

Failure to see what's there to be seen

How our justice system fails
vulnerable road users fatally hit by drivers who
didn't look or didn't see them

FAILURE TO SEE WHAT'S THERE TO BE SEEN

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Contact Cycling UK Cycling UK

Parklands
Railton Road
Guildford
Surrey
GU2 9JX

Tel.: 01483 238 300

Email: campaigns@cyclinguk.org

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Foreword

The primary purpose of road traffic laws (RTL) should be to reduce casualties and improve road safety, but they also set the legal framework for dealing with irresponsible behavior on our roads.

The effectiveness of RTL is of particular importance to vulnerable road users (VRUs) because irresponsible driving presents a disproportionate threat to pedestrians, cyclists, motorcyclists and horse riders, and puts people off travelling by foot or cycle despite their health and environmental benefits.

In other aspects of our lives, high safety standards are expected where there are inherent risks (e.g. rail and air travel, in the workplace or on construction sites), and the law creates strong obligations to avoid or minimise hazards. Despite the fact that driving a motor vehicle on a public road presents a risk to others, the cultural attitude towards that risk is different. Lapses of concentration are regularly dismissed as 'accidents' or 'carelessness' rather than something that is avoidable, reflecting an attitude that an absence of care and the resultant collisions are inevitable.

The legal framework, and our justice system, should make it clearer that it is unacceptable to endanger other road users, and that road crime is real crime. Too often, that doesn't happen, not least because the current legal definitions for 'careless' and 'dangerous' driving have led to confusion and inconsistency.

Whilst that confusion and inconsistency is apparent with other road user collisions, it's the response of the justice system to the deaths of VRUs where drivers have failed to look or failed to see what was there to be seen that most starkly demonstrates the urgent need for a review of our road traffic laws.

Duncan Dollimore

Head of Campaigns, Cycling UK

About this report

Time and time again, media stories have alerted Cycling UK to cases where a driver has caused the death of a cyclist, pedestrian or motorcyclist, whom they claim not to have seen in time or even seen at all.

This report focusses on how our road traffic laws enable the justice system to deal with such 'failing to see' cases. For our analysis, we searched the press online for incidents that:

- Were fatal
- Happened between 2012 and 2017
- Involved a vulnerable road user that the driver failed to spot at all, or failed to spot in time, and
- Led (or could have led) to the driver being charged with either 'careless' or 'dangerous' driving (but not 'under the influence' of drugs or drink).

Given that we were relying on whether an incident was covered online, our search was not exhaustive, but we identified various cases which answered our criteria (some of which Cycling UK has closely followed and commented on publicly in the past). We refer to nineteen of them in this report.

We've concentrated on charging and conviction, rather than on sentencing. Although none of the penalties imposed in the cases we cite go anywhere near the maximum for the charge in question, we can't comment

further without knowing considerably more about any mitigating circumstances that may have been taken into consideration. This isn't always apparent from the media reports.

The severity of the original charge (if any) and the resultant conviction (again, if any), are indicators of the approach the justice system takes to cases of bad driving that involve 'failing to see'.

Also, we've focused on fatal cases simply because we've relied on media reports and fatal cases tend to be well-reported. It's important to note, however, that not seeing another road user can also lead to life-changing injury, and since 2012, drivers can be charged with 'causing serious injury by dangerous driving'.

When fatal cases do come to court, though, there's a prime opportunity for the justice system to reinforce the message that not looking out properly for other road users is an unequivocally dangerous act.

Unfortunately, the cases identified below suggest that its response is hardly a deterrent. It is, in fact, both ambiguous and inconsistent – apart from a marked scarcity of 'death by **dangerous** driving' prosecutions and convictions, and a marked plethora of 'death by **careless** driving' cases, many of which do not lead to any conviction.

