



accidents don't have to happen

**Response to**

**Department for Transport**

**Consultation Paper**

**“Cycling and Walking Investment Safety**

**Review:**

**Proposals for New Cycling Offences”**

25 October 2018

## Introduction

This is RoSPA's response to the Department for Transport's "Cycling and Walking Investment Strategy Safety Review: Proposals for New Cycling Offences". It has been produced in consultation with RoSPA's National Road Safety Committee.

The aim of the government's Cycling and Walking Investment Strategy (CWIS) is to double cycling and reverse the decline in walking activity and reduce accidents by 2025. As the Investment Strategy states, 'Realising our ambition will take sustained investment in cycling and walking infrastructure. It will take long term transport planning and a change in attitude. Walking and cycling should be seen as transport modes in their own right and an integral part of the transport network, rather than as niche interests or town planning afterthoughts'.

The Government wants walking and cycling to be a normal part of everyday life and the natural choices for short journeys. However, the sad reality is that in 2016, 550 pedestrians and cyclists were killed on our roads, making up nearly one third of all road fatalities, and thousands more were seriously injured. The key to increasing cycling and walking is to create a safe on and off-road environment, improve road user attitudes and behaviour towards each other, and safer vehicles that reduce the risk of collisions occurring and the severity of those that do occur. RoSPA strongly supports the vision as outlined in the Investment Strategy.

RoSPA is pleased to be given this opportunity to respond to the consultation. However, before answering the questions we believe that it would be helpful to provide our general policy position as the specific nature of the questions do not sufficiently allow for this to be stated.

Throughout our 101 years history as a safety charity RoSPA has campaigned for safer roads, which has included calls to either change or introduce new legislation, for example, we were instrumental in the introduction of compulsory seatbelt wearing and reducing the drink drive limit in Scotland. Where there is a gap or anomaly in road traffic law RoSPA is happy to suggest and support changes which rectify it if it improves road safety and provides legal reassurance for the victims of road crashes.

In this context, we are happy to support in principle the proposals for new offences and penalties which involve death and serious injury. However, we do question the overall approach of aligning proposed new legislation to fill the current gap by grafting new legislation onto the current framework of dangerous and careless driving. In doing this, we may be missing an opportunity to carry out a wider review of road traffic law, especially as the current consultation is essentially to create new cycling offences using the existing definitions of 'careless' and 'dangerous' driving. These definitions, and the associated sentencing framework, are subject to personal interpretation, lack clarity and are inconsistently applied.

The tragic death of Kim Briggs highlighted the gap in the law where the individual was convicted and sentenced to 18 months imprisonment under the Victorian legislation; wanton and furious driving. The need to fill this gap is justified, however, and it is worth highlighting that there is a general feeling that drivers convicted of causing death and serious injury receive a sentence which does not reflect the severity of the crime. For example, the average sentence over the last 5 years for 'causing death by dangerous driving' was just 61 months.

RoSPA, whilst supporting this consultation, believes that it is a missed opportunity to carry out a wider review and hope that this will be undertaken at the soonest opportunity.

RoSPA is pleased that the consultation acknowledges the specific health and environmental advantages that regular cycling creates and is keen not to see measures implemented that would deter people off from cycling, such as the licensing bicycles.

It is also worth stating that in 2017 there were 470 pedestrians killed, up 5% on the previous year, the majority as a result of being in collision with a motor vehicle. In 2016 three pedestrians were killed as a result of being involved in a collision with a cycle. Rare as these events are, RoSPA believes that this is still a reason to ensure that there is an appropriate legal framework available for the very small percentage of cyclists who deliberately put other road users at risk through their actions.

Every time a serious collision involving a cyclist and a pedestrian occurs it should be viewed as a systems failure. Changes to the law will enable the courts to administer perceived justice for victims' families, but it will not bring them back or make their life changing injuries less debilitating. Our aim must be to prevent such incidents from happening in the first place by having a pedestrian and cyclist friendly infrastructure, targeted enforcement and both driver and cyclist education/training.

See RoSPA response to DfT Call for Evidence, Cycling and Walking Investment Strategy; Safety Review (May 2018) <https://www.rospa.com/rospaweb/docs/advice-services/road-safety/consultations/2018/cycling-walking-investment-strategy-review.pdf>

## **RoSPA Responses to the Questions in this Consultation Paper**

### **Question 1**

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

#### **RoSPA Response**

RoSPA believes that there should be parity of sentencing options where the outcome is death or serious injury. Victims who are killed or seriously injured, and their families, suffer the same consequences whether the harm is caused by a cyclist, a driver or a motorcyclist. In the short term introducing an offence of causing death by dangerous cycling will fill the current legislative gap as identified by Laura Thomas's Review. However, in the longer term, RoSPA would like to see the Department of Transport carry out a wider review of road traffic law, which should also include cycling offences.

