

DATED

1st February 2018

**DEPARTMENT FOR TRANSPORT
CYCLE SAFETY REVIEW**

REPORT



1. BACKGROUND

1.1 This is a report into the Government's cycle safety review.

1.2 On 21st September 2017 Ministers announced an important cycle safety review in two phases:¹

1.2.1 Phase 1 will analyse the case for a new offence equivalent to causing death or serious injury when cycling.

1.2.2 Phase 2 will consult on road safety issues relating to cycling considering the rules of the road, public awareness, key safety risks and the guidance and signage for all road users.

2. SCOPE OF THE REPORT

2.1 This report addresses my opinion on the legal considerations in respect of phase 1 of the cycle safety review. In particular, I have considered whether the current applicable laws are adequate and whether there is need for legislative change. A résumé of my experience and qualifications is set out at Annex 6.

3. EVIDENCE

3.1 I have considered the following:

3.1.1 Research table setting out cases from the press;

3.1.2 Research table setting out an analysis of the relevant laws in other jurisdictions;

3.1.3 Research document setting out the wording of law in other jurisdictions;

3.1.4 Sentencing remarks of HHJ Wendy Joseph Q.C. in the case of *R v Alliston [2017]*;

3.1.5 Research table setting out the outcomes of interviews with lawyers and police officers;

3.1.6 Representations from Cycling UK by cover of email dated 30.11.17;

3.1.7 Article printed in Solicitors Journal: 'Is this really manslaughter? Really?' (by Peter Bowles);

3.1.8 Blog by Martin Porter Q.,C. - The Cycling Lawyer;

¹ <https://www.gov.uk/government/news/government-launches-urgent-review-into-cycle-safety>

- 3.1.9 STATS19 police road casualty data for Great Britain;
- 3.1.10 Extracts from Hansard.
- 3.2 In addition to the evidence and representations above, I have also considered relevant statute, judgements of the Court of Appeal, Wilkinson's Road Traffic Offences (28th edition), CPS guidance on charging and Sentencing Council guidelines.
- 3.3 By way of evidence gathering, researchers at the Department for Transport (DfT) considered anonymous STATS 19 data and carried out an online search of media articles to identify cases in the past 10 years where a cyclist had been prosecuted for killing or seriously injuring a pedestrian. Where possible, the media articles were used to identify: the names of the cyclist and casualty; the court; the charges and sentences; and the names of the prosecution lawyers, defence lawyers and judges involved in the case. There were 9 cases judged to have sufficient levels of culpability and harm to be relevant to the review, and where contact details for those involved in the case could be sourced.
- 3.4 Prosecution lawyers, defence lawyers and a police officer involved in these cases were then contacted and invited to participate in a 45 minute in-depth telephone interview. This interview covered: their experience relating to motoring and cycling offences; any perceived challenges with the existing range of offences cyclists can be charged with; differences between motoring and cycling offences; and the potential impacts of creating new offences applicable to cyclists that are equivalent to causing death or serious injury by careless or dangerous driving. A total of 11 interviews were conducted between 22 November 2017 and 08 January 2018.
- 3.5 In order to gather information from other jurisdictions, 11 countries were selected for comparison. Of these countries, 5 were chosen as having a similar legal system and a reasonably comparable road traffic safety record to England and Wales: Australia; Canada; New Zealand; Ireland; and the USA. In each of these cases, an online search was conducted to find and review relevant road safety and criminal code legislation. In the case of federal countries, the analysis was limited to the larger states where there were most likely to have been cases of cyclists causing the death or serious injury of pedestrians. The remaining 6 countries were European countries chosen based on having a high penetration of cyclists and/or a large population, again meaning there are relatively likely to have been cases where a cyclist has killed or seriously injured a pedestrian. The selected jurisdictions were: Germany; France; Belgium; Netherlands; Denmark; and Sweden. In each of these cases, a member of government working in road traffic safety was contacted to provide advice on relevant laws in their country.

- 3.6 The DfT has also worked closely with key stakeholders in respect of this review. Key stakeholders were invited to comment on the case for an offence for cyclists equivalent to causing death or serious injury by dangerous or careless driving (phase 1) so that the views of those that responded could be considered as part of this advice. However, the only written submission received was from Cycling UK.
- 3.7 The judiciary were approached but do not give views on what they consider to be government policy. While permission was sought to interview to gain the benefit of their views, the request was declined.

PART 1 – THE LAW

4. CYCLING OFFENCES

- 4.1 Cycling offences are dealt with across a number of pieces of legislation; the most comprehensive is the *Road Traffic Act 1988* which contains specific provisions relating to cycling offences (see Annex 1). These include dangerous cycling, careless or inconsiderate cycling,² cycling under the influence of drink or drugs as well as the more general offence of failing to give (or giving a false) name or address following an allegation of dangerous or careless cycling. Section 7 of the *Road Traffic Act 1991* substitutes the offence of dangerous cycling found in the 1988 Act (Annex 2).
- 4.2 It is worth looking at the offences of dangerous and careless cycling a little more carefully; they are essentially to be considered in the same way as the equivalent offences for driving a motor vehicle. The definitions of careless and dangerous are set out in section 6 below.
- 4.3 Both offences are summary only; that is to say they can only be dealt with by the Magistrates' Court, and the maximum penalty is a level 4 fine for dangerous cycling (currently equivalent to £2500) or a level 3 fine for careless/inconsiderate cycling (£1000).
- 4.4 Section 35 of the *Offences Against the Person Act 1861* causing bodily harm by wanton or furious driving or wilful misconduct (see text at Annex 3) has been used in cases involving a cyclist causing serious injury or death. The authority of *R v Parker [1859] 59 J.P. 793* confirms that this offence applies to pedal cycles as well as other vehicles. This offence is only triable on indictment; that is to say only in the Crown Court (unless committed by a youth). The maximum sentence is two years imprisonment.
- 4.5 The wording of section 35 was originally intended for horse and carriage driving. There is a question mark over its appropriateness in the modern day and in cycling cases; it has been described as an "*old-fashioned offence*".³ Moreover, in some cycling cases the wilful misconduct element of the offence has been used and in others the wanton and furious driving element; pointing to a lack of consistency in its use.
- 4.6 The offence can only be committed if the driver has a degree of subjective recklessness so far as the foreseeability of causing injury is concerned. In other words, he or she must appreciate that harm was possible or probable as a result of

² Hereafter 'careless' driving or cycling should be taken to include careless or inconsiderate driving or cycling

³ *R v Hall* at paragraph 12.9 below

the manner of driving: see *R v Okosi [1996] CLR 666*.⁴ As I will go on to outline in section 6 of this advice, this is a quite different test to that of dangerous or careless driving/cycling.

- 4.7 Research has shown that in at least one case of a cyclist causing serious injury, the defendant was charged with an offence contrary to section 20 of the *Offences Against the Person Act 1861* (see wording at Annex 3). This is the offence of inflicting grievous bodily harm which carries a maximum sentence of 5 years imprisonment. Section 20 is an offence that focuses on the level of injury whereas the section 35 offence addresses the manner of driving.

5. DRIVING OFFENCES

- 5.1 It is necessary for these purposes to outline in a little more detail the offences of causing death by dangerous driving, causing serious injury by dangerous driving and causing death by careless driving. There are also offences of causing death by driving whilst unlicensed, disqualified or uninsured; causing death by careless driving whilst under the influence of drink or drugs; and causing serious injury by driving whilst disqualified. I do not consider it necessary to look at these offences in any more detail for the purposes of this report as cyclists do not need to hold a licence or be insured, nor is there a legal alcohol limit relevant to them.
- 5.2 Section 1 of the *Road Traffic Act 1988* creates the offence of causing death by dangerous driving of a mechanically propelled vehicle; thus not a bicycle. This offence can only be committed on a road or other public place (see Annex 4). The offence can only be tried on indictment (at the Crown Court), the maximum sentence is 14 years imprisonment and an obligatory disqualification from driving for a minimum of 2 years with an extended re-test.
- 5.3 The relevant test for dangerous driving is the same as for dangerous cycling; set out in section 6 below.
- 5.4 Causing serious injury by dangerous driving is created by *section 1A* of the *Road Traffic Act 1988*, as inserted by *s.143* of *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (see wording at Annex 4). This offence is triable 'either way'; meaning that it could be heard in either a Magistrates' Court or the Crown Court. It is punishable on summary conviction with up to 6 months' imprisonment or statutory maximum fine; or both, and on conviction on indictment with 5 years imprisonment, unlimited fine, or both.
- 5.5 The definition of serious injury is equivalent to grievous bodily harm, i.e. really serious bodily harm.

