
CAMPAIGN FOR STRICT LIABILITY

"In Scotland 556 pedestrians, 163 cyclists, 326 motorcyclists and 1016 motor vehicle occupants were killed and/or seriously injured in 2011, with huge resulting pain for families and economic loss for the country. These tragic figures could all be reduced, especially those for pedestrians and cyclists, by introducing the concept of 'Strict Liability' into Civil Law"

Under strict liability, motorists would have a new responsibility towards both cyclists and pedestrians, and cyclists a new responsibility towards pedestrians. Changing civil law to establish this hierarchical structure, to identify responsibility, will help create a cultural shift in driver behaviour and so reduce collisions. A system of strict liability will also ensure that vulnerable road users involved in road traffic collisions are compensated fairly and quickly.

HISTORY LESSON: NO-FAULT LIABILITY

One of the remarkable achievements of Roman Jurisprudence was the introduction and development of a notion of fault or culpability. Very importantly, they also developed the concept of **"no fault"** liability – where a person is held liable not for failure to display the diligence of a reasonable person, but because they are **in control of a potential source of danger** to other people's lives, health and property. This is **'strict liability.'**

WHAT HAPPENS AFTER A COLLISION?

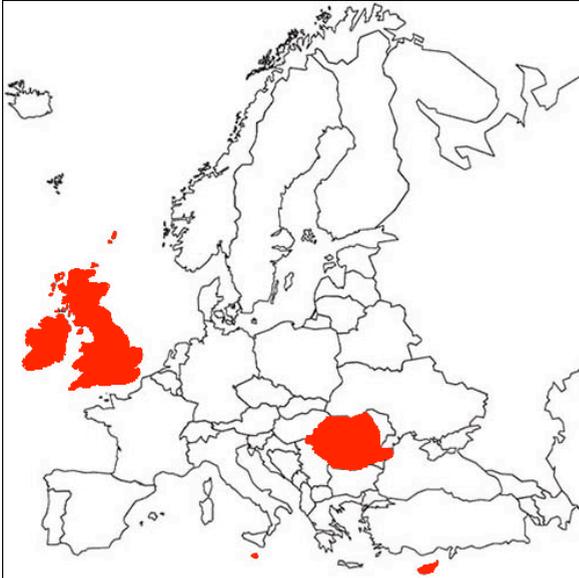
At present, the injured party may have to undertake costly and stressful litigation, often lasting a year or more, to receive compensation. Under strict liability, the person in charge of the source of danger would be automatically liable to pay compensation, normally without the need for litigation. A motorist would be liable to a more vulnerable road user and a cyclist would be liable to a pedestrian. However, if it was shown that the vulnerable road user was at fault, then the compensation could be reduced.

WHY ARE WE LAGGING BEHIND?

No-fault liability already applies in many other situations. For example, the owner of a dangerous dog, or the employer with potentially dangerous equipment is strictly liable where an individual is injured by the source of danger, which they control.

Most countries in Europe also have a strict liability system in civil law as it applies to road use. What underpins the system is the notion of **vulnerability** and its application to road and vehicle use.

China has had a strict liability regime in place for the past 10 years and strict liability rules in relation to road hierarchy can be found in India, Bangladesh and even Vietnam. As the map shows, the only European countries without some form of strict liability on the roads are Malta, Cyprus, Ireland, Romania – and Scotland and the UK!



Why is the concept of Strict Liability normal in most European countries and many others around the world and yet in Scotland we struggle with the concept of hierarchy of road use whereby motor vehicles have responsibility to cyclists and pedestrians and cyclists in turn have a responsibility to pedestrians?

“The UK and other countries without a strict liability law are almost 30 years behind early adopters such as Denmark, the Netherlands and France, who introduced similar clauses in the mid-1980s.”

Ceri Woolsgrove - Road Safety Policy officer at the European Cyclists' Federation.

THE PUBLIC DIVIDE

The UK Department of Transport published a paper in 2010, which painted a rather bleak picture, suggesting there is a **failure in culture of road sharing** and a lack of consensus of whether and how cyclists should be on the road.

There is no doubt that public opinion is divided on the question of strict liability, and many will ask what is wrong with a fault-based system. On the other hand, a survey of driving instructors found 75% in support.

Some motoring journalists and parts of the motoring industry have argued that the roads are a level playing field, that we are all road users and we should all be bound by the same liability laws. But, are we seriously going to accept that it is a level playing field when a cyclist or a pedestrian shares the road with fast moving motorised vehicles?

CHANGING PEDESTRIAN/CYCLIST RELATIONS

In a crash between a pedestrian and a cyclist, the cyclist would be strictly liable in Civil Law. In the same way that motorists would become more aware of and considerate to cyclists and pedestrians, so cyclists would also be likely to pay greater thought to pedestrians, leading to a more harmonious relationship on shared paths as well as on the roads.



THE BENEFITS OF STRICT LIABILITY

- Strict liability in civil law is the proper approach for a mature, socially conscious nation as it addresses the unacceptable human cost of the current system.
- Strict liability builds a culture of mutual respect between road users (as seen by the Continental example), including between pedestrians and cyclists as well as between motorists and all vulnerable road users.
- Strict liability will help promote the idea of Scotland as a cycle-friendly nation and show Scotland leading the UK in cycle-safety.
- Strict liability is more cost effective than the current system – and a cheap way to make a big difference to cycle safety.

IN CONCLUSION

The Scottish Government is encouraging more people to travel by bicycle. It must provide the legal protection they need and deserve, to address the unacceptable human and financial costs of the present system.

Strict liability is a simple powerful change to alter attitudes and foster better conditions on our road. It is a vital tool in a wider package of measures, such as better infrastructure, to achieve more and safer cycling.

MSPs at the Scottish Parliament's Cross-Party Group for Cycling have noted that the laws around strict liability should be looked at as we work to make Scotland a cycle friendly nation. If it can be shown to help improve road safety, Scotland should not be afraid to take the lead. Broadcaster Lesley Riddoch has noted that in much of Europe there is a road culture of treating cyclists with great consideration, and strict liability laws had contributed to that culture by profoundly altering driver behaviour.

Strict Liability is an emotive issue. However, we must push ahead with attempts to introduce strict liability into civil law in Scotland to bring us in line with our European neighbours and to foster a culture of Road Share.



WHAT YOU CAN DO TO SHOW YOUR SUPPORT

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Cycling-accident-compensation.co.uk/strict-liability.aspx

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