Cycling UK has been in touch with some of the people directly affected by these incidents but, as this report is largely based on press accounts, we haven't been able to contact others. If you have been affected and would like to talk to us, please do not hesitate to call Cycling UK's Campaigns Department on 01483 238301, or email campaigns@cyclingsuk.org.

1. The scale of 'failing to see': contributory factors

When they attend traffic collisions and are trying to decide what happened, British police have just under 80 'contributory factors' (CFs) to choose from. Of the 100,000 or so CFs they allocate on average each year, one in particular keeps cropping up: around 44% of the total are assigned to 'Driver/Rider failed to look properly'.¹

This makes it by far the most common factor recorded, significantly exceeding all the rest – the next down, 'Driver/Rider failed to judge other person's path or speed', comes in at 23%.

Although CFs are assigned by police officers, usually at the scene, and give no insight into any subsequent forensic investigation or the determinations of the prosecution services or the courts, they do help reveal the magnitude of 'failing to see':

On average each year from 2013-2017 (GB), the police allocated 'Driver/Rider failed to look properly' as a CF in:²

- 390 fatal collisions (out of an average total of c.1,650 fatal collisions per year = 24%)
- 6,403 serious collisions (out of an average c.21,000 serious collisions per year = 31%)
- 37,462 slight collisions (out of an average c. 138,000 slight collisions per year = 27%).

Manifestly, not seeing another road user is a major road safety problem.

¹ DfT. Reported Road Casualties Great Britain 2017, Tables RAS 50002.

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

² DfT. Reported Road Casualties Great Britain 2017, Tables RAS 50001 & 10001.

2. 'Careless' or 'dangerous'? The current legal framework

If a collision results in the death of another road user, the driver can either be charged with 'causing death by careless driving' or, more seriously, with 'causing death by dangerous driving'.

The difference between the two charges is supposedly determined by the legal definitions of 'careless' and 'dangerous' driving, and the maximum penalties are substantially different:

Charge	Definition	Maximum penalty
Causing death by CARELESS driving (Road Traffic Act 1988, Section 3ZA, as amended by the Road Safety Act 2006)	The driving "... falls below what would be expected of a competent and careful driver."	Five years in prison
Causing death by DANGEROUS driving (Road Traffic Act 1988, Section 2A, as amended by the Road Traffic Act 1991)	The driving "... falls far below what would be expected of a competent and careful driver, and it would be obvious to a competent and careful driver that driving in that way would be dangerous." "[...] "dangerous" refers to danger either of injury to any person or of serious damage to property;"	Fourteen years in prison

All the cases we highlight below involve either a failure to look, or a failure to see a vulnerable road user either in sufficient time or at all.

Cycling UK's view is that a competent and careful driver should always look whilst driving and should be able to see what's there to be seen. Failure to do so therefore clearly falls *below* the standard to be expected of a careful and competent driver, and therefore passes the legal test for *careless* driving.

But we'd go further and say that failing to look falls *far below* the standard of driving to be expected, presenting an obvious risk of danger, and therefore passes the test for *dangerous* driving.

Yet the cases we refer to demonstrate that a failure to look or a failure to see leads variously to a conviction for dangerous driving, careless driving, no conviction, or no charge at all. How the failure to look or failure to see is treated by the justice system appears to be something of a lottery.

To put charges and convictions for ‘careless’ or ‘dangerous’ driving in the context of road fatalities, the following table compares the number of people killed in collisions with a vehicle on average each year in England and Wales, compared with the number of drivers who are proceeded against/convicted for each offence (rounded figures).³

Fatal casualties and proceedings/convictions for causing death by careless or dangerous driving, estimated average each year 2013-2017 England and Wales					
	Pedestrians	Cyclists	Motorcyclists	Car occupants	All road users
Fatal casualties involving another road user	390	80	240	460	1,200
	Proceedings		Convictions		
Causing death by CARELESS driving	220		190		
Causing death by DANGEROUS driving	190		140		

It seems that around 16% of drivers involved in fatal collisions are convicted of ‘causing death by careless driving’, and another 12% of ‘causing death by dangerous driving’.