⁴ CPS Guidance: Road Traffic Offences - Guidance on Charging Offences arising from Driving Incidents

5.6 Section 2A of the *Road Traffic Act 1988* creates an offence of causing death by careless or inconsiderate driving. The relevant test for careless or inconsiderate driving is the same as careless cycling as set out in section 6 below.

5.7 The offences above require driving of “*mechanically propelled vehicles*”; thus they do not apply to bicycles. There is now an increase in the use of electrically assisted pedal cycles (EAPC); where these meet the relevant criteria set out in *The Electrically Assisted Pedal Cycles Regulations 1983* they are not considered to be motor vehicles. However, if they do not meet the criteria they could fall within the definition of a “*mechanically propelled vehicle*”.⁵

6. DEFINITION OF CARELESS AND DANGEROUS DRIVING/CYCLING

6.1 In respect of dangerous driving or cycling the test is whether the standard of the driving/cycling fell far below what would be expected of a competent and careful driver/cyclist and that it would be obvious to a competent and careful driver/cyclist that driving/riding in that way would be dangerous. The term “*dangerous*” refers to a danger either of personal injury or of serious damage to property.

6.2 Section 2A(2) of the *Road Traffic Act 1988* provides that a person is to be regarded as driving dangerously if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous. When considering the state of the vehicle, regard may be had to anything carried by or attached to the vehicle - Section 2A(4) of the 1988 Act. This section applies to vehicles rather than bicycles.

6.3 The skill (or indeed lack of skill) of a driver is an irrelevant circumstance when considering whether the driving is dangerous.⁶

6.4 In respect of careless or inconsiderate driving/cycling, the test is whether the driving/cycling fell below the standard (rather than far below) or that the driving/cycling was inconsiderate; i.e. without reasonable consideration for other persons using the road or place.

6.5 For clarity, dangerous and careless driving offences apply to the road or other public place whereas dangerous or careless cycling cases apply to the road only. The definition of “*road*” is set out at Annex 5. Whilst it is a relatively wide definition it is not as wide as “*public place*”.

6.6 In determining what would be expected of a careful and competent driver, regard must be had not only to the circumstances of which (s)he (the competent and careful driver) could be said to be aware, but also the circumstances shown to have

⁵ See *Wilkinson's Road Traffic Offences* 28th edition at para 1-23

⁶ *R v Bannister* [2009] EWCA Crim 1571.

been within the knowledge of the accused (s. 3ZA(4) of the *Road Traffic Act 1988*). The offences are absolute in the sense that it is unnecessary to show that the defendant's mind was conscious of the consequences of her/his actions; it is only necessary to show that (s)he was conscious of what (s)he was doing.⁷

6.7 Importantly, the tests for dangerous and careless driving/cycling are objective ones. Whilst it is primarily a question of fact as to whether the driving/cycling departed from the required standard, the only subjective element is in respect of consideration of the particular circumstances of each case, without the benefit of hindsight.

6.8 In contrast, as set out above at para 4.6 above, the test for wanton and furious driving is subjective in the sense that the driver/cyclist must foresee the causing of injury.

6.9 An objective test is preferred in modern jurisprudence as it renders a defendant accountable to a readily identifiable and measurable benchmark.

7. MANSLAUGHTER

7.1 The common law offence of manslaughter could be prosecuted in cases where a driver or cyclist, or in fact any road user, causes the death of another.

7.2 A charge of manslaughter can also be considered where the driving has occurred "off road" i.e. other than on a road or other public place, or when the vehicle driven was not mechanically propelled, and death has been caused. In these cases the statutory offences such as causing death by dangerous driving or causing death by careless driving do not apply.⁸

7.3 Manslaughter covers a broad range of circumstances; relevant to cases involving cyclists causing a death are gross negligence manslaughter or unlawful act manslaughter.

7.4 Gross negligence manslaughter is where the death is a result of a grossly negligent (though otherwise lawful) act or omission on the part of the defendant. A four stage test for gross negligence manslaughter was outlined by the House of Lords in *R v Adomako [1994] 3 All ER 79*. We were recently reminded of the test by the Court of Appeal in *R v Zaman [2017] EWCA Crim 1783* (per Lord Justice Hickinbottom at paragraph 24):

7.5 "The prosecution has to prove the following elements.

⁷ Wilkinson's Road Traffic Offences 28th edition at para 5-51

⁸ CPS: Road Traffic Offences - Guidance on Charging Offences arising from Driving Incidents

- 7.5.1 *In accordance with the ordinary principles of negligence, the defendant owed the deceased a duty of care.*
- 7.5.2 *The defendant was in breach of that duty of care.*
- 7.5.3 *A reasonably prudent person would have foreseen that the defendant's actions or omissions constituting the breach of duty had exposed the deceased to an "obvious and serious" risk of death. This court in *Misra and Srivastava* [2004] EWCA Crim 2375; [2005] 1 Cr App R 21 and *Yaqoob* [2005] EWCA Crim 2169 confirmed that that the relevant risk to be reasonably foreseen is nothing less than the risk of death.*
- 7.5.4 *The breach of duty either caused, or made a significant contribution (i.e. a contribution that was more than negligible) to, the deceased's death.*
- 7.5.5 *The departure of the defendant's conduct from the proper standard of care incumbent upon him, involving as it must have done the risk of death, was such that the breach of duty can properly be characterised as gross negligence and therefore criminal."*
- 7.6 It is a well-established principle that all road users owe a duty of care to other road users under the neighbour principle outlined in the case of *Donoghue v Stevenson* [1932]. The question in cycling cases is therefore:
- 7.6.1 whether that duty was breached;
- 7.6.2 whether a reasonably prudent person would have foreseen that the defendant's actions or omissions had exposed the deceased to an obvious and serious risk of death;
- 7.6.3 whether such a breach caused, or made a significant contribution to, the death and finally;
- 7.6.4 whether the breach was gross and therefore criminal. The test for this final stage being; would a jury of 12 consider that what had happened was so bad as to be criminal?
- 7.7 CPS guidance states *"In cases where a death has occurred as a result of the manner of driving, and it is clear from the available evidence that the standard of driving has been grossly negligent on the part of the driver, a charge of gross negligence manslaughter will be the correct charge."*⁹

⁹ CPS: Road Traffic Offences - Guidance on Charging Offences arising from Driving Incidents and Gross Negligence Manslaughter

- 7.8 The other category of involuntary manslaughter is that of unlawful act manslaughter
This is where the death is the result of:
- 7.8.1 the defendant's unlawful act;
 - 7.8.2 where the unlawful act is one which all sober and reasonable people would realise would subject the victim to the risk of some physical harm resulting (albeit not serious harm) *R v Williams and Davis [1992] 2 All ER 183*;
 - 7.8.3 whether or not the defendant realised this.
- 7.9 The knowledge attributed to the sober and reasonable person is that which such a person would acquire as an observer of the whole course of the defendant's conduct throughout the unlawful act: *R v Watson [1989] 2 All ER 865*, *R v Dawson [1985] 81 Cr App R 150*, *R v Carey and others [2006] EWCA Crim 17*.
- 7.10 Once these points are established the question whether the act was dangerous is to be judged not by the defendant's appreciation but that of the sober and reasonable person and it is impossible to impute the mistaken belief of the defendant that what he was doing was not dangerous: *R v Ball [1989] CLR 730*.
- 7.11 *Andrews v DPP [1937] A.C. 576* confirms that driving carelessly or driving dangerously do not, on their own, amount to unlawful acts for the purpose of unlawful act manslaughter.
- 7.12 CPS guidance suggests that unlawful act manslaughter should only be charged instead of causing death by dangerous driving where there is evidence that the driver either intended to cause injury to the victim or was reckless as to whether injury would be caused.¹⁰
- 7.13 The maximum sentence for manslaughter is life imprisonment.
- 7.14 The threshold for a manslaughter conviction is, as would be expected, a high one and therefore, as set out below at paragraph 8.2, its use in driving cases is limited.
- 8. THE LEGAL HIERARCHY & THE DIFFERENT LEGAL TESTS**
- 8.1 The downward hierarchy in fatal driving cases is manslaughter, death by dangerous driving and death by careless driving.
- 8.2 The Court of Appeal has made clear in *R v Governor of Holloway ex p. Jennings [1983] R.T.R. 1 – per Lord Roskill at 19G-H* – that 'motor manslaughter' should only be prosecuted "*in a very grave case*". This is affirmed in *R v Pimm [1994] R.T.R.*

¹⁰ CPS: Road Traffic Offences - Guidance on Charging Offences arising from Driving Incidents

391 which held that whether manslaughter is charged is a matter which the prosecuting authorities should consider carefully, bearing in mind that the graver offence should be charged only where there was a very high risk of death.

