

# STRICT LIABILITY AND MOTORISTS – A DISCUSSION PAPER

## 1 Introduction

**1.1** Cycling and walking are comparatively safe. In the course of a normal-length lifetime, a cyclist or pedestrian is most unlikely to be involved in a serious collision with a motor vehicle.

Cycling and walking are far more likely to prolong life, with frequent exercise leading to lasting health.

However, collisions do happen. No driver sets out to maim or kill but that can be the result of driving a motor vehicle. While the UK's road safety record is generally good, child safety is poor; the question has to be asked whether adult cyclist and pedestrian casualties are low because comparatively few are about.

**1.2** Busy, fast roads have exaggerated the perceived danger of a collision. Over the past 40 years, this has led people to over-compensate: they have chosen not to walk or cycle, and they have stopped their children from doing so, too. The result has been poorer general physical and mental health, increasing weight problems and obesity, as well as more motor traffic congestion and pollution.

The idea of the "school run" being a major cause of congestion has meant that children are in the front line of being asked to walk or cycle. Many want to do so, but apart from a few expensive, localised engineering measures and defensive training schemes, very little is being done to offset both the fear of danger, and danger itself.

**1.3** It is also the case that cycling on the road is now considered to be safer than using shared footway cycle facilities – especially when the cyclist is riding to Bikeability<sup>1</sup> standards. The argument<sup>2</sup> is that next-to-road cycle tracks and cycle lanes provide nominal safety where cyclists need it least – on straight sections – but lead to an increase in danger at T-junctions and roundabouts. Such cycle tracks and cycle lanes also lead to inconsistent, jerky journeys, which are not appropriate for most utility riding.

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<sup>1</sup> <http://www.bikeability.org.uk>

<sup>2</sup> <http://www.cyclecraft.co.uk/digest/research.html>

1.4 A package of measures is needed which will include lower speeds and road user education. Part of the mix should be the introduction of strict liability on motorists in collisions with vulnerable road users, bringing Britain into line with other major countries. This will help to encourage everyone, of whatever age, to cycle and walk as part of their everyday lives.

## 2 What is strict liability?

2.1 Strict liability means that a person is responsible for the damage and/or loss caused by their acts regardless of culpability or carefulness.

Note the phrase “**regardless of culpability**”. This is **not about blame**, it is about taking responsibility for choosing to use a motor vehicle, the speed and weight of which, when compared with non-motorised modes, means accidents are more likely (greater speed means less reaction time), and are also more likely to cause injuries, and more severe injuries.

2.2 The law often uses strict liability in situations where there is an likely to be an imbalance in terms of responsibility, and where there is an inherent danger.

Strict liability is already in use in English civil law, including:  
:: workplace health and safety incidents – an employer has a duty of care to their employees so far as is reasonably practicable, and  
:: product liability – where a manufacturer automatically has to address the problem if the product they sell is defective, and those defects lead to injury, loss or damage.

2.3 Lawyers acknowledge that strict liability can discourage reckless behaviour and also lead to a potential defendant taking every possible precaution.

It also helps to simplify the legal process, allowing an injured party to reach a conclusion more quickly.

### **3 What is the current situation?**

**3.1 Criminal law:** The police will investigate all reported accidents that result in injury. If there is evidence of drug or drink-driving, carelessness or recklessness, they will put the facts before the Crown Prosecution Service and the case may go before magistrates or a crown court.

There has been a great debate over satisfaction with court sentences. That debate is not part of this paper, but it should be noted that, despite court cases being covered in local newspapers, the level of punishment has not provided sufficient incentive to drive more slowly and safely on roads where cyclists and pedestrians are likely to be present.

**3.2 Civil law:** In terms of the number of collisions that occur, especially between motorists and cyclists/pedestrians, motorists are required to have at least third party insurance to cover claims for compensation after a collision.

There are a large number of unreported minor injury collisions between pedestrians/cyclists that lead to no claims at all.

Following a reported collision, the driver is assumed to be in the right unless they admit liability. The cyclist/pedestrian has to make a claim against the motorist's insurance company to try to prove they were careless or reckless.

This claim may result in an out-of-court settlement but, if there is a dispute, the case can go to civil court where a judge will hear the arguments from both parties, and decide on liability.

Sometimes cyclists or pedestrians are reluctant to go to court because of the costs involved, or because they are still injured and/or wish to avoid the time and trouble of opposing an insurer and their legal team.

### **4 What change do you want to see?**

**4.1** I want to see strict liability introduced so that the responsibility for proving culpability is that of the driver, and not the cyclist/pedestrian: the motorist would have to make the case to prove that the cyclist/pedestrian was careless or reckless.

## **5 Why now?**

**5.1** Many cyclist/pedestrian groups have always wanted to see strict liability introduced. The urgency has increased because of global warming and general pollution, declining health and fitness, and the increase in UK child casualties. The need to reduce car use and increase the number of cyclists and pedestrians makes it important to reassess the relationship between all highway users.