It is impossible to tell from the Department for Transport’s (DfT) statistics relating to casualties whether cases involving a vulnerable road user went to court and, if so, what the outcome was – let alone how many involved ‘failing to see’. This is because the data from the DfT and the Ministry of Justice are not directly linked, a shortcoming that Cycling UK has repeatedly argued should be addressed.

Given its prevalence as a contributor factor, however, and the reports from the cases below, it is clear that ‘failing to look properly’ features in a significant proportion of incidents that do end up in court.

³ Estimates for England and Wales only, taking into account collisions between pedestrians and motor vehicles, and between motor vehicles. Crashes involving only one cycle or motor vehicle have been subtracted. Sources: DfT, Reported Road Casualties GB, Tables RAS 40004 & 30034.). <https://www.gov.uk/government/collections/road-accidents-and-safety-statistics>. The criminal justice figures come from the Ministry of Justice Criminal Statistics Quarterly, Overview Tables A6_1 & A6_2. <https://www.gov.uk/government/collections/criminal-justice-statistics>

3. The cases

For our analysis of individual cases, we used press reports because they offer the most accessible insight into what happens where 'failing to see' a vulnerable road user features in some way, and whether the driver in question is considered to be guilty of causing death by 'dangerous' or merely 'careless' driving, or indeed guilty of nothing at all – except perhaps failing to see what was there to be seen.

We have categorised the cases in terms of criminal proceedings:

- No criminal proceedings
- Private prosecution
- Charged, but acquitted
- Charged with 'dangerous' but convicted of 'careless'
- Charged with 'careless' and convicted of 'careless'
- Charged with 'dangerous' and convicted of 'dangerous'

Please note: at the time of writing, the reports we refer to are still online and do not appear to be in dispute, although we must state that this is to the best of our knowledge only and that we are, inevitably, relying on the accuracy of the journalists who wrote them.

No criminal proceedings

VICTIM: BEN WALES (d. 2017)

The collision

Ben Wales was cycling home from work when he slipped in muddy conditions at the Knights Road junction with North Woolwich Road, Newham, London. Moments later, as he sat in the road, he was struck by a tipper truck driven by Jose Rodrigues.

Why did the driver 'fail to see' the victim?

Rodrigues told the coroner that he was on a hands-free phone call at the time. He said he was not distracted. It is not clear if he checked his mirrors or took any other action.

Another driver, who was in front of the truck, skirted the fallen cyclist and slowed to check he was OK. He saw in his mirrors that the truck had driven straight over Mr Wales.

Mr Wales was wearing hi-viz clothing.

What the police/CPS did

No criminal charges appear to have been brought.

Press reports: [Evening Standard](#); [Newham Recorder](#)

Private prosecution

VICTIM: MICHAEL MASON (d. 2014)

The collision

On 25 February 2014, Michael Mason was cycling along London's Regent Street when he was [hit from behind](#) by the Nissan Juke driven by Gail Purcell at around 6.23 pm. He died 19 days later.

Why did the driver 'fail to see' the victim?

We don't know. Michael's bike was fitted with reflectors and working lights, he was cycling in front of her car as she approached from behind on a straight road, and the street was well-lit. In the words of the police, Michael was "there to be seen".

Yet Ms Purcell offered no explanation for her failure to see him before the collision. She also claimed she did not see what witnesses saw, i.e. his body thrown into the air, heavily enough to dent her bonnet.

The police said they found no evidence of any evasive action or emergency braking.

Evidence from at least two witnesses suggests that Ms Purcell was driving at an inappropriate speed for the circumstances (i.e. a crowded shopping street), but not over the limit.

What the police/CPS did

The police investigated but did not pass the case file to the Crown Prosecution Service (CPS) for charging advice, even though this is what they are supposed to do in fatal cases. They also failed to take statements from witnesses who, it transpired, had relevant evidence to offer.