## **Question 2**

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

### **RoSPA Response**

RoSPA believes that there should be an offence of causing death by careless or inconsiderate cycling. However, in the longer term, we would like to see the Ministry of Justice carry out a wider review of road traffic law which may replace this new offence.

## **Question 3**

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

### **RoSPA Response**

Currently where a cyclist seriously injures another road user there are offences such as manslaughter, grievous bodily harm or wanton and furious driving (England and Wales), culpable and reckless conduct, or culpable homicide (Scotland) available to the prosecution. However, these are only likely to be considered in the more extremes of reckless cycling behaviour. The introduction of a new offence of causing serious injury by dangerous cycling would allow the prosecution greater flexibility and success in prosecution.

## **Question 4**

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

### **RoSPA Response**

Yes, RoSPA agrees with this proposal.

## **Question 5**

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

- a. **Causing death by dangerous cycling**
- b. **Causing death by careless cycling**
- c. **Causing serious injury by dangerous cycling**

### **RoSPA Response**

RoSPA does not believe that sentences should match the sentences for dangerous and careless driving. The potential to inflict harm is much greater in a motor vehicle than with a bicycle and the greater sentences for dangerous or careless driving should reflect this accordingly.

## **Question 6**

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

### **RoSPA Response**

Where a cyclist seriously injures another road user there are offences such as manslaughter, grievous bodily harm or wanton and furious driving (England and Wales), culpable and reckless conduct, or culpable homicide (Scotland) available to the prosecution but these are only likely to be considered in the more extremes of reckless cycling behaviour. RoSPA recognises that existing laws do not adequately cover circumstances where a person's cycling causes harm or injury to others. The offence of wanton and furious driving can only be committed if the driver or cyclist has a degree of subjective recklessness so far as the foreseeability of causing injury.

### **Question 7**

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

#### **RoSPA Response**

We have no further comment

### **Question 8**

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

RoSPA believes that the legal loop hold should be equally closed in Scotland as in England and Wales. We are not however in a position to provide legal advice as to how best to achieve this in accordance with the Scottish judicial framework.

### **Question 9.**

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

#### **RoSPA Response**

RoSPA agrees that it is an anomaly and wrong that currently most cycling offences apply only to the road and not in public places. If you are injured as a pedestrian by a reckless cyclist for example, in a public place such as a car park or pedestrian precinct or shopping area that the law does not apply. Injury and the long-term consequences remain the same irrespective as to whether it happened on the 'road' or in a 'public place'.

Therefore, the proposed new offences should apply to both in the same way. Extending the scope of existing cycling offences to public places would also have the additional advantage that dangerous and careless cycling could also be prosecuted.

### **Question 10**

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

#### **RoSPA Response**

RoSPA agrees with this proposal.

### **Question 11**

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

#### **RoSPA Response**

RoSPA would like to see the same laws apply to private land as to public space. We are aware of the tragic death of Caixa Sun who was crushed to death in 2015 at her son's school. As it was on private land the driver could not be charged.

We believe that this consultation is an ideal opportunity to close this gap in the judicial system.

### **Question 12**

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

#### **RoSPA Response**

RoSPA believes that where a cyclist deliberately behaves in a way where they knowingly act in a fashion, which results in death, or serious injury that a driving ban should be at the disposal of the courts. If a cyclist displays a wanton disregard for the wellbeing of others whilst cycling, why would this be any different when driving a vehicle that has the potential to cause a much greater level of harm?

Therefore, a driving ban with a mandatory re test may be the correct punishment.

### **Question 13**

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

#### **RoSPA Response**

See our response to question 12 above.

### **Question 14**

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

#### **RoSPA Response**

RoSPA agrees that it would not be proportionate to change the current penalties for dangerous and careless cycling. The lesser penalty including a non-custodial option as compared to dangerous and careless driving reflects the level of harm that a driver or cyclist is likely to cause. It would be disproportionate for a cyclist to face imprisonment.

### **Question 15**

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

See our response to question 14 above.

### **Question 16**

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

#### **RoSPA Response**

RoSPA agrees that there should not be a new offence of causing death by careless cycling when under the influence of drink or drugs. It is sensible for drink or drug use to be considered as an aggravating factor when sentencing for causing death or serious injury by cycling. We do however believe that the current £1000 fine of riding whilst unfit through drink or drugs should be substantially increased as it might be pure chance that a ride does not kill themselves or others when intoxicated.

### Question 17

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

#### RoSPA Response

Yes, we agree the fine should be substantially increased.

### Question 18

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

#### RoSPA Response

You can be charged with attempting to drive a vehicle whilst under the influence of drink or drugs and RoSPA believe that the same principle should apply for cyclists who attempt to cycle.

### Question 19

Are there any further comments you wish to make?

#### RoSPA Response

RoSPA thanks the Department for Transport for the opportunity to comment on the consultation. We have no objection to our response being reproduced or attributed.

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