- 8.3 Criminal negligence must, by its nature, be for the most serious of cases. Death by dangerous driving (of a mechanically propelled vehicle) is an offence concerned with a serious departure from the standards of a competent and careful driver. It is clear from the judgements of the Court of Appeal in 'motor manslaughter' cases that this is not the same test as that of death by dangerous driving. It is perfectly conceivable that there could be cases where a driver had fallen far below the required standard but there was not a very high risk of death; and thus manslaughter would not be the appropriate charge.
- 8.4 However, to infer that the likelihood of the outcome is the only factor would also be misconceived. The test of gross (criminal) negligence is materially different to that of dangerous driving; gross (criminal) negligence is by its nature a higher threshold to pass; which is why the penalty is one of life imprisonment.
- 8.5 The relationship between manslaughter and death by dangerous driving offences was debated in the House of Lords when considering the Road Traffic Bill in 1955. The offence of death by dangerous/reckless driving was an amendment proposed by Lord Merthyr to the original Bill; it was recommended by the Lord Chief Justice because he was concerned that juries would not convict for manslaughter. There was debate about whether to abolish manslaughter altogether in the context of driving cases, but it was retained and it was argued that it should be used in situations where there was deliberate intent.
- 8.6 A relevant quote is found in Hansard per Lord Mancroft¹¹: *"The other point was raised by my noble and learned friend the Lord Chief Justice, who said that he would not object, if some such proposal as this became the law, to the abandonment of manslaughter charges in cases where death results from reckless driving. I have of course considered that point, but I believe there is value in retaining the offence of manslaughter to deal with the class of case which I have mentioned—namely, where jewel robbers have stolen a car and drive off and deliberately run down the police or other well-disposed people who try to stop them. In such cases I consider that manslaughter is the proper charge."*
- 8.7 Death by careless driving signposted a new approach to the issue of driving related fatalities. Naturally, there was much debate prior to its implementation as the standard of driving for careless driving is significantly below that of dangerous driving and could result from a momentary lapse of concentration (albeit, in the case of death by careless driving, a necessarily culpable one).

¹¹ Hansard 14th March 1955 vol 191 cc959-1052 at 990

- 8.8 When debating the proposed new law in the House of Commons on 8th March 2006 Ms Keeble MP recognised the need for a proper range of offences and penalties in driving cases.¹² She went on...*“There is clear consensus among everybody except the lawyers that there is a major gap between imprisonment for causing death by dangerous driving and the minor traffic offences—except, of course, in the case of drink driving. There is a great gap in the middle as regards what the courts can do. It is important that they have available a range of offences and penalties—what the courts do is down to them—that properly recognise the different types of accident and levels of culpability, and that delivers to the public a sense that justice will be done if their loved ones are involved in an accident.”*
- 8.9 Mr Kidney MP said...¹³ *“On the proposed new offence of causing death by careless driving, I recognise the concerns of those, including the Hon. Member for Epsom and Ewell, who say that punishment should be commensurate with the guilty act and not with its consequences, but to take a vehicle out on a road is to undertake a responsible activity. As I set out, it is foreseeable that hitting a person with a vehicle will cause injury—perhaps fatal injury—and that should be within the driver’s contemplation. The existence of the offence will underline the responsibility that we all assume when we get behind the wheel. Of course, imprisonment for committing the offence is not compulsory or obligatory but will be reserved for those who have clearly failed, by the greatest amount, to shoulder their responsibility.”*

9. SENTENCING GUIDELINES

- 9.1 There are currently no sentencing guidelines for manslaughter; each case is very much fact-specific as the offence covers a multitude of sins. However, there was a consultation period which ended in October 2017¹⁴ in respect of a proposed guideline by the Sentencing Council for manslaughter offences. As in many existing sentencing guidelines for criminal offences, the court is invited to assess culpability and harm before going on to consider aggravating and mitigating factors. The guideline then suggests sentence ranges. It is made clear in the consultation that the proposed guidelines are based on an analysis of current sentencing practice, and in most areas, there are unlikely to be changes to sentence levels. However, the Council does expect that in some gross negligence cases, sentences will increase. Interestingly, whilst the guideline contains some case examples, which are set out to evidence how the guideline might work in practice, none are relevant to ‘motor manslaughter’ cases.
- 9.2 Some guidance on the approach to be adopted in ‘motor manslaughter’ cases can be found in *Attorney General’s Reference (No. 111 of 2006) sub nom R v Hussain*

¹² Hansard – 8th March 2006 at column 854

¹³ Hansard – 8th March 2006 at column 877

¹⁴ The Sentencing Council are yet to publish their response to the consultation.

[2006] EWCA Crim 3269 (per Lord Justice Keene); “We acknowledge that sentencing for offences of manslaughter by gross negligence is never an easy process. The guidance on causing death by dangerous driving in a case such as this may be of some relevance because the mitigating and aggravating factors identified in the guidelines for those cases may sometime apply; but their value tends to be somewhat limited, and such is the case here. It is to be borne in mind that death by dangerous driving has a maximum sentence, even now, of 14 years, whereas the maximum for manslaughter is life imprisonment. Manslaughter when using a vehicle can vary considerably in its characteristics, and various factors may be relevant in the individual case. Whether there was any animosity by the defendant towards the deceased will be relevant, as will whether the gross negligence was prolonged or shortlived and whether it took place in the context of some other offence, such as seeking to steal the vehicle. The consequences, such as the number of deaths, would also be relevant.”

9.3 The guideline referred to in the quote by Lord Justice Keene above is the ‘Causing Death by Driving Definitive Guideline’ produced by the Sentencing Council. This guideline is used by judges in sentencing cases of death by careless and dangerous driving.

9.4 The document sets out a number of factors that judges should take into account when determining the seriousness of the offence. These include awareness of risk, use of alcohol or drugs, speed, seriously culpable behaviour (such as using a mobile phone, aggressive driving, poorly maintained vehicle) and factors relating to the victim (including whether they are considered vulnerable road users). The guideline then sets out aggravating and mitigating features to be considered and suggests sentencing ranges for the particular offence.

9.5 I do not consider it necessary to set out the guidelines in any more detail for the purposes of this report. However, this analysis highlights that currently cyclists causing a death could face an offence of manslaughter with no current guideline or an offence contrary to section 35 OAPA, again with no sentencing guideline. In contrast, drivers would most likely face death by dangerous or careless driving, both of which are covered by the definitive guideline set out above. This therefore raises concerns as to consistency of sentencing in cases involving cyclists.

10. **LAW IN OTHER JURISDICTIONS**

10.1 Consideration has been given, as part of this review, to legislation in other jurisdictions concerning cyclists causing death or serious injury.

10.2 In Australia, road traffic offences are state level matters and therefore vary. In many states, their equivalent death by dangerous and careless driving offences apply to motor vehicles only. However, like England and Wales, they have specific

dangerous and careless cycling offences; the difference being that in some states the sentencing options are much broader than the relatively modest fines available in this jurisdiction.