As the police failed to pass on the file, the CPS could do nothing.

What happened in court

In the absence of a public prosecution, Cycling UK's Cycling Defence Fund brought a private prosecution against Ms Purcell in 2017. She was found not guilty.

Online report: [Cycling UK website](#)

Charged but acquitted

VICTIM: DANIEL SQUIRE (d. 2013)

The collision

Whilst cycling on the A258 in Kent, 18-year-old Daniel Squire was hit by a van driven by Philip Sinden.

Why did the driver 'fail to see' the victim?

Forensic phone records showed that the Sinden had sent and received 40 texts in the lead-up to the crash, with only a negligible lapse of time between his last use of the phone and a 999 call (made from another phone).

Sinden's claim that Daniel, an experienced triathlete on a road bike, had ridden off a narrow pavement into his path without looking was not substantiated.

What the CPS did

Sinden was prosecuted for 'death by dangerous driving'.

What happened in court

The jury did not return a guilty verdict to the charge of 'dangerous', nor to an alternative charge of 'careless' put to them by the judge.

Online report: [Cycling UK website](#)

VICTIM: COLIN CROWTHER (d. 2014)

The collision

Cyclist Colin Crowther was hit from behind by a car driven by Sam Burrows at around 2.30pm on the Old London Road, Copdock, Suffolk.

Why did the driver 'fail to see' the victim?

Burrows said he had been blinded by the sun. He squinted, then heard a bang. He claimed he'd slowed down, had his foot on the brake and there was nothing he could have done to avoid the collision. The speed limit was 50mph and it was accepted that he had been driving at 39-47mph.

Mr Crowther was wearing a fluorescent yellow bib.

What the CPS did

Burrows was prosecuted for 'causing death by careless driving'.

What happened in court

The jury returned a not guilty verdict.

Press report: [Ipswich Star](#)

VICTIM: RAYMOND ELSMORE (d. 2012)

The collision

Raymond Elsmore, a 'lollipop man', was helping a pedestrian across a road in Hampshire when he was hit by a car driven by Lauren Paul.

Why did the driver 'fail to see' the victim?

Paul said she was driving straight into the sun, so she slowed down to what she believed was about 25mph (40km/h).

She put the sun visor down and took steps to adjust her driving position but only became aware of Mr Elsmore when he hit her windscreen.

What the CPS did/what happened in court

Paul was prosecuted for 'causing death by careless driving'. After two trials in which the juries failed to reach a verdict, the CPS decided not to pursue the case.

Press report: [BBC News](#)

Charged with 'dangerous', but convicted of 'careless'

VICTIM: JOHN DUREY (d. 2017)

The collision

In May 2017, cyclist John Durey was hit head-on by a car driven in the opposite direction by Ayasha Penfold. The driver had decided, unforced, to overtake a lorry and a car because she thought they were moving slowly. In doing so, she drove into the opposite lane.

Why did the driver 'fail to see' the victim?

This is a matter for speculation only. The weather was good, the road was long, straight and clear, and Mr Durey was riding in the correct lane.

The prosecutor said he would have been visible for at least 45 seconds prior to the crash. When the driver did eventually notice him, she did not take evasive action.

The judge surmised that lack of experience may have contributed.

What the CPS did

The defendant was originally prosecuted for 'dangerous' driving. Once her earlier 'careless' plea had been accepted instead, the CPS decided not to ask for a retrial.

What happened in court

The jury could not agree on a 'dangerous' verdict. The driver was convicted of 'careless' instead.

The judge ruled that her overtaking manoeuvre had not been, in itself, 'careless', but the driver's inexperience seems to have influenced him.

The judge commented: "Roads are sometimes thought by drivers to be built for the exclusive convenience of motor vehicles but most roads are built for cars to share with a variety of other road-users, including cyclists."

Sentence

12-month community order; and an 18-month driving ban.

