

**Personal details**

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***Where is your organisation based?***

Other: Across England and Wales.

***Are you a:***

Cyclist

Pedestrian

Motorist

***Are you responding:***

On behalf of an organisation.

***What type of organisation are you responding for?***

Other: Law firm.

**The need for change in the law**

***Our consultation proposes that there should be an offence of causing death by dangerous cycling. Do you agree with this proposal?***

Yes, if it is part of an overall review of road traffic offences.

***Do you think that there should be an offence of causing death by careless or inconsiderate cycling?***

Yes, but only determined in the context of an overall review of road traffic offences.

***The consultation also proposes that there should be an offence of causing serious injury by dangerous cycling. Do you agree with this proposal?***

Yes, if the proposal is advanced as part of an overall review of road traffic offences.

***The Ministry of Justice consulted on bringing forward a new offence of causing serious injury by careless driving. This consultation proposes that there should be an offence of causing serious injury by careless or inconsiderate cycling. Do you agree with this proposal?***

Yes, but only after an overall review of road traffic offences and having taken into account the findings of that wide-ranging review.

Thompsons acts for thousands of people injured on the UK's roads every year, including cyclists. It is clear from the most recent statistics<sup>1</sup> that the vast majority of those injured on the roads are either in a motor vehicle or hit by a motor vehicle and, while any death or serious injury caused by a cyclist is one too many, cyclists are responsible for a small percentage of road traffic casualties.

In 2017, 18,855 pedestrians were hit by motor cars, with 318 being killed and 4,353 being seriously injured. Meanwhile, in 2017 there were 530 pedestrians hit by pedal cyclists, resulting in three deaths and 122 individuals with serious injuries. 14,327 pedal cyclists were the casualty of accidents with cars, of which 2,650 were seriously injured and 48 killed. There were 141 cases of cyclist-on-cyclist injuries, resulting in no deaths and 47 serious injuries.

While road accident casualties have trended downwards over the last two decades, accidents, injuries and deaths are still far too common. Common sense suggests that there are significant changes needed to road traffic laws. The current laws are out of date and are failing to provide reassurance to all road users. Meanwhile, the ability of the police to monitor and respond to potential breaches in the law due to cut-backs and 'efficiency savings' inevitably means that there will be fewer offences identified, and therefore less attention paid by road users to the laws that do exist. Figures recently provided by 30 police forces following Freedom of Information requests<sup>2</sup> show that the number of dedicated traffic police has reduced by 30% over the last decade.

Regulating and improving the behaviour of all road users is a complex challenge which requires a suitably wide-ranging and sophisticated, evidence-based assessment of policy needs and (legislative and non-legislative) solutions. The answer will not be found by only looking at the legal framework around cyclists in isolation and the ways to criminalize unwanted behaviour.

Any sensible debate must involve the full range of issues and pressures, including the behaviour of all road users vis-à-vis cyclists and, for example, the ability of authorities to require and enforce design and technological safety enhancements to Heavy Goods Vehicles (HGVs) and proper training of HGV drivers.

As the above statistics show, the number of deaths and serious injuries caused by cyclists is low and the tone of the public debate around cyclists' behaviour on the roads risks creating a perception that the problem is far greater than the evidence shows it to be.

While this does not mean the government and other agencies should not address unwanted, and potentially dangerous, behaviour by cyclists, it is important that the discussion should not degenerate into being a political football and that, at all times, it should focus on the full context of road traffic behaviour and regulations and be led by evidence.

***If there were a new offence of dangerous or careless cycling, do you think the sentences should match the sentences for dangerous or careless driving?***

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<sup>1</sup> Statistics reported in House of Commons Library Debate Pack: Road Safety (Number CDP 2018/0240, 1 November 2018): <http://researchbriefings.files.parliament.uk/documents/CDP-2018-0240/CDP-2018-0240.pdf>

<sup>2</sup> <http://roadsafetygb.org.uk/news/n-a-5920/>

Thompsons Solicitors believes that there should be consistency in the sentences for dangerous or careless driving and cycling. To differentiate between the two would lead to there being potential legal challenge.

While parameters should be consistent across motor vehicle drivers and cyclists, any legal framework should, ultimately, enable the courts to apply its discretion on the penalties to be imposed based on the circumstances of each case. There are a range of sentencing options available to the courts, including fines, bans, and custodial sentences - and regardless of the mode of transport, it is appropriate that only the courts can decide how they can be applied.

***The report from the independent expert concluded that there is a gap in the law regarding dangerous or careless cycling. Do you feel that existing laws adequately cover circumstances where a person's cycling causes harm or injury to others?***

No, for the reasons stated above. However, the government's approach, to create new cycling offences under the existing definitions of 'careless' and 'dangerous' driving, risks creating poor outcomes. Those definitions are already opaque and, in allowing a wide degree of subjectivity, are inconsistently interpreted and applied. Simply replicating the same set of definitions and applying them to cycling, risks perpetuating - and worse, extending - an already flawed approach.