- 10.3 For example, in Victoria, the maximum penalty is five years in prison if a person is killed or seriously injured by a cyclist and the rider does not immediately stop and offer assistance ¹⁵. In Western Australia, if convicted of culpable driving (not of a motor vehicle): if death is caused the maximum sentence is one of 10 years; or if grievous bodily harm is caused, 7 years ¹⁶.
- 10.4 Dangerous driving laws in Canada do not apply to cyclists ¹⁷ but careless driving laws do (apart from British Columbia; where neither does). There is no specific careless and dangerous cycling legislation. However, in Ontario, there is currently a Bill proposed to amend the Highway Traffic Act 1990 so that careless drivers who cause bodily harm or death will face a maximum of \$50,000 in fines, two years in jail, a five year license suspension and six demerit points. It appears that this would apply to all vehicles, including cyclists ¹⁸.
- 10.5 New Zealand is very similar to Canada, in that their reckless and dangerous driving offences do not include cyclists but their careless driving laws do (punishable by a fine, rather like in England and Wales). However, careless driving causing injury or death only applies to motor vehicles ¹⁹.
- 10.6 In Ireland, the careless and dangerous driving laws apply equally to cyclists (they do not have separate offences for cycling). The maximum penalty for careless driving is 2 years in prison (in cases of death or serious bodily harm) and for dangerous driving it is 10 years in prison (in cases of death or serious bodily harm) ²⁰.
- 10.7 In California, USA, in recent years courts have applied driving laws to cyclists. The maximum sentence for reckless driving is 3 years in prison and for felony vehicular manslaughter is 6 years in prison ²¹.
- 10.8 In New York, reckless endangerment is the only offence applicable to cyclists. A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to

¹⁵ Road Legislation Amendment Act 2009

¹⁶ Criminal Law Amendment (Homicide) Act 2008

¹⁷ Criminal Code of Canada 1985

¹⁸ Highway Traffic Amendment Act (Careless Driving), 2016

¹⁹ Land Transport Act 1998

²⁰ Road Traffic (No. 2) Act 2011

²¹ California Vehicle Code Driving Offenses [23100 - 23135]

another person. This is a class A misdemeanour with a maximum sentence for a first offence of 30 days in prison and \$300 fine ²².

- 10.9 In Florida, careless and reckless driving applies to cyclists. For reckless driving the sentence can be up to 90 days in prison and a \$500 fine. Reckless driving causing serious bodily injury to another is a third degree felony, punishable by up to 5 years in prison and a \$5,000 fine ²³.
- 10.10 In Texas, reckless driving applies to any vehicle with the maximum sentences being 30 days in prison and \$200 fine ²⁴.
- 10.11 Under Dutch law road traffic offences apply equally to cyclists as to motorists. Typical maximum sentences are 3 years for causing death and 18 months for causing serious injury, with these doubling in the case of recklessness and increasing by 50% where there are other aggravating factors such as drink driving²⁵.
- 10.12 In Sweden a cyclist can be penalised for careless or dangerous driving; the penalty is a day-fine. However, under the Swedish Penal Code, cyclists can also face offences of involuntary manslaughter (2 year maximum sentence, increasing to 6 years if gross) and causing bodily harm by negligence (6 month maximum sentence, increasing to 4 years if gross).
- 10.13 In France the relevant road traffic offences of homicide and unintentional injury only apply to motor vehicles. Cyclists can be prosecuted under the Penal Code for involuntary manslaughter (3 year maximum sentence) and for injuries that prevent someone working for at least 3 months (2 year maximum sentence).
- 10.14 In Germany the relevant offences in the Penal Code are negligence that causes bodily harm with a 3 year maximum sentence or negligence causing death with a 5 year maximum sentence. There are also endangering road traffic offences with maximum sentences of 2-5 years. These offences apply to all vehicle types.
- 10.15 The position in Denmark is that the road traffic offences of careless and dangerous driving only apply to motor vehicles. However, cyclists can be prosecuted under the Penal Code for negligent homicide or negligent considerable bodily harm which has a maximum sentence of 4 months.
- 10.16 In Belgium cyclists are covered by the Penal Code, with a longer maximum sentence in the case of traffic offences of 3 months to 5 years for unintentionally causing death; and 8 days to 1 year for causing injury.

²² New York Penal Section 120.20

²³ The 2017 Florida Statutes 316.192 Reckless driving

²⁴ Texas Transportation Code - TRANSP § 545.401. Reckless Driving

²⁵ Road Traffic Act 1994

10.17 It is clear from this research that the position in respect of cyclists varies widely across other jurisdictions. However it is not uncommon for cyclists to face offences akin to causing death or serious injury by dangerous cycling or causing death by careless cycling; nor is it uncommon for cyclists to be treated in ways directly legally comparable to drivers.

PART 2 – EVIDENCE: APPLICATION OF THE LAW IN CYCLING CASES

11. ALLISTON CASE

11.1 The most recent and high profile case concerning a cyclist causing the death or serious injury of a pedestrian is *R v Alliston [2017]*. Charlie Alliston was tried at the Central Criminal Court on indictment for unlawful act manslaughter and wanton and furious driving. He was acquitted of manslaughter but convicted by a jury, after trial, of wanton and furious driving.

11.2 In her sentencing remarks Her Honour Judge Wendy Joseph Q.C. summarises the circumstances of the case:

“...When this much-loved wife and mother of two young children set off for work that morning and arrived in the Old St area, she had no reason to think the 12th February was anything other than a normal day, and 12.15 a normal lunch-time. She could not know that, in your words, your girl-friend had told you to go and kill time for ½ hour. The bitter irony of that expression as you used it in evidence will not be lost on anyone. You were cycling at approximately 18 mph down Old St as you approached the traffic lights at the junction with Charlotte Rd. Mrs. Briggs was walking towards you on the other side of the junction. Traffic lights were green in your favour. Mrs. Briggs decided to cross Old St. Whether she saw you and judged she had time to cross, or whether she simply didn't notice you, I do not know; but I am satisfied on the evidence that you saw her as she stepped off the kerb. It was clear to you that she was in danger. It was your responsibility as a road-user to ensure you did not run into her. This must have been obvious to you, and you did indeed swerve and slow to between 10-14 mph as you went through the yellow-box at the junction of Old St and Charlotte Road. You shouted at her twice to (in your own words) 'get out of the fucking way'. She reached almost the centre of the road but could not go further because of on-coming traffic. On your own account you did not try to slow any more but, having shouted at her twice, you took the view she should get out of your way. You said in evidence 'I was entitled to go on'. That meant threading [a] path between her in the middle of the road and a parked lorry on your left. We have together in this court-room watched those final seconds over and over on the CCTV footage that recorded them. When she realised her danger, in the shock of the moment, she clearly did not know what to do or which way to move for the best. The result was that you rode straight into her. If your bicycle had a front-wheel brake you could have stopped, but on this illegal bike, you could not. On your own evidence by this stage you weren't even trying to slow or stop. You expected

her to get out of your way. Thus I make it clear that it was not merely the absence of a front brake but your whole manner of riding that caused this accident ...”

- 11.3 Charlie Alliston was sentenced to 18 months detention in a Young Offender's Institution. An order was made for deprivation of the bicycle, and he was ordered to pay a victim surcharge.
- 11.4 Whilst one can never truly ascertain what was in a jury's mind, the Alliston case could perhaps be taken as an example of a jury being reluctant to convict of manslaughter. In this case the unlawful act giving rise to unlawful act manslaughter was said to be the fact that he was riding a bike with no brakes; which is a criminal offence.
- 11.5 Analysing HHJ Joseph Q.C.'s sentencing remarks, one can identify a number of aggravating features: illegal bike due to a lack of brakes, speed of cycling, lack of regard for other road users, history of cycling in this way for the 'thrill'. However, one wonders, despite these highly unsavoury and aggravating factors, whether it could be said that Mr Alliston intended to cause Mrs Briggs serious injury or death or was reckless as to it. The jury obviously concluded in the negative.
- 11.6 In the absence of a conviction for manslaughter the only alternative for the jury was for them to convict of wanton and furious cycling; which, as stated above, has a maximum sentence of 2 years' imprisonment; a significant reduction on the life imprisonment available for manslaughter.
- 11.7 There has been much commentary about this case; most notably from Martin Porter Q.C. who has a blog entitled 'The Cycling Silk'. Some of his comments are referenced later in this advice at paragraphs 13.13 and 14.4.