"I cannot understand how this unnecessary, unforced overtaking manoeuvre can be considered anything other than dangerous. To me as a layman 'careless' is bumping into a post in a supermarket car park."

Oly Durey, John Durey's son.

Press report: [KentOnline](#)

VICTIM: CHRIS CLEMENTS (d. 2018)

The collision

In January 2014, Chris Clements was riding in a wheelchair along the B1052 at a point without a footpath in Cambridgeshire. He was hit from behind by a Peugeot Partner driven by Hayley Sterna.

Why did the driver 'fail to see' the victim?

The driver's windscreen was dirty. She had run out of washer fluid but failed to replenish it despite having good opportunity to do so. She said she had been dazzled by sunlight.

Mr Clements was wearing a hi-viz jacket and had hi-viz markings on his wheelchair.

What the CPS did

Sterna was prosecuted for 'death by dangerous driving'.

What happened in court

The driver pleaded guilty to and was convicted of 'careless'.

Sentence

A 12-months' prison sentence, suspended for two years; a two-year driving ban with an extended retest; and 200 hours of community service.

Press reports: [BBC News](#); [The Hunts Post](#)

VICTIM: JOSEPH WILKINS (d. 2012)

The collision

Joseph Wilkins was cycling on a country road near Abingdon when he was hit from behind by a Ford Focus driven by Paul Brown at 21.00 hrs.

Why did the driver 'fail to see' the victim?

Brown admitted to eating a sandwich between five and 10 seconds before the collision.

What the CPS did

Brown was prosecuted for 'causing death by dangerous driving'.

What happened in court

The defendant was cleared of 'dangerous' and convicted of 'careless'.

Sentence

One-year driving ban; 240 hours of unpaid work

Press report: [BBC News](#)

VICTIM: CHRIS DENNEHY (d. 2014)

The collision

Chris Dennehy was cycling on the A38 in Devon when he was struck from behind by a lorry driven by John Noble.

Why did the driver 'fail to see' the victim?

It seems that the driver was distracted by reaching across his cab for his mobile phone (he said he wanted to play a sermon). He drifted across the carriageway and, according to the experts, probably had only two seconds to react after the cyclist came into view.

Mr Dennehy was wearing a hi-viz jacket.

What the CPS did

Noble was initially prosecuted for 'causing death by dangerous driving'.

What happened in court

The defendant was cleared of 'causing death by dangerous' driving. He admitted to 'causing death by careless driving' and was convicted.

Sentence

A 24-week sentence suspended for two years; 18-month driving ban; 250 hours of unpaid work; and 12-month supervision order.

Press report: [BBC News](#)

VICTIM: STEWART GANDY (d. 2013)

The collision

Cyclist Stewart Gandy was run over on the A530 near Nantwich by an HGV driven by Paul Byrne. Mr Gandy had arrived at a bridge controlled by traffic lights a minute or so earlier than the HGV.

Why did the driver 'fail to see' the victim?

Byrne said he had not seen, felt or heard anything when driving over the bridge. He had, in fact, run over Mr Gandy. Witnesses said they saw him 'examining his vehicle' further along the road, but he claimed he had stopped 'by coincidence' to check out a rattling noise which he believed to be a faulty headlight.

What the CPS did

Byrne was prosecuted for 'causing death by dangerous driving'.

What happened in court

The jury found the defendant not guilty of 'dangerous'. He pleaded guilty to 'careless' and was convicted.

The judge commented to Byrne: "On giving evidence, you mentioned that you didn't see, hear or feel anything. I don't believe that for one moment. I'm not suggesting that you knew you had hit a person but stopping to examine your vehicle a few metres down the road, suggests to me you knew something had happened. The fact remains that you should have seen him."

Sentence

12-month imprisonment; 12-month driving ban.

Press report: [Crewe Chronicle](#)

Charged with 'careless', convicted of 'careless'

VICTIM: KARLA ROMAN (d. 2017)

The collision

Cyclist Karla Roman was killed when a coach, driven by Barry Northcott, turned left into her path in Whitechapel, London.

