Assessment of selected options*. March 2007. [www.europarl.europa.eu/compar/iuri/hearings/20070319/background\\_en.pdf](http://www.europarl.europa.eu/compar/iuri/hearings/20070319/background_en.pdf)