12. **OTHER REPORTED CASES**

- 12.1 Of the nine cases identified through research, I have focused on the cases that were heard by the Court of Appeal rather than first instance decisions, as Court of Appeal judgements are authoritative and binding upon lower courts.
- 12.2 *R v Lambert [2008] EWCA Crim 2109* concerned a young man who pleaded guilty at the first opportunity to an offence contrary to section 35 of the *Offences Against the Person Act 1861*, causing bodily harm by wilful misconduct. He was sentenced to 12 months' detention in a Young Offenders Institution.
- 12.3 The circumstances were as follows: *“At 11.45 in the morning of 30th August 2007 he was riding his mountain bike down The Chase, Guildford towards a bus stop on his nearside. As he approached the bus stop he was overtaken by a bus. Three people, including a 82-year old grandmother, Dora Thompson, were waiting at the bus*

shelter for the bus. As it arrived, they stood up and moved towards the bus. Instead of stopping behind the bus or overtaking it on its offside in the road, the applicant mounted the pavement without slowing down. Even if he had attempted to apply his brakes they would have availed him little because the rear brake was wholly ineffective and the front brake could only be applied at all with great effort. It is estimated that he was travelling at 12 to 13 miles per hour. He rode straight into Mrs Thompson, knocking her into the air and onto the ground on which she struck her head. She died of her injuries later that day.”

- 12.4 It is interesting that this case also featured an issue with the brakes on the bike; whilst they were present, they were described as ineffective. Speed was also an aggravating feature.
- 12.5 Of note is a comment by the Court of Appeal (per Mr Justice Mitting); *“If the vehicle ridden by him had been motorised he would have had no defence to a charge of causing death by dangerous driving, an offence which carries a maximum sentence of 14 years’ imprisonment. There is no statutory offence specific to the facts other than causing harm by wanton or furious driving, also contrary to section 35 and subject to the same maximum. **If, as is widely believed, the risk of death or serious injury to pedestrians caused by dangerous riding of cycles on pavements has become a significant problem, Parliament may wish to consider legislating for an appropriate specific offence and maximum penalty.** [my emphasis]”*
- 12.6 *R v Hall [2009] EWCA Crim 2236* followed *Lambert*; Hall pleaded guilty to an offence of causing bodily harm by wanton or furious driving and was sentenced to seven months’ detention in a young offender institution. He was also disqualified from driving for twelve months, and his licence was endorsed with six penalty points
- 12.7 In summary; in the early evening of Friday 8 August 2008, the defendant, who was then 19 years old, was cycling home from work in Weymouth. He was travelling downhill along Littlemoor Road towards the T-junction with Dorchester Road which was controlled by traffic lights. He was intending to turn left. He claimed that as he approached the traffic lights he was forced to mount the pavement in order to avoid a vehicle which had pulled in front of him. He remained cycling on the pavement, and as he turned the corner, he collided with an 84 year old man, Ronald Turner. Mr Turner suffered a head injury and died some 12 days later from a pulmonary embolism as a result of the head injury.
- 12.8 Speed was a factor in this case.
- 12.9 The Court of Appeal noted *“The offences of causing death by dangerous and careless driving do not apply to bicycles because, as we shall see, normal pedal-cycles are not mechanically propelled vehicles. It was no doubt because the*

offences of dangerous and careless cycling are triable summarily only that the applicant was charged with the old-fashioned offence created by section 35 of the 1861 Act, which has been held to apply to bicycles. Neither the prosecution nor the defence disagreed with the judge's suggestion at the plea and case management hearing at which the applicant had pleaded guilty that it would be helpful to look at the guidance issued by the Sentencing Guidelines Council for offences of causing death by driving, as it was thought that there was no clear authority on the appropriate sentence for an offence contrary to section 35."

- 12.10 In considering submissions that the sentence was manifestly excessive the court noted: *"We acknowledge that some distinction must be drawn between riding a bicycle and driving a car, since car accidents are much more likely to cause serious injury than bicycle accidents. However, we do not consider that it is appropriate to classify this accident as having arisen out of momentary inattention. The applicant decided to remain cycling on the pavement, and therefore to run the risk that he would not encounter a pedestrian on the other side of the blind corner with whom he may not be able to avoid a collision. An accident was by no means unforeseeable. The applicant should have realised that if he collided with someone who was infirm or elderly, it was entirely possible that serious injury might ensue. It was the sort of cycling which, in our judgment, created at least some risk of danger. It was, therefore, not far short of dangerous cycling. The equivalent starting point for the offence of causing death by careless driving in these circumstances would have been a sentence in the region of 15 months' custody. We acknowledge the mitigating features which the judge rightly took into account, including the fact that the applicant had apparently been the victim of a hate campaign by an anonymous member of the public arising out of the press coverage of the case in the magistrates' court, but we cannot say that a custodial sentence was wrong in principle, or that seven months' detention in a young offender institution was manifestly excessive."*
- 12.11 In respect of the disqualification from driving, the Court affirmed this but quashed the order that his licence be endorsed with 6 penalty points.
- 12.12 *R v Gittoes [2015] EWCA Crim 1608: Daryl Gittoes was sentenced to 12 months imprisonment for an offence of causing bodily harm by wanton or furious driving.*
- 12.13 *"The facts are these. At about 3 pm on 30th July 2014, Mary Evans, who was 73 years old, was walking with a friend through a pedestrianised area of the City Centre of Hereford. The pedestrian area was clearly marked and no vehicles or bicycles are permitted to use that area between 10.30 am and 4.30 pm. There were a number of members of the public walking through the pedestrianised area. The appellant rode his bicycle through the pedestrianised area. He can be seen on the CCTV weaving between pedestrians as he cycled. The bicycle was not roadworthy. It had no*

brakes. It had no bell. It had no lights and had a cracked tyre. The appellant knew that bicycles were not permitted in that area. Indeed he had been told by a police officer to push his bicycle along there and not to cycle there on a previous occasion. As the appellant cycled along that pedestrianised area he tried to weave between Mrs Evans and her friend and other pedestrians. He struck Mrs Evans causing her to fall to the floor. She struck her head and suffered what were described as devastating head injuries. Mrs Evans was taken to hospital but sadly her condition deteriorated and she died just over a week later.”

- 12.14 The roadworthiness of the bicycle was a factor in this case, as was the fact that the cycling took place in a designated pedestrian area. Interestingly, on appeal, counsel for Mr Gittoes sought to distinguish the cycling here from the cycling in the case of *Lambert* on the grounds that the cycling here was less serious and involved misconduct but was not a serious departure from the required standard.
- 12.15 The Court of Appeal rejected this submission (per Mr Justice Lewis) and concluded that; *“The cycling in this case although different from that in Lambert was at least as bad. The judge was entitled to regard this as a case where the appropriate sentence after a trial would be at or near the statutory maximum of two years.”*
- 12.16 Of the first instance decisions, of note is the case of *R v Jason Howard* in Aylesbury Magistrates’ Court on 9th July 2008. This prosecution concerned the tragic death of a pedestrian, Rhiannon Bennett. She was hit by Mr Howard on his bike; it was alleged that he had prior to this shouted at her to “*move out of the way*”. He was convicted of dangerous cycling and sentenced to pay a fine of £2,200.
- 12.17 The case of *R v Benwell* is also worth some consideration as this was a case prosecuted under section 20 of the *Offences Against the Person Act 1861*. Benwell hit a pedestrian at 30mph on a pedestrian crossing, ignoring a red light. The victim suffered a fractured skull. The defendant was sentenced to 12 months imprisonment.
- 12.18 These two first instance decisions show a marked disparity in charging decisions and thus sentencing in cycling cases.