Why did the driver 'fail to see' the victim?

The prosecutor said there was "no reason" for the driver's failure to see Ms Roman as he pulled into the cycle box. She had been ahead of his coach and within view for some 16 seconds before the crash. It seems he did not see her in his mirrors as he turned because he was not paying attention.

Northcott only became aware he had hit a cyclist when one of his passengers informed him.

What the CPS did

Northcott was prosecuted for 'causing death by careless driving'.

What happened in court

The defendant denied the charge, but the jury convicted him.

Sentence

15-months' prison sentence; banned from driving for five years and 30 weeks.

Press report: [Evening Standard](#)

VICTIM: PAUL MILLER (d. 2015)

The collision

In January 2015, head teacher Paul Miller was cycling home from work on the B3147 in Dorset when he was hit from behind by a car driven by Derek Edward Cheney.

Why did the driver 'fail to see' the victim?

There appears to be no stated explanation.

The police investigation found that there were seven seconds of full visibility of the road ahead, with no oncoming traffic. As such, Cheney should have seen Mr Miller and been able to overtake him safely.

Paul Miller was wearing hi-viz clothing and his bike was lit.

What did police/CPS did

Miller was charged with 'causing death by careless driving'.

What happened in court

The case was not heard in the Crown Court, but in the Magistrates Court, where the defendant was convicted of 'causing death by careless' driving.

Sentence

A six-month curfew; two-year driving ban; a victim surcharge of £145 and court costs. (Tougher sentences would have been available had the Magistrates declined the case and transferred it to the Crown Court).

Press reports: [Dorset Echo](#); [Cycling UK website](#)

VICTIM: STEVEN JONES (d. 2017)

The collision

Steven Jones was cycling on a 40mph road in the New Forest when he was hit from behind by a car driven by teenage motorist Frankie Katciotis.

Why did the driver 'fail to see' the victim?

The police found that Katciotis was exceeding the speed limit, despite low sun affecting his vision.

What happened in court

The driver was convicted of 'death by careless driving' (this seems to be what he was prosecuted for, but it is not stated).

Sentence

A six-months' prison sentence, suspended for two years; a two-year driving ban; 240 hours of unpaid work.

Press report: [Daily Echo](#)

VICTIM: MALCOLM WALKER (d. 2016)

The collision

Malcolm Walker, a pedestrian, was crossing a road after getting off a bus in Shrewsbury when he was hit by the Ford Focus driven by Nicholas Adams.

Why did the driver 'fail to see' the victim?

There is no stated explanation. The judge in the case said it was a "complete mystery". There were no obstacles, and Adams had more than enough time to stop.

What the CPS did

Adams was prosecuted for 'causing death by careless driving'.

What happened in court

Adams admitted and was convicted of the charge.

Sentence

12-month driving ban; 12-month community order, including 100 hours of unpaid work; £300 costs and a victim surcharge.

Press report: [Shropshire Star](#)

VICTIM: ROY BOWEN (d. 2016)

The collision

Roy Bowen, an elderly pedestrian, was crossing the road in Rusthall when he was hit by a van driven by Christopher Arnold.

Why did the driver 'fail to see' the victim?

Witness evidence and the prosecutor suggested Arnold was frustrated at having his way blocked by buses and may have been looking towards them.

What the CPS did

Arnold was prosecuted for 'causing death by careless driving'.

What happened in court

Arnold denied the charge but was convicted.

Sentence

A one-year prison sentence suspended for two years; one-year driving ban; 200 hours unpaid work.

Press report: [KentOnline](#)

VICTIM: ANTHONY ASHCROFT (d. 2015)

The collision

Anthony Ashcroft was cycling along the A510 between Wellingborough and Finedon when he was hit by a Citroen Saxo driven by Angela Willshire.

