



Strict liability – a civilised compensation system

Discussion paper for RoadPeace April 2008 conference

“In the present state of motor traffic, I am persuaded that any civilised system of law should require, as a matter of principle, that the person who uses this dangerous instrument on the roads – dealing death and destruction all round – should be liable to make compensation to anyone who is killed or injured in consequence of the use of it. There should be liability without proof of fault. To require an injured person to prove fault results in the gravest injustice to many innocent persons who have not the wherewithal to prove it.”

Lord Denning (1982)

What is strict liability?

In road traffic personal injury cases in the UK, the burden of proof is on the victim to prove the other party was negligent. The injured party in a crash between a motor vehicle and a pedestrian or cyclist is most likely to be the vulnerable road user. Under strict liability, the burden of proof is reversed. Vulnerable victims, not drivers, are the ones assumed innocent with regard to causing their injuries.

Strict liability already applies to passengers, and many countries in Europe also extend it to vulnerable road victims, e.g. pedestrians and cyclists. Strict liability only applies to civil compensation and does not affect criminal prosecution.

RoadPeace is calling for the introduction of strict liability in the UK whereby motorists would be responsible for compensation for injuries to cyclists and pedestrians, unless it was proven that the victim caused the collision. In the case of children and the elderly, or those with physical or mental impairments, motorists would be liable irrespective of the victim's actions.

Background

Since Lord Denning called for a strict liability system, over 30,000 pedestrians and 5,000 cyclists have died on the UK's roads. During this time, motor vehicles have increased by 69% from 20 million to over 33 million.

Nine years ago, the Environmental Law Foundation published the report *Options for civilising traffic* in which it promoted strict liability. RoadPeace has long argued that a civilised society protects its vulnerable and that this should apply particularly on the roads where the vulnerable are at greatest risk. In 2002, RoadPeace produced a briefing sheet advocating Strict Liability.

A strict liability amendment was proposed for inclusion in the UK Road Safety Bill 2005 by the Safer Streets Coalition, an umbrella association of some 30 organisations representing road victims, road safety, sustainable transport, environment, health, children, women, road engineers, etc. RoadPeace also recommended strict liability to PACTS in their consultation for their *Beyond 2010* report on road safety.

This discussion paper highlights the key benefits of a strict liability motor insurance compensation system and how it operates in other European countries.

Benefits of strict liability

A strict liability system is believed to be:

- Fairer
- Safer
- Healthier
- Greener



Strict liability is fairer

In virtually every collision between a motor vehicle and a vulnerable road user, it will be the pedestrian or cyclist who will be injured and suffer accordingly. It is not fair to expect pedestrians and cyclists to provide evidence when many will not be able to testify due to the severity of their injuries.

In 2003, in *Eagle v. Chambers*, the Court of Appeal held a pedestrian should not be more than 50% liable, and noted that: *"It should be rare for a pedestrian to be found more responsible than the driver for injuries arising from a road traffic accident unless the pedestrian had suddenly moved into the path of the oncoming vehicle."*

Motor vehicle owners can influence the risk posed to vulnerable road users by choosing a vehicle type with a higher or lower pedestrian safety rating. Vulnerable road users do not have the choice of which vehicle type hits them. Owners can also choose ABS systems which do not leave skidmarks and make speed estimation very difficult in the case of a collision.

No witness no justice is the name of a criminal justice programme aimed at improving the involvement of witnesses. It is also a key reason why strict liability is needed. In many collisions involving motor vehicles and vulnerable road users, there will be no witnesses. This is especially true of collisions occurring on residential streets, the streets cyclists and pedestrians use to a large extent.

The Department for Transport estimates that few police resources are allocated to collision investigation, especially with injury crashes. Estimated police investigation related costs in 2005 were £1660 for a fatal crash, £230 for a serious crash, and £50 for a slight injury crash (DfT, 2007).

In a worst case scenario with the present fault based system, an innocent victim will receive no compensation from a culpable driver and the victim's family will be burdened with rehabilitation costs and/or a loss of earnings. Under the strict liability system, the cost is internalised and shared between the policy holders. No innocent driver will ever face financial devastation under a strict liability system.

The insurance industry has campaigned for a fairer and faster compensation system for the injured. This has not yet included strict liability, despite pedestrians and cyclists accounting for almost one-third of all those killed or seriously injured in crashes.

Strict liability is safer

A strict liability system is consistent with the UK's driver training approach and its promotion of defensive driving, with drivers expected to take a proactive approach to avoiding collisions, especially with vulnerable road users.