PART 3 - ANALYSIS OF CURRENT LEGAL POSITION

13. IS THE CURRENT LAW ON CYCLING SUFFICIENT?

- 13.1 Many lawyers who have been in some of the most prominent cycling cases were spoken to in respect of this review. The majority view of both prosecution and defence lawyers was that there are tensions in the current law concerning cyclists causing serious injury or death. One barrister spoken to was against legislative change but was in favour of revising the maximum sentences for existing offences. A further two barristers highlighted concerns about an offence of death by careless (as opposed to dangerous) cycling. This is dealt with in further detail below at paragraph 14.3.
- 13.2 Clear concerns were expressed as to the use of the offence of wanton and furious driving to essentially plug the gap between manslaughter and specific cycling offences that are punishable only with a modest fine.
- 13.3 One of the major issues highlighted was the applicability of this old law in the modern day, with one counsel noting that the offence is *"outdated and ill-defined, and what we need is some modern legislation which actually focuses on a proper fault element."*
- 13.4 Another counsel goes on: *"Because it's [wanton and furious driving] older legislation, the way it's worded meant you could fit modern behaviour into it but it would always be interpretation, so I did expect there to be a challenge from the defence as to how I was proposing that we fit the defendant's behaviour into the legal elements of that offence."* One barrister likened it to trying to put a *"round peg in a square hole"*, the difficulty being how to explain to juries the applicability of this legislation to cycling.
- 13.5 A second tension was the level of penalty available for wanton and furious driving as opposed to death by dangerous or careless driving; even where the tragic outcome is the same: one counsel notes *"the maximum sentence, which is 2 years imprisonment, doesn't match what you would get for causing the same outcome if you were driving a car."*
- 13.6 A police officer who was interviewed stated; *"Within the cyclist legislation there wasn't anything appropriate because the dangerous and careless cycling and no brake really only cover a fine, and they certainly wouldn't have taken into consideration the pedestrian's life being taken."*
- 13.7 Put very nicely by one barrister spoken to there is *"a sudden leap from gross negligence manslaughter to wanton and furious, and thereafter there's nothing."*
- 13.8 Thirdly, and linked to the arguments above, there are significant concerns about how the law as it stands, and the offence of wanton and furious driving in particular,

should be looked at from a sentencing perspective. We know, from considering the Court of Appeal authorities in the leading cycling cases (see paragraphs 12.1 to 12.15), that the sentences imposed for wanton and furious driving (generally nearer the maximum penalty available of two years imprisonment) were not considered manifestly excessive. However, there are concerns as to; firstly, the appropriateness of the maximum penalty and range of sentences available and, secondly, in the absence of applicable sentencing guidelines, consistency in sentencing decisions. This view is supported by a number of barristers interviewed.

- 13.9 In the case of *Lambert*, Mr Justice Mitting noted that *"If the vehicle ridden by him had been motorised he would have had no defence to a charge of causing death by dangerous driving, an offence which carries a maximum sentence of 14 years' imprisonment."* These comments suggest this was a case where the maximum sentence was deemed insufficient.
- 13.10 Addressing this point, it could be argued that as manslaughter is available in cycling cases, with a maximum penalty of life imprisonment, this ensures that the most serious cases are adequately covered under current legislation. However, the counter argument is that whereas drivers facing prosecution for causing death would most likely be prosecuted for the relevant and prescriptive driving offences, manslaughter is the only culpable offence available when a cyclist causes death. In reality this means that cyclists could face the most serious offence of manslaughter in circumstances where drivers would not; which can only be disproportionately unfair to cyclists.
- 13.11 A barrister interviewed supports this view: *"You then start getting cyclists all saying well why is it just cyclists being prosecuted for manslaughter, why are car drivers not prosecuted in the same manner? There is a real risk that could happen... There was a lack of understanding that there were no other offences available."*
- 13.12 Moreover, it would appear that juries are reluctant to convict in manslaughter cases, as highlighted by the then Lord Chief Justice as far back as 1955. As set out in the authorities above, it is clear that manslaughter is to be reserved for the gravest cases. In respect of unlawful act manslaughter, the CPS guidance set out above at paragraph 7.12 and Hansard at section 8 confirm that this is to be reserved for deliberate and grave breaches of law; where an intention or recklessness to injure is present. In respect of gross negligence manslaughter the 'jury test' is considered, rightly in my view, to be a very high hurdle.
- 13.13 Martin Porter Q.C. comments: *"a cyclist who is considered to have caused death by dangerous cycling may be charged with involuntary manslaughter. However given the statutory definition of dangerous cycling this would have to entail riding the bicycle in an obviously and flagrantly dangerous manner. There are probably no circumstances in which a cyclist who has committed the proposed offence of*

*causing death by dangerous cycling has not also committed the offence of (gross negligence) manslaughter. There is only therefore any point in introducing a statutory offence of causing death by dangerous cycling if (as was felt to be the case with motorists in the 1950s) guilty people are walking free because of a reluctance of a jury to convict.*²⁶

- 13.14 As set out in section 8 above, I do not agree that the tests for manslaughter and death by dangerous driving are the same. However, reflecting on Mr Porter's comments, in my opinion there is sufficient evidence, as set out throughout this advice, to suggest that juries may have such a reluctance to convict for manslaughter.
- 13.15 The reality in cycling cases is that the outcome (namely death) is rarely if ever anticipated; albeit that the standard of cycling may fall far below the objective standard. In this instance, the range of available offences and penalties is limited.
- 13.16 Addressing the use of section 20 in cases involving cyclists causing serious injury, as stated above at paragraph 4.7, this offence focusses on the outcome rather than the standard of cycling.
- 13.17 Overall, in my opinion, the present law on cycling is not sufficient. I suggest that an offence comprising an objective test focused on both outcome and standard would be more appropriate.

14. **VIEWS ON THE NECESSITY FOR A CHANGE IN LEGISLATION**

- 14.1 Generally, the lawyers and police officer spoken to were in support of a change in law to include cyclists in an offence of causing death by dangerous cycling; with one commenting that it is "*long overdue*".
- 14.2 In support of a change in legislation, one barrister spoken to commented: "*I think there should be a causing death by dangerous cycling in the way there is for dangerous driving, with a much wider range of sentencing and a clearer definition of what is and isn't dangerous...wanton and furious is quite a high definition...it's quite hard to get that sort of conviction...causing death by dangerous: the benefit is that it's a modern rule, there is ample case law on what is and isn't dangerous, and it will open up a wider range of sentencing...and a clearer understanding of what the offence is.*"
- 14.3 However, more than one barrister spoken to had reservations about the necessity for an offence equivalent to causing death by careless (as opposed to dangerous) driving. These reservations were rooted in the fact that they had concerns about the existing offence of causing death by careless driving. They reflected that an offence

²⁶ Taken from Martin Porter Q.C.'s blog - The Cycling Lawyer

of causing death by careless cycling could result in a prosecution for a simple mistake (as is the case for the existing offence of causing death by careless driving). One commented that there is a...*“risk of cyclists ending up in prison for a momentary lapse of concentration.”* Another barrister spoken to was concerned that you *“shouldn’t criminalise accidents”*.

14.4 There has been some criticism of the way in which causing death by careless driving has been used by prosecutors; a view shared by Martin Porter Q.C. in his blog. However, Parliament decided this was a necessary piece of legislation and took the view that the CPS and prosecution counsel should be trusted to use this legislation in appropriate circumstances; with the legal system having many mechanisms to remedy a perceived or actual injustice.

14.5 Another concern raised was that whilst juries are able, in the main, to draw from personal experience to assess the standard of a reasonably competent driver, the likelihood is that far fewer jury members will have this personal experience to draw upon in cycling cases.

14.6 Whilst I understand this submission, in my view it is one that could easily be addressed by reference to the Highway Code. In many driving cases, the court is invited to consider whether the Highway Code has been followed in order to establish whether the driver in that case has met the required objective standard; there is no reason I can see why the same could not apply in cycling cases.²⁷ In support of this contention, one lawyer spoken to stated that they *“...would expect advocates to be able to get this across to juries in a way they understand and can get their heads around...”*

14.7 One barrister summarised; *“The benefit [of a new offence] would be you would have a specific offence to cover a specific behaviour, and that would allow for consistency of approach in charging and sentencing”*.

