

**Department for Transport**

**Cycling and Walking Investment Strategy: Safety Review**



**A response by the Association of Personal Injury Lawyers**

**May 2018**

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a history of over 25 years of working to help injured people gain access to justice they need and deserve. We have over 3,500 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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## **Introduction**

APIL welcomes the opportunity to respond to the Department for Transport's call for evidence on the cycling and walking investment strategy: safety review. We believe that the best way to improve the number and safety of cyclists would be greater investment in the infrastructure of roads. We have considered proposals such as the introduction of a strict liability principle in cases involving cyclists, or compulsory insurance for cyclists, but conclude that these would be unworkable. While we believe that it is sensible for those cycling on the road to wear a helmet, we do not believe that helmet use for adults should be compulsory, as this is likely to deter would-be cyclists from taking up the activity, and there are certain risks that a helmet cannot protect against. However, we would encourage the government to introduce compulsory wearing of helmets for children under 12.

## **Infrastructure**

In order to improve the safety of the roads for cyclists, the main focus should be on improving the fabric of the road itself, and there should be greater investment in this. The condition of many roads is unsatisfactory at present, creating hazards for cyclists. We note the coroner's comments in the recent inquest into the death of Roger Hamer. Mr Hamer died as a result of injuries he sustained from falling off his bicycle; with the jury at the inquest finding that the cause of the accident was probably a pothole. In this case, the coroner criticized the Department for Transport's *Well Managed Highway Infrastructure: Code of Practice*, which was introduced in October 2016. Under this code, councils do not have to automatically repair holes in the road, with any pothole measuring less than 40 mm not requiring investigation by the local authority. The coroner stated that he believed that it would lead to future deaths, in particular to cyclists. As this case demonstrates, injuries to cyclists from potholes can be very severe and even fatal, and their presence also puts cyclists in danger of weaving into other traffic in order to try to avoid them. The general condition of the roads should be of greater priority than increasing the number of cycle paths, and if the number and safety of cyclists is to improve, the key is greater investment and funding in the fabric and state of roads.

In relation to cycle paths, these must be well designed, and not simply a tokenistic gesture. Often, cycle paths are retrofitted on to roads that are unsuitable and too narrow. Poorly installed cycle lanes can be more dangerous than roads where there are no cycle lanes at all, as they may encourage drivers to pass the cyclist without considering whether they are giving them enough room.

There are also several cycle city ambition cities across England, which, following a bidding process, have received grants from the Department for Transport, to improve their roads for cyclists. Research should be carried out to ensure that the initiative is achieving its aims, and if it is shown to be a success, the initiative should be rolled out more widely. As above, the key to improving cycle safety is improving road infrastructure, and there must be funding available to do this.

## **The Law and Rules of the Road**

### *Strict liability*

In order to achieve the Department for Transport's aims of encouraging more and safer cycling, there must be a culture shift, with cyclists accepted as respected users of the road. How to achieve this culture shift is a difficult question to answer. In other European countries, which have a more cycle-friendly road culture, there is a rebuttable presumption that in accidents involving cyclists and motor vehicles, the driver of the motor vehicle is at fault. We do not, however, believe that it would be beneficial to change the law in the UK at present. The civil justice system works well to ensure that drivers are held accountable for causing accidents – if they have breached their duty of care to another road user, then they are liable for injury and loss which arises from that. Introducing a rebuttable presumption may also lead to increased animosity against cyclists from other road users, with the perception being that cyclists could behave badly but still not be at fault.

### *Compulsory insurance*

It is sensible for those who often cycle – particularly at busy times of day where there is a risk that they may be involved in an accident - to take out insurance, and all city rental bike schemes should offer insurance along with the bikes they rent out (as is presently the case with the “Boris Bikes” in London). Having insurance will mean that if there is an accident and someone is injured, compensation will be available to the injured person to put them back as closely as possible to the situation they would have been had the injury not been suffered. To introduce a requirement for compulsory insurance for cyclists would, however, be simply unworkable. Not only would a requirement for compulsory insurance for all cyclists act as a barrier to getting more people involved in the activity – people who want to casually cycle on a weekend will be deterred if they know that they must have an insurance policy in place before doing so - it would also be fraught with enforcement issues. Unless there are the resources to pull over every cyclist on the road, which local authorities and police forces simply do not have, it would be impossible to check that all cyclists had insurance.

#### *Civil and criminal law relating to accidents involving cyclists*

Overall, the civil law in this area is working well. There should be consideration of the criminal law in this area. Juries find it difficult to convict an otherwise law abiding motorist of offences in relation to cycling which were caused by a momentary lapse of judgment. There is a problem, therefore, with the criminal law not being properly enforced.

#### **Training**

There are many free Bikeability training schemes available to the public, which are funded by local authorities. There should be an effort to raise public awareness of these schemes. Cycle safety should also be a compulsory part of the school curriculum.

Awareness of how to act around cyclists on the road should also be included in all vehicle driving tests. We suggest that there should also be a requirement that everyone who has a driving license should be required to retake their test every 10 years, and that this should include the new section on how to act/behave around cyclists.

We are also supportive of the West Midlands Police “Operation Close Pass”, whereby a police officer cycles a busy commuter route and if a vehicle passes too close, they are stopped and given the choice of a 10 minute educational talk or prosecution. The initiative has been hailed a success, with West Midlands Police reporting a 20 per cent reduction in the number of cyclists killed or injured on the county’s roads<sup>1</sup>. This should be rolled out more widely.

Additionally, 6.3 of the consultation highlights the National Driver Offenders Rehabilitation Scheme, which offers those who have committed a relevant traffic offence to attend a course aimed at re-education. As part of this course, there should be a specific section on awareness around cyclists, particularly if the offence has involved a collision with a cyclist.

#### **Vehicles and equipment**

##### *Cycling helmets*

We believe that people should follow the Highway Code and wear a helmet<sup>2</sup>, but it should not be compulsory to do so, except in relation to children under 12 (as they are particularly vulnerable road users). While research has found that cycle helmets can prevent serious injury and death, there are certain risks that helmets cannot guard against. Requiring people to wear helmets will also discourage people from cycling. The real issue is, as stated above, needing to create a safe environment for cyclists, and investing in better road infrastructure. Compulsory helmet use would simply be an ineffective sticking plaster which would not tackle the route of the problem.

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<sup>1</sup> <http://www.cyclingweekly.com/news/latest-news/operation-close-pass-hailed-success-west-midlands-police-see-reduction-cyclist-casualties-352625>

<sup>2</sup> Rule 59 of the Highway Code states: “You should wear a cycle helmet which conforms to current regulations, is the correct size and securely fastened”