The Highway Code reminds motorists that: *"The speed limit is the absolute maximum and does not mean it is safe to drive at that speed irrespective of conditions. Driving at speeds too fast for the road and traffic conditions is dangerous. **You should always reduce your speed when.....sharing the road with pedestrians, cyclists and horse riders, particularly children, and motorcyclists.**"* DfT (2007)

Changes in vehicle modes and traffic policies also demonstrate the need for strict liability. Electric cars and motorcycles, which are soundless, are being promoted as 'greener' vehicles (no congestion charge in London).

There is also consideration being given to allowing motor vehicles to turn on red. This practice is common in North America and may be soon trialled in London. A strict liability system would reinforce the need for motorists to give way to pedestrians crossing on the green signal.

The UK is known for having a bad child pedestrian safety record and in 2006, child pedestrian deaths increased by 20% over the previous year. It is also consistent with our criminal justice system. The age of criminal responsibility is 12 years old, and children are not held responsible for their actions below that age, at least not by the courts.

Involvement of an HGV in a motoring offence and disregard for vulnerable road users are seen as aggravating factors that merit a tougher penalty.



Surveys of motorists and motor vehicles regularly reveal reason for concern about the competence of drivers and vehicle defects. Many drivers would fail the eyesight test and some 75% have not read the Highway Code since their driving test, and 50% still choose to exceed the 30 mph speed limit in urban areas when they can. This is despite over a decade of 'Kill your speed' campaigns.

Strict liability is healthier

A strict liability system poses health benefits for both victims and the general public.

Rehabilitation is not encouraged by the current compensation system. Though its benefits are widely recognised, rehabilitation is often not provided early enough after an incident to maximise its effectiveness. ABI (2008)

With victims, the sooner liability is decided, the sooner rehabilitation starts, and the better for the victim. The victim does not have to worry about proving the extent of their injuries but instead can focus on getting better.

Justice delayed is justice denied

With the general public, to counter the growing problem of obesity, walking is being promoted by government. The NHS National Institute for Health and Clinical Excellence (NICE) Quick Reference Guide to Physical activity and the en-

vironment included the following recommendation:

Ensure pedestrians, cyclists, and users of other modes of transport that involve physical activity are given the highest priority when developing or maintaining streets or roads. (NICE, 2008)

Strict liability is greener

Transport already accounts for over a quarter of carbon dioxide emissions and is the only sector where emissions are increasing. DfT surveys show that 40% of motorised travel is on urban roads. Almost 60% of car trips are under 5 miles and 25% under 2 miles.

Converting motor vehicle trips to cycle and walk trips is a key measure in any climate change mitigation strategy. But many people are too scared to cycle and walk. Any significant modal shift in walking and cycling is unlikely to occur without greater deterrence on bad driving.

By their very nature, motor vehicles represent a danger for the other users of the public highway—a danger resulting not only from the violence of impacts with the human body but also from the extremely disconcerting effects that vehicles can have even without hitting people (for instance, causing pedestrians to stumble when they are frightened by a close-shave with a road vehicle) Groutel, 2001.

Sources

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Note: This paper was produced as a background reference for the strict liability discussion panel which took place during the RoadPeace conference, *Improving the Response to Road Death and Injury*, on 7 April 2008.



Strict liability civil compensation systems in Europe (to be completed)

Country	Year introduced	Contributory Negligence	Crash circumstance exemptions
Austria		Yes, compensation reduced if victim contributed to collision	Compensation does not have to be paid if collision could not have been avoided
Denmark	1986	No, no fault system for all with personal injury but property damage compensation will be reduced if victim contributed to collision.	
France	1985	Children under the age of 16, adults over the age of 70 or with physical or mental impairments (20%) are not held liable for their actions.	
Germany ¹	1909	None for victims under the age of 10 and parents are rarely held responsible.	Motorists held liable for 'force majeure', under 2002 revised regulations. But compensation for pain and suffering does not have to be paid for bodily injury claims, if the driver was not at fault for the collision.
Italy	1969	Yes, compensation reduced if victim contributed to collision. There are no exceptions for children or others.	There are exemptions for 'chance events'.
Netherlands	Early 1990s	Children under the age of 14 cannot be held responsible for any collisions and other cyclists and pedestrians cannot be more than 50% responsible, but rarely is their compensation reduced.	
Sweden	1950s	No, no fault system for all introduced in 1975	

¹German traffic regulations (StVO, 3 (2a)) hold drivers responsible for ensuring the safety of children, the disabled or the elderly. They are to drive slowly and be prepared to brake. If someone is injured or killed as a result of their not obeying this regulation, the driver can be charged with negligent bodily injury or negligent homicide.

Other countries with strict liability include Czech Republic, Hungary, Poland, Slovenia and Spain, where as countries with a fault based system include the UK, Cyprus, Ireland, Malta, and Romania.