15. **IS THIS REVIEW NECESSARY AND PROPORTIONATE?**

15.1 Any ‘knee jerk’ reaction to the reviewing and/or revising of legislation would be irresponsible and is to be avoided. The horror of the untimely death of Mrs Briggs has understandably impacted many but a reaction solely based upon the tragedy of an isolated case could be considered disproportionate.

15.2 Cycling UK’s response included²⁸ *“Our concerns however are that the Government appears to be rushing to respond to one case of irresponsible cycling – admittedly a very serious one that resulted in a fatality, and a lot of negative headlines while*

²⁷ Relevant sections of the Highway Code are 59-82

²⁸ Cycle Safety Review: Phase 1 - A response from Cycling UK

continuing to overlook what we believe is the much greater need for a comprehensive review of the wider road traffic offences and penalties framework.”

- 15.3 However, against this view, it is clear from the evidence that this is not a new or isolated issue. As stated in the Highway Code²⁹, pedestrians, cyclists, motorcyclists and horse riders are considered vulnerable road users. It is accepted that in the majority of cases cyclists are the more vulnerable road user (as opposed to a driver). However there are cases (as set out above and highlighted below) where this is not the position and pedestrians are the more vulnerable road user.
- 15.4 Whilst the number of reported collisions involving pedestrians and cyclists is smaller than the number involving cyclists and motor vehicles (and pedestrians and motor vehicles) it is not an insignificant number.
- 15.5 STATS19 reported road casualty data between 2011-2016 confirms that during this period there were a total of 2,491 collisions between cyclists and pedestrians resulting in a pedestrian casualty (but not necessarily amounting to fault on the part of the cyclist):³⁰
- 15.5.1 20 resulted in a pedestrian fatality
 - 15.5.2 546 resulted in a pedestrian serious injury
 - 15.5.3 1,931 resulted in a pedestrian slight injury (6 of these cases were the same collision where there was a pedestrian serious injury)
 - 15.5.4 44 had two pedestrian casualties and 1 had three pedestrian casualties
- 15.6 As a general proposition, as early as the 1950's, it was considered that in driving cases the gap between manslaughter and other driving offences was too wide; thus why the offence of causing death by dangerous/reckless driving was legislated. Such a gap still exists in cycling cases; with the above data, and case analysis, confirming that the *Alliston* case could not be said to be isolated.
- 15.7 More specifically, Mr Justice Mitting in *Lambert* in 2008 suggested that Parliament may wish to consider further legislation in cases of death or serious injury caused to pedestrians by cyclists.
- 15.8 Given these factors, I consider that on balance the case for review could not properly be categorised as a 'knee jerk' reaction. Moreover, the law should strive to

²⁹ The Highway Code at 204 states: *“The most vulnerable road users are pedestrians, cyclists, motorcyclists and horse riders. It is particularly important to be aware of children, older and disabled people, and learner and inexperienced drivers and riders.”*

³⁰ For completeness, not all of these fatalities were attributed to cyclist error: *“15/20 fatalities were assigned at least one contributory factor, with 6/20 assigning a factor to the pedestrian only, 5/20 assigning a factor to both the pedestrian and the cyclist, and 4/20 assigning a factor to the cyclist only.”*

deal with a range of situations and considering one issue should not be taken as ignoring another. Whilst I have sympathy for the representations on behalf of Cycling UK, they do not make a case for why this review should not take place; they simply assert that there are also other issues to be considered.

- 15.9 It could be said that the frequency of cases over the last ten years demonstrate this not to be a widespread issue. Whilst I have some sympathy for that submission, this is not, in my view, a reason not to act. When the Road Traffic Bill (which brought in the offences of dangerous and careless cycling) was being debated in 1955³¹), The Minister of Transport and Civil Aviation (Mr. John Boyd-Carpenter) quite succinctly summarised the point; *“The great majority of cyclists ride in a law-abiding and sensible manner, but probably the experience of Hon. Members would cause them to agree that it is proper that some control of this sort should be extended to the very small minority of cyclists, who, by doing silly things, may endanger their own lives or the lives of others.”*
16. A more relevant question is, I suggest, why now? In this respect, the analysis of the views of the majority of lawyers and a police officer that have been involved in cases over the last 10 years, combined with the Court of Appeal judges considering the cases on appeal, point to the fact that this is an issue that should be addressed. It has perhaps been focused by the untimely death of Mrs Briggs but this is properly to be considered as a converging of issues rather than a single, tragic, event precipitating a reaction. The tragedy concerning Mrs Briggs could be said to be the trigger rather than the cause. In short, the timing appears to be appropriate.

³¹ Hansard HC Deb 05 April 1955 vol 539 cc1013-128 at 1017

PART 4 – THE NEED FOR LEGISLATIVE CHANGE

17. ADVICE

- 17.1 In reviewing this matter I have carefully considered and analysed the evidence placed before me by the DfT (outlined in paragraph 3.1 above). I have also consulted with the relevant legislation and Court of Appeal judgments as well as the definitive guidelines and proposed definitive guidelines produced by the Sentencing Council.
- 17.2 In my opinion there is a persuasive case for legislative change to tackle the issue of dangerous and careless cycling that causes serious injury or death; in order to bring cycling into line with driving offences.
- 17.3 The current legal position does not allow for a range of offences or penalties to tackle this issue. The gap between manslaughter and the historic offence of wanton and furious driving is too wide; particularly when, as far back as the 1950's it was recognised that juries are slow to convict in 'motor manslaughter' cases, let alone cases involving cyclists.
- 17.4 The use of a historic offence aimed at carriage driving does not fit with the modern approach to road safety; it is difficult to define, is not objective in scope and does not allow for a transparent and consistent sentencing practice focused on culpability and harm. Moreover, the maximum sentence available does not appropriately reflect the harm in cases involving serious injury or death.
- 17.5 How such legislative change is made is not necessarily a matter for this advice and, of course, any decision on this is for the DfT to take, having sought appropriate advice on the drafting of legislation. There are many ways that this change could be effected. However, I note that in Ireland, the Netherlands and Germany their normal driving laws apply equally to cyclists. An amendment to the *Road Traffic Act* to remove the restriction of "*mechanically propelled vehicles*" to the offences of causing death or serious injury by dangerous or careless driving is a way of effecting this change. This would have the benefit that the offence would cover public places and not just roads; which is relevant as some of the reported cases involved collision with pedestrians in pedestrian areas.
- 17.6 Tackling legislative change in this, or an analogous, way would also provide a benefit in respect of the rise of so-called e-bikes; and would to some extent future-proof the law in respect of vehicle innovation. Currently some e-bikes could be considered to be mechanically propelled and therefore would fall within the current laws of causing death by dangerous and careless driving, but many would not (EAPC's). Given their increasing popularity, removing the requirement that a vehicle is mechanically propelled would ensure that everyone; whether driving a car, using

an EAPC, driving a horse and carriage or cycling, would be subject to the same legal standard if they were to seriously injure or kill another road user as a result of driving that fell below the required standard.

18. THE IMPACT

- 18.1 Any change in legislation must consider its effect. Whilst this does not necessarily fall within the scope of my brief and I am not carrying out a regulatory impact assessment, there are some general comments I would make about impact. I consider that this legislative change would have a positive effect on all road users. As one barrister put it; *“I would like to think that it [a change in legislation] would have a positive impact purely and simply on the basis of cyclists being well aware that if they were to ride in a careless or dangerous manner and were unfortunate enough to kill someone they know they are going to be up against it...I would like to think that it would have a positive impact for people to think 'I am going to slow down, I'm not going to do anything stupid because actually it could be me putting myself before the court system.’”*
- 18.2 As highlighted earlier in this report, currently, cyclists are in danger of facing manslaughter in circumstances where drivers would not as there are prescriptive driving offences. Therefore, whilst cyclists may be wary of such a legislative change, in fact it could have a positive impact in those circumstances.
- 18.3 Considering the wider impact of legislative change, this review is focused specifically on cycling. However, some of the issues outlined above would apply in respect of all non-mechanically propelled vehicles such as horses, horse and carriages etc. This is particularly so if, rather than setting out new legislation specifically for cyclists; there was an amendment to existing legislation to remove the *“mechanically propelled”* stipulation. This may be an issue that requires further consideration.

