

All-Party Parliamentary Cycling Group
Cycling and the Justice System

Thompsons Solicitors' response
January 2017

Thompsons is a UK-wide law firm specialising in personal injury and employment law. At any one time we will, as a firm, be handling over 35,000 personal injury cases.

Cycling safety

In 2014, more than 21,000 cyclists were injured in road traffic accidents, of which 3,514 resulted in a serious injury or a fatality. Thompsons welcomes the opportunity to respond to the APPG Enquiry, both as a law firm acting for hundreds of injured cyclists every year – some examples of which we set out at the bottom of this submission – and as an organisation with keen cyclists at every level of our staff.

We recognise that the UK in general, and its cities in particular, can be very crowded and space is at a premium, however what is very clear from those for whom we act and as cyclists ourselves is that the safety of city cyclists is greatly enhanced by segregated cycle lanes.

The original Cycle Super Highways in London, with their lick of blue paint, were of little use against vehicles that deliberately or carelessly chose to occupy them to drive or to park. Figures show that the first six months of the segregated 'Cycle Superhighway' at Vauxhall saw an increase of 73% in cycling along the stretch of road and we welcome the increasing segregation of cyclists in cities.

We support schemes such as 20mph zones as studies both in Islington and Brighton have shown that, whilst reductions in speed have been overall by as little as 1mph (which suggests more could be done to enforce the policy), they have led to a reduction in incidents which is to be welcomed.

Outside cities the greatest risks are from speeding and careless drivers and we would welcome legislative change – such as presumed negligence – which would recognise the huge difference between a two wheeled vehicle with no engine and every other vehicle on the road.

There are practical low-cost measures that would potentially improve cyclists safety and awareness between road users dramatically. We have consistently as a firm called for training for both cyclists and HGV drivers that involves them seeing the world from the other's perspective. Sitting on a bicycle riding alongside a lorry can be a real 'eye opener' for the professional driver as can sitting in the cab of a lorry be an 'eye opener' for a cyclist.

Small Claims Limit

As a firm acting solely for injured people we are particularly concerned, and believe that the APPG on cycling should be too, with the proposal on which the government closed a consultation on 6 January, to increase the small claims limit in personal injury claims to £5,000, a 500% increase from the current limit of £1,000.

We believe that an increase in the small claims limit as proposed would legally entrench the physical distinction between those who are injured and those who cause the injury. The fact is that it is rare in the extreme that cyclists cause injury and yet the government is proposing that the innocent cyclist injured through no fault of their own should be left without free or affordable legal help when taking on an insurer and their lawyers.

The government's proposals would affect 1 million injured people every year, 95% of all personal injury claimants.

While the government says its proposals are designed to tackle a perceived problem with so-called 'fraud' in 'whiplash' claims, this is a cynically deployed fig leaf. There is no suggestion anywhere in the government's consultation, or in any statements made by insurers (who have been very vocal in support of the increase), that cyclists are part of any fraudulent claiming.

Cyclists may have nothing to do with whiplash claims and yet they will be caught up – as will all injured people – in these changes. This cannot be justified on any technical, legal, moral or economic grounds. It is not supported by evidence and not backed by senior members of the judiciary.

The changes will effectively take professional claimant lawyers out of the process in personal injury claims and further shift the balance of power away from the injured victim and towards the insurer-backed defendant. They represent the end of the well-established 'polluter pays' principle of English law.

Cyclists who have sustained entirely genuine injuries face being put off from bringing a claim or, should they bring one on their own in their own time, all of the evidence and all Thompson's experience suggests they will be under-compensated by the insurers they deal with direct.

Lord Justice Jackson in his 2009 Review of Civil Litigation Costs recommended against any increase in the small claims limit until inflation justifies an increase to £1,500. Inflation does not yet justify that change. Lord Justice Jackson and others have referred to injury victims being in an 'asymmetric relationship' with their opponents. These proposals will pit unrepresented cyclists against multinational insurers who will retain their own lawyers.

The Transport Select Committee recommended against any increase in the small claims limit in 2013. They considered access to justice was likely to be impaired and insurers would use legal professionals to contest claims. Nothing has changed since then, other than in favour of insurers through the introduction of the Portal and fixed costs.

The government says that the majority of road injury victims will not be affected by the changes they propose, as the vehicle they are travelling in normally has legal expense insurance. That is not the case for injured cyclists.

Aside from the very real threat to cyclists' access to justice that the proposals represent, the consultation paper and supporting impact assessment produced by the government disclose that these proposals would mean an effective transfer of wealth from government and state institutions, already under budgetary strain, to highly profitable insurers. Using the government's own figures (which we can show are a gross underestimate) these proposals would see the NHS lose at least £9m per year, and on the same figures the Treasury would lose at least £135m per year. In return, the impact assessment concedes that insurers will be gifted an additional £200m per year.

Recent case examples

Holt

In 2013, we represented the family of Brian Holt who was killed by a lorry when cycling home in Mile End, London. While the driver was frustratingly found not guilty of death by dangerous driving, the case shows the danger of cyclists and HGVs travelling in close proximity. Around 20% of cyclist fatalities in London involve an HGV.

Keegan

Our client, Antony Keegan, a 56-year-old security guard, was cycling home from work on Salvage Lane in Edgware when a car turned right into a driveway, cutting across his path.

Antony had no time to avoid the car and crashed into the side of it. The impact threw him onto its roof. He was taken to hospital and found to have a soft tissue injury to his chest and a laceration on his chin, which needed 80 stitches. His bicycle was irreparably damaged.

Antony had two weeks off work after the accident but returned before his injuries had healed because he couldn't afford further time off. He turned to Thompsons, and our lawyers secured more than £4,000 for him in compensation.

Grantley

Mr Grantley was knocked off his bike when he was hit side on by a van driver pulling out of a junction. Mr Grantley suffered bruising and abrasions, and broke his elbow which required surgery to repair. It took almost two years for Grantley's elbow to fully recover and he can no longer cycle as much as he would like.

Powell

Dr Glyn Powell was seriously injured in a road traffic accident while cycling home from work. He was knocked off his bike by a road sweeper and suffered a head injury and stroke at the site of the incident. He was unable to return to work following the accident. Thompsons Solicitors secured £200,000 in compensation for Dr Powell.