



Presumed liability—for fairer and faster justice

June 2013 update

Presumed liability would deliver fairer and faster justice for injured vulnerable road users. The increasing numbers of cyclists and pedestrians need the legal guarantees offered by a system of presumed liability. This would mean that in a collision, any pedestrian or cyclist casualty would be assumed to qualify for civil compensation. For children and older persons, and people with disabilities, they would be compensated regardless of their actions. For older teenagers and adults, compensation could be reduced if the victim had contributed to the collision. But this would have to be proved, unlike the current situation which requires fault on the part of the driver to be proven.

Given the victim is also often the main, if not the only, witness, and is unlikely to have insurance coverage, our current situation is biased against those walking and cycling. RoadPeace has argued that although we may share the road, we do not share the risk. In a collision with a four wheel motor vehicle, the cyclist/pedestrian is some 45-50 times more likely to be seriously injured or killed than a motor vehicle occupant (DfT (2011), Road Casualties Great Britain 2010). Thus cyclists and pedestrians are already paying the price in terms of pain and suffering. RoadPeace does not believe that presumed liability will deliver perfect justice, just a better balance than what we currently have.

In honour of Marie Vesco

This briefing is dedicated to the memory of Marie Vesco, a 19 year old French cyclist who was killed on 4 June 2009. On her way to an anti-arms protest, she was hit by one car exiting an A road and killed by a second car unable to stop before running over her. Neither driver was charged with causing her death or even Driving without Due Care and Attention. The police explained that the Highway Code does not state that drivers have to reduce their speeds around cyclists (it does say that the speed limit may not be appropriate when cyclists are around but this is not the same).

Five years on, Marie's family are still in shock at the lack of duty of care expected of drivers to cyclists on Britain's roads. They described her death as being treated as if she was no more than a cat run over, "mere road-kill". They are joining calls for liability reform to make the justice system fairer and the roads safer for those walking and cycling.



Who would benefit?

Whilst the calls for liability reform come loudest from cyclists (thank you!), it is important to remember that more pedestrians than cyclists are injured on our roads. In 2011, 26,198 pedestrian casualties were reported, including 5907 killed and seriously injured. In the same year, 19,125 cyclist casualties were reported, with 3192 killed and seriously injured.

The real beneficiaries would be children, the elderly and the disabled, those to whom society owes the greatest protection. These groups are much more likely to be walking than cycling. Amongst those over the age of 70, for every one injured whilst cycling, there were almost seven injured walking. For every child cyclist casualty reported, there were almost three children reported injured whilst walking. There is good reason why the European Child Safety Alliance identified Strict Liability laws as a key indicator of how safety conscious countries were towards children.

Why is it needed now more than ever?

Police resources have been cut. Roads policing have suffered disproportionately and this has affected the extent of investigation possible. The police are not even required to keep injured victims informed of the investigation findings, under the MOJ's Code of Practice for Victims of Crime. At a time of reduced traffic law enforcement, it is all the more important for drivers to appreciate that they have a greater duty of care towards pedestrians and cyclists.

Nor can personal injury solicitors fill the gap as their fees have been slashed. The vast majority of civil claims for collisions qualify for the RTA Portal as they are under £10k (soon to be extended to £25k). The fee for a solicitor's handling a claim under the RTA Portal has been cut from £1200 to £500. The concern to tackle staged crashes and fake whiplash claims has hurt innocent pedestrians and cyclists.

Worse may come if the limit for small claims is increased from £1k to £5k.; legal fees are not recoverable and this will be a further blow to innocent victims seeking compensation.

At a time when active travel is being promoted, RoadPeace has argued that government campaigns to get more people cycling and walking will not succeed until our justice system offers greater protection to those faced with greater risks from adopting active and benign travel modes.

Latest developments

1. All Party Parliamentary Group (APPG) on Cycling's recommends presumed liability

The inquiry by the APPG has now issued both its [summary and full report](#). s3.9 of the full report calls for: "[t]he rules on civil compensation should be changed to create a presumption that injured pedestrians and cyclists are entitled to full compensation, unless it is clear that they were solely and culpably at fault." We are very pleased to see the APPG take this step forward in the right direction, as we had highlighted the need for liability reform in our [response](#) to this inquiry [link](#).

2. Cyclist sues to introduce presumed liability

As reported on [Road.cc](#) a cyclist who was 'doored' in Dalston, London; has filed a civil claim (for personal injury on the basis of a presumption in his favour. He is hoping that his claim will result in a reversal of the burden of proof, as RoadPeace has long called for, with the assumption that the weaker party is unlikely to have caused the collision.

3. Cycle Law Scotland (CLS) Strict Liability campaign

CLS became the latest organisation to [campaign](#) for liability reform and want to introduce a private member's bill into the Scottish Parliament. RoadPeace provided CLS with background information from our 2008 briefing. Their campaign was discussed on the 26 April 2013 'You and Yours' programme on 26 April 2013. You can listen to the discussion [here](#) or even better, [sign their petition](#).

4. European survey

RoadPeace, in conjunction with the European Federation of Road Traffic Victims (FEVR), conducted a survey of FEVR members in order to better understand the European experience of presumed liability laws. We received a response from thirteen jurisdictions, the results of which can be found on our [website](#). This was undertaken to commemorate the Second UN Road Safety Week, which was dedicated to pedestrians.

5. Transport minister rules out introducing 'strict liability' laws

Norman Baker MP, the Parliamentary Under-Secretary for Transport whose responsibilities include sustainable transport (but not road safety), recently ruled out introducing presumed liability laws. The minister did so in a letter to the Greater London Assembly following its request that the Department for Transport consider implementing such laws in its 2012 report on cycling. This was reported in the *Local Transport Times* (19 April – 02 May 2013).

Mr Baker confusingly suggested that presumed liability laws would remove the incentive currently in place for drivers to act responsibly (given that such a change would have no impact upon the criminal law this is highly unlikely). The minister also suggested that such laws would create an anomaly, which was until recent changes in employment law untrue (prior to commencement of the Enterprise and Regulatory Reform Act 2013), and remains untrue for the law relating to defective products.

6. GLA Cycling and the Law seminar

At a May seminar organised by Jenny Jones, Greater London Assembly Green Party Member, strict liability was the voted the most desired initiative with the assumption that injured cyclists deserve compensation unless it can be proved otherwise, or the Dutch scheme where at least 50% of responsibility lies with drivers.

RoadPeace and liability reform

RoadPeace has been campaigning for liability reform for many years. It was a key call in our 1997 election manifesto and we contributed to the research done by the Environmental Law Foundation that year. Over the years we have referred to strict liability and then stricter liability. We have agreed with British Cycling, CtC and London Cycling Campaign to refer to presumed liability. For more information on why we believe that presumed liability will facilitate fairer and faster justice for vulnerable road user casualties, see our website and earlier briefings.