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Annex 1

Road Traffic Act 1988

Cycling offences and cycle racing

28 Dangerous cycling

(1) A person who rides a cycle on a road dangerously is guilty of an offence.

(2) For the purposes of subsection (1) above a person is to be regarded as riding dangerously if (and only if)—

(a) the way he rides falls far below what would be expected of a competent and careful cyclist, and

(b) it would be obvious to a competent and careful cyclist that riding in that way would be dangerous.

(3) In subsection (2) above “dangerous” refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of that subsection what would be obvious to a competent and careful cyclist in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.]

29 Careless, and inconsiderate, cycling.

If a person rides a cycle on a road without due care and attention, or without reasonable consideration for other persons using the road, he is guilty of an offence.

30 Cycling when under influence of drink or drugs.

(1) A person who, when riding a cycle on a road or other public place, is unfit to ride through drink or drugs (that is to say, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the cycle) is guilty of an offence.

(2) In Scotland a constable may arrest without warrant a person committing an offence under this section.

31 Regulation of cycle racing on public ways.

(1) A person who promotes or takes part in a race or trial of speed on a public way between cycles is guilty of an offence, unless the race or trial—

(a) is authorised, and

(b) is conducted in accordance with any conditions imposed,

by or under regulations under this section.

(2) The Secretary of State may by regulations authorise, or provide for authorising, for the purposes of subsection (1) above, the holding on a public way other than a bridleway—

(a) of races or trials of speed of any class or description, or

(b) of a particular race or trial of speed,

in such cases as may be prescribed and subject to such conditions as may be imposed by or under the regulations.

(3) Regulations under this section may—

(a) prescribe the procedure to be followed, and the particulars to be given, in connection with applications for authorisation under the regulations, and

(b) make different provision for different classes or descriptions of race or trial.

(4) Without prejudice to any other powers exercisable in that behalf, the chief officer of police may give directions with respect to the movement of, or the route to be followed by, vehicular traffic during any period, being directions which it is necessary or expedient to give in relation to that period to prevent or mitigate—

(a) congestion or obstruction of traffic, or

(b) danger to or from traffic,

in consequence of the holding of a race or trial of speed authorised by or under regulations under this section.

(5) Directions under subsection (4) above may include a direction that any road or part of a road specified in the direction shall be closed during the period to vehicles or to vehicles of a class so specified.

[F4(6) In this section “public way” means, in England and Wales, a highway, and in Scotland, a public road but does not include a footpath.]

32 Electrically assisted pedal cycles.

*(1) An electrically assisted pedal cycle of a class specified in regulations made for the purposes of section 189 of this Act and section 140 of the **M1** Road Traffic Regulation Act 1984 shall not be driven on a road by a person under the age of fourteen.*

(2) A person who—

(a) drives such a pedal cycle, or

(b) knowing or suspecting that another person is under the age of fourteen, causes or permits him to drive such a pedal cycle,

in contravention of subsection (1) above is guilty of an offence.

168 Failure to give, or giving false, name and address in case of reckless or careless or inconsiderate driving or cycling.

Any of the following persons—

*(a) the driver of a **[mechanically propelled vehicle]** who is alleged to have committed an offence under section 2 or 3 of this Act, or*

(b) the rider of a cycle who is alleged to have committed an offence under section 28 or 29 of this Act,

who refuses, on being so required by any person having reasonable ground for so requiring, to give his name or address, or gives a false name or address, is guilty of an offence

Annex 2

Road Traffic Act 1991

7. Cycling offences.

For section 28 of the Road Traffic Act 1988 there shall be substituted—

28 Dangerous cycling.

(1)A person who rides a cycle on a road dangerously is guilty of an offence.

(2)For the purposes of subsection (1) above a person is to be regarded as riding dangerously if (and only if)—

(a)the way he rides falls far below what would be expected of a competent and careful cyclist, and

(b)it would be obvious to a competent and careful cyclist that riding in that way would be dangerous.

(3)In subsection (2) above “dangerous” refers to danger either of injury to any person or of serious damage to property; and in determining for the purposes of that subsection what would be obvious to a competent and careful cyclist in a particular case, regard shall be had not only to the circumstances of which he could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.”

Annex 3

Offences against the Person Act 1861

35. Drivers of carriages injuring persons by furious driving.

Whosoever, having the charge of any carriage or vehicle, shall by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years, . .

20. Inflicting bodily injury, with or without weapon.

Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and being convicted thereof shall be liable . . . F1 to be kept in penal servitude .

Annex 4

Road Traffic Act 1988

1. Causing death by dangerous driving..

A person who causes the death of another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence

1A Causing serious injury by dangerous driving

(1) A person who causes serious injury to another person by driving a mechanically propelled vehicle dangerously on a road or other public place is guilty of an offence.

(2) In this section "serious injury" means—

(a) in England and Wales, physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861, and

(b) in Scotland, severe physical injury

2B Causing death by careless, or inconsiderate, driving.

A person who causes the death of another person by driving a mechanically propelled vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, is guilty of an offence.

Annex 5

“road”

(a) in relation to England and Wales, means any highway and any other road to which the public has access, and includes bridges over which a road passes

Annex 6



Laura Thomas

MA (Oxon) in Jurisprudence

Laura was called to the Bar in 2001 having graduated in law from Christ Church, Oxford University. Her career began in the Chambers of William Clegg Q.C., 2 Bedford Row, London where she was firstly a pupil and then a tenant. Whilst in chambers she prosecuted and defended heavyweight criminal cases in the criminal courts and specialised in regulatory law, regularly prosecuting and defending in health and safety cases.

In 2007, Laura joined Birketts LLP as an Employed Barrister in the Corporate Criminal Defence Team. She successfully developed the practice and was promoted; firstly to head of team and then, in 2013, to Partner. Her practice includes health and safety, transport and logistics, environmental regulation, Trading Standards prosecutions, food law, private criminal defence and fraud.

Laura has particular expertise in health and safety. She was, for a time, seconded to the HSE Solicitor's Office; advising on health and safety prosecutions of national importance. She has conducted legal training for HSE Inspectors as well as regularly speaking at health and safety conferences and seminars. Whilst in chambers, she significantly contributed to the first edition of Butterworths' publication 'Health and Safety Law: Enforcement and Practice' by Matthews and Ageros. In addition, Laura was invited onto Eddie Mair's BBC Radio 4 show in July 2017 to discuss corporate manslaughter following the tragic fire at Grenfell Tower in West London. She has also been featured in several editions of 'Health & Safety at Work' publication.

In 2017 Laura was appointed a Deputy Traffic Commissioner. She was also formerly a board member for the Freight Transport Association (FTA).

Laura is recommended by Legal 500 [UK 2016] for health and safety, transport, crime, fraud, environment and licensing, and is listed in the elite 'Leading Lawyers' list of lawyers nationwide. She is also recommended by Chambers and Partners for health and safety and road regulatory (nationwide).

Legal 500 [UK 2016] notes that Laura and colleagues are all “*fantastic, always available and experts in their field.*” Previous Legal 500 editions state that Laura “*knows everything about regulatory defence work.*” She is “*precise, pragmatic and risk-aware*” and “*knowledgeable in her craft.*” Clients note that she “*brings her historical experience at the Bar and at the Health and Safety Executive to bear in providing a very strong defence to regulatory cases – she is detailed and accurate, bullish, clear and extremely competent.*”

Chambers [UK 2017] states Laura is “*assured and confident and provides clear and concise advice.*” In previous editions, Laura is noted as being “*very effective and communicates at all levels, she is not patronising and gives a very clear message.*”

Laura has also been named 'Health and Safety Lawyer of the Year 2013' (Lawyer Monthly) and 'Business Crime Lawyer of the Year 2014' (Finance Monthly).