## **6 Would the UK be out of step with other countries?**

**6.1** No. Other countries in northern Europe introduced strict liability in the 1930s. and France followed suit in the 1990s.

**6.2** An attempt to introduce strict liability into the UK in the early 2000s was defeated by the powerful motor insurance sector. Its lobby groups manufactured stories that:

:: drivers would be automatically blamed in collisions (see 2.1), and

:: individual driver's premiums would increase

However, the insurance sector in the rest of Europe works within the framework of strict liability in road accidents. It is also the rationale of successful businesses that they adapt to new and challenging situations.

## **7 How effective has strict liability been elsewhere?**

**7.1** This is hard to say owing to the length of time since its introduction in most countries, which is too long ago for a scientific assessment of its effectiveness. However, the attitude of European motorists when they encounter cyclists and pedestrians, or when they are in a location likely to be shared with cyclists and pedestrians, is far different to that shown by most motorists in the UK. It can be argued that it is central to the ethos of increased consideration and courtesy to vulnerable road users that exists on the Continent. France could provide a case study, but strict liability was introduced at the same time as improved policing, and road casualties were reduced. It would be hard to say which had most effect.

## 8 Clearing up misconceptions

**8.1 Isn't strict liability unfair on drivers?** No. It is accepted that motorists "assume extra responsibility when they choose to keep and drive cars"<sup>3</sup>. It is a person's choice to use a motor vehicle on any given trip, and it is the weight and speed of that motor vehicle that, generally, leads to the inherent danger and extent of injuries on the road. Strict liability will not lead to drivers being blamed for an accident, but will shift the balance for proving responsibility from the cyclist/pedestrian to the driver.

**8.2 I thought people were innocent until proved guilty.** That is criminal law. Strict liability in this case applies to civil law only and, as stated previously, is regardless of culpability or carelessness. A driver still has the option of raising a defence of "absence of fault".

If a driver is charged with a criminal offence, they will still be innocent until proved guilty; because of the lack of culpability, strict liability is unlikely to have an effect.

**8.3 But cyclists and pedestrians are irresponsible, too.** A small number of each type of road user is irresponsible. Lorry drivers use mobile phones, drivers speed, cyclists go through red lights, and pedestrians walk into the road without looking. However, as stated before, it is the weight and speed of a motor vehicle that leads to the severity of the results of a collision.

**8.4 Surely, though, cyclists should have strict liability against them in case of collisions with pedestrians?** A sense of perspective is needed. Cyclists and pedestrians kill and injure each other in few incidences compared with collisions in which motor vehicles are involved. There is also the argument that motor vehicles use the road by licence, and it is therefore easier to proscribe insurance. Schemes to register cyclists have been tried and, largely, failed in other countries. It was mooted in the UK by Ken Livingstone, mayor of London, in 2006 but this was ruled out owing to the cost and complexity: it would have suffered from similar snags as the former dog licence.

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<sup>3</sup> Case of Idris Francis and Gerard O Halloran, European Court of Human Rights, June 1997  
<http://news.bbc.co.uk/1/hi/uk/6251936.stm>

## **9 What are the possible disadvantages?**

**9.1** Like most areas of the law, strict liability is a complex concept. Many people will be unable or unwilling to grasp the finer points, and this could lead to confusion and the impression that it is unfair on motorists – which has been exploited by opponents in the past.

**9.2** Insurance companies have raised concerns about higher premiums and greater opportunity for fraud: insurance is a business that works on balancing risk with reality. The chance for greater fraud – a pedestrian throwing themselves in the path of a car? – is unlikely.

**9.3** The likely benefits of strict liability far outweigh disbenefits.

## **10 Conclusion**

**10.1** A full and independent study into strict liability is needed now. The benefits, in terms of pollution, health and quality of life (especially for younger people) are immense.

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**This briefing was written to accompany my ORIGINAL PETITION at <http://petitions.pm.gov.uk/roadsafety9>:**

**The briefing was sent separately to the Department for Transport, which has still to reply.**

**A reply from the Petitions website was received, which can be read on the above site – it is clear that whoever wrote the response had not read this briefing.**

**The wording of the petition was:**

Youngsters are being asked to walk or cycle to school to be green and reduce jams.

Walking and cycling are generally safe but parents will worry – if they

are brave enough to let youngsters be independent.

The perception of safety has to be improved.

Lower speeds and extra road education will play a part but this petition is calling for a change to strict liability laws on drivers' insurance policies.

At present, in a car – bike/pedestrian collision, the cyclist or pedestrian (probably the worst injured) has to prove the motorist was reckless.

We want that burden of proof switched so the motorist – choosing to use a ton of metal at speed – has to prove the cyclist or pedestrian was at fault.

This only applies to insurance claims. In criminal law, drivers in collisions remain innocent until proven guilty.

This rule exists in many EU countries with more walking and cycling, and a better child road safety record, Let's raise driving standards and create better road user attitudes.