Why did the driver 'fail to see' the victim?

There is no stated explanation. It seems that Willshire did not know what had happened. A collision investigator estimated that Mr Ashcroft would have been visible to Willshire for at least five seconds before the collision.

Mr Ashcroft was wearing a hi-viz jacket and had lights on his bike.

What the CPS did

Willshire was prosecuted for 'causing death by careless driving'.

What happened in court

Willshire pleaded guilty and was convicted. The court heard that she was also uninsured at the time of the crash as the DVLA had revoked her licence. The defendant said she was unaware of this issue.

Sentence

Five-month prison sentence; two-year driving ban.

Press report: [Northampton Chronicle](#)

Charged with 'dangerous', convicted of 'dangerous

VICTIM: CATHERINE BAILEY (d. 2016)

The collision

Catherine Bailey was walking her dogs near St Minver, Cornwall, when she was struck by a Land Rover driven by Jonathan Kane and thrown into a ditch.

Why did the driver 'fail to see' his victim?

Kane denied that he didn't see Mrs Bailey because he was on his mobile phone checking the progress of a train he wanted to catch to London. He said he simply did not see her.

Mrs Bailey was wearing in a hi-viz jacket.

What the CPS did

According to reports, Kane had previously pleaded guilty to causing death by careless driving, causing death by driving whilst unlicensed or uninsured, and one count of dangerous driving, but the prosecution pursued a 'death by dangerous driving charge'.

What happened in court

Kane was convicted of 'death by dangerous driving'.

Sentence

Two years in prison; five-year driving ban.

Press report: [BBC News](#)

VICTIM: RAY JONES (d. 2016)

The collision

Ray Jones, a motorbike passenger, was hit by a car driven out of a petrol station in Blaenavon by John Morgan. The moment was captured on CCTV.

Why did the driver 'fail to see' the victim?

There is no stated explanation.

What the CPS did

Morgan was prosecuted for 'death by dangerous driving'.

What happened in court

Morgan changed his plea to guilty on the third day of his trial. He was convicted of the charge.

Sentence

Four years in prison; six-year driving ban.

Press report: [WalesOnline](#)

VICTIM: JACK BERRY (d. 2017)

The collision

Jack Berry was cycling on the A48 near Cowbridge, Vale of Glamorgan, when he was hit by taxi driver Craig Gough.

Why did the driver 'fail to see' the victim?

Gough fell asleep at the wheel following a 13-hour shift.

Mr Berry would have been visible for 15 seconds before the crash. He was riding with two other cyclists (who were injured in the crash). All three were wearing reflective clothing as they travelled in single file.

What the CPS did

Gough was prosecuted for 'causing death by dangerous driving'.

What happened in court

Gough admitted and was convicted of the charge.

Sentence

Three years in prison; five-and-a-half-years' driving ban.

Press report: [BBC News](#)

4. Conclusion and recommendations

In several of the above cases, no explanation is offered as to why a driver failed to see the person they hit, even when investigators calculate that there was sufficient time to notice and manoeuvre safely, and/or when a cyclist was wearing hi-viz clothes/and or displaying lights at night.

There is no suggestion in any of the reports that the victim was behaving unpredictably or doing anything wrong.

There are, however, a number of factors that seem to be, at least in the cases we found, associated with 'failing to see' a victim. These are:

- Inappropriate speed
- Blind overtaking
- Lack of experience
- Dirty windscreen
- Mobile phone distractions
- Blinded/dazzled by sun
- Failing to check mirrors
- Vehicle 'blind spot'
- Falling asleep

But the response to and weight given to these factors seems to vary hugely between cases.

In the cases of Mason, Squire, Crowther and Elsmore, the driver's failure to see a cyclist or pedestrian in front of them on a road resulted in no conviction. In two of those cases there was no explanation for the driver's failure to see, and in the other two, being blinded by the sun was the excuse – but in both those cases the driver kept on driving despite being supposedly blinded.