***Do you have any comments on any laws not covered in this consultation which could apply when trying to prosecute for this cycling behaviour?***

We agree with cycling groups who identify a clear need for consideration to be made to areas where injustices exist but are not effectively addressed by the current legal framework.

These include the phenomenon of 'car-dooring', where the only penalty available is a fine, to a maximum of just £1,000. We agree with those who argue that this is neither a sufficient deterrent to influence the behaviour of drivers, nor, where serious accidents or fatalities occur, an appropriate recognition of the severity of the consequences to the victim. Other examples of where the current system is failing include the penalties that can be applied to hit and run drivers who flee the scene of a collision, and the loophole which allows drivers to evade bans on the basis of 'exceptional hardship'.

Additionally, we encourage the government to closely consider the ability of the police to monitor and enforce safe behaviour by all road users when no crime has been committed but where behaviour is unsafe or irresponsible - or has the potential to become 'criminal'.

We are aware of the threat posed to cyclists by HGVs even when they are being operated responsibly. However, there are some HGV firms who are persistent offenders - in terms of their drivers' behaviour and the extent to which their vehicles comply with safety regulations - and who seek to avoid repeated prosecution and more severe sentencing through the use of 'phoenix' companies trading under different names.

We also support the application of Presumed Liability for road accidents in England and Wales, as well as to Scotland, and set out more detail on this below.

***Do you have any other comments that you wish to make in relation to how existing laws apply in Scotland?***

We all have responsibility for our safety and the safety of others on the road. Respect of all road users for one another is vital yet our current fault based system requires the cyclist seeking compensation after an accident to prove someone else was to blame and as such is weighted against the injured. We support the Scottish campaign for the introduction of Presumed Liability in Scotland but believe it should be introduced UK-wide. The change would bring the UK into line with the vast majority of European nations who for decades have had empathetic civil road traffic liability legislation for their vulnerable road users.

Presumed Liability would not entitle dangerous or careless cyclists to automatically receive compensation and thus encourage poor road behaviour. Nor would it prevent the government introducing legislation to criminalise reckless cycling but it would go some way to addressing the current imbalance between the most vulnerable and those that statistically are most likely to harm them.

Presumed Liability is in our view a progressive response of a mature, socially conscious nation seeking to encourage greater cycling density whilst also addressing the unacceptable level of casualties amongst cyclists. The UK and Scottish Governments suggest there should be ambitious increases in cycling, yet there is no evidence of any country achieving the levels of growth sought without a comprehensive package of measures which includes Presumed Liability Legislation.

There will be those who would seek to portray the introduction of Presumed Liability as a major step biased in favour of the cyclist yet all it seeks to do is bring us into step with our European neighbours. Presumed Liability is a natural component part of the overall review of road safety legislation that we suggest is needed - a considered package of reforms rather than a piecemeal reaction to specific events.

**Road and public place**

***This consultation proposes that new offences should apply to public places as well as roads. Do you agree with this proposal?***

Yes.

***The current offences of dangerous or careless cycling apply to a road. This consultation proposes that it should also extend to a public place. Do you agree with this proposal?***

Yes.

***Are there any other comments that you wish to make about where the laws should apply?***

No further comments.

**Penalty points and disqualification**

***Drivers may be banned from driving for committing a current cycling offence. Minimum driving disqualification periods currently apply under the Road Traffic Offenders Act 1988. For drivers this is currently 2 years for causing death or serious injury, 1 year for causing death by careless driving. Do you think this should also apply to any of the new offences proposed in this consultation?***

Thompsons Solicitors believes that the offences and punishments should be consistent with those of road traffic offences.

While drivers of a vehicle require a licence, cyclists do not. Therefore, we believe that the monitoring and enforcement of a cycling 'disqualification' would present serious difficulties for the police.

***If not please explain why? If so, do you have any views on how long the minimum disqualification period should be?***

N/A.

#### **Dangerous and careless cycling**

***There is currently an offence of dangerous cycling (with a fine of up to £2,500) and for careless cycling (with a fine of up to £1,000). This consultation proposes that the penalties for these offences should remain unchanged. Do you agree with the proposal?***

Yes.

***If not, please explain why. Are there any other comments you wish to make on the level of penalty?***

No.

#### **Drink and drug driving and cycling**

***This consultation proposes that there should not be a new offence of causing death by careless cycling when under the influence of drink or drugs. Do you agree with the proposal?***

Yes.

***The current fine for riding a cycle when unfit to ride through drink or drugs is £1,000. Do you think we should consider increasing the fine?***

Fines should be consistent across cyclists and motorists and based on the determination of the courts.

***Do you think we should consider making it an offence to attempt to cycle (as well as actually cycling) when unfit to do so through drink or drugs?***

No, in particular due to the challenge of enforcing such an offence. How could the government define, in a way that is practical for the police, 'attempting to cycle'? While it can be quite easily assessed in the circumstances of a person sitting in the driving seat of a motor car with the key in the ignition and the engine on, there is no comparable circumstance for cyclists where a police officer could make a realistic assessment that would stand up to scrutiny through a legal process.

***Are there any further comments you wish to make?***

No.