In the cases of Bailey, Jones and Berry, the driver's failure to see resulted in a conviction for dangerous driving, whereas in eleven other cases the failure to look or see was deemed to be merely 'careless'.

In the case of Ray Jones, the driver was convicted of dangerous driving after he collided with the motorcycle she was riding as he exited a petrol station. But a similar failure to see what was in front of them was not, apparently, driving which fell below the standard of driving to be expected of a competent and careful driver in the cases of Mason or Squire.

It's therefore impossible to work out when 'looking but failing to see', or simply failing to look, is thought to be inherently dangerous, merely careless, or a mistake with no criminal culpability.

Cycling UK maintains that 'looking but failing to see' is inherently dangerous, not careless.

It seems from the cases we collected, however, that such acts of bad driving are too often dismissed or regarded as merely 'careless' because they may have been unintentional. But by replacing 'reckless' with 'dangerous' driving, the *Road Traffic Act 1991* removed all trace of *mens rea* ('guilty mind', or criminal intent) from the offence. This means that an act of dangerous driving should be treated as 'dangerous' whether the offender was acting wilfully, aggressively, recklessly or made a simple misjudgement.

It follows that an act of dangerous driving should not be dismissed merely as 'careless' just because it was unintentional. Whilst it is right that differences in intentionality should be reflected in *sentencing*, they should not be taken into account when determining the actual offence for which the driver is being prosecuted – if the law and the legal framework were working as intended, that is.

Unfortunately, these cases show that the distinction between what's deemed careless, dangerous, or just a mistake is completely arbitrary. This is why this area of our traffic laws is in urgent need of review.

The Government promised to carry out such a review in 2014, but we're still waiting. The inconsistency and confusion with the application of these road traffic laws continues, leading to victims and their families feeling let down by the justice system.

Cycling UK's recommendations for improving the legal framework

Cycling UK believes that the legal framework needs to change to eliminate the element of subjectivity and stop driving that causes obvious danger from being dismissed as merely 'careless'.

This could broadly be achieved by either:

- **Retaining the current distinction between two levels of bad driving**, but re-naming the lower tier offence (e.g. 'unsafe' or 'negligent' driving instead of 'careless' driving), and;
- In addition, **revising the definition of 'dangerous' driving in unambiguously objective terms** (i.e. relating to the manner of the driving, not the mindset of the driver).

A possible definition for dangerous driving would be: "Driving that gives rise to a reasonably foreseeable risk of non-trivial injury to any person, or of serious damage to property, where this risk would be reasonably foreseeable by a driver who was driving competently and carefully."

Or

- **Reverting to a two-tier distinction between 'careless' and 'reckless'**, i.e. reintroducing the state of mind (*mens rea*) of the driver (which was ostensibly removed by the 1988 *Road Traffic Act*), but making it clear that the court is entitled to infer the state of mind of the driver from the manner of the driving.

In this case, it would also be necessary to introduce much tougher penalties 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 '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.

To sum up, the lack of a coherent legal framework within which to classify and define irresponsible behaviour and bad driving has direct repercussions for road safety.

It leads to dangerous driving behaviour being trivialised, and leaves vulnerable road users in particular feeling less confident than they deserve to be that the justice system will robustly challenge the kind of irresponsible behaviour that endangers them. This does nothing to make them feel that walking and cycling are safe.

This is why Cycling UK has repeatedly argued for a comprehensive review of the definition, classification, and sentencing options for all bad driving offences currently charged as 'careless' or 'dangerous', and opposes the serial addition of new offences to the existing framework in an area of law that has proved so problematic for many years.

It's not clear, however, whether the Government is failing to see that the legal framework and justice system are letting down victims, or whether they're just choosing not to look.

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we are
cycling
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Cycling UK | Parklands | Railton Road | Guildford | Surrey | GU2 9JX
Find us on Facebook and Twitter | www.cyclinguk.org/cyclesafety

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