

E-Scooters & Micromobility Accidents

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Micro-Mobility – Pros & Cons

- Not sure this is even a consideration now
- We are “in it to win it”
- Last mile/ environmental/ cost positive factors
- New transport/ electricity costs/ accidents/ fire negatives
- Promise of a new billion pound industry....
- Meanwhile one of the unfolding “cons” is the government lack of legislation and the continuation of the “wild west”

E-scooters

- Where are we now?
- In England and Wales private e-scooters are still illegal
 - Need to comply with RTA but don't
 - They are still on the roads and in common use
 - Huge increase in numbers, readily able to purchase
 - Something in order of million or more
 - £300 fine and /or 6 points on licence
- Trial e-scooters are still on the roads
 - Earliest ones July 2020 in Middlesborough
 - Currently run to 30 November 2022 with LA option to extend to 31/5/2024
 - About 40 trials continue

E-Scooter Trials – Regulatory Requirements

- E-scooters themselves subject to minimum technical and speed requirements (15mph)
- Compulsory insurance
- Rules about when/where/how scooters are used
- Rider requirements:
 - Full or provisional driving licence (i.e. no under 16s)
 - No drink-scooting
 - One person at a time
 - No phones or bags
 - Helmets advisory not mandatory

Regulations in Action

- New Highway Code into force January 2022
- Totally silent on micro-mobility and e-scooters – hierarchy of road users – absent!
- Codification of causative potency: will need as good evidence as lorry driver
- This is **NOT** presumed liability (UK only 1 of 5 European countries not operate PL)
 - Rebuttable presumption liability attach to powerful road user
 - Switches burden of proof
- Road traffic: “just and equitable” outcome looking at “causative potency”
- Contributory negligence arena

Liability Considerations

- Standard RTA questions:
 - Where does fault lie?
 - Multi-party accidents?
 - Highway Code / rules of the road?
- Contributory negligence
 - How will “causative potency” work?
 - “normal rule” of vehicle being more blameworthy
 - Car vs e-scooter
 - Pedestrian vs e-scooter?
- *Davies v Swan Motor Co [1949] 2KB 291* Denning L.J. said:

“Whilst causation is the decisive factor in determining whether there should be a reduced amount payable to the plaintiff, nevertheless, the amount of reduction does not depend solely on the degree of causation. The amount of the reduction is such an amount as may be found by the court to be ‘just and equitable’, having regard to the claimant’s ‘share in the responsibility’ for the damage. This involves a consideration, not only of the causative potency of a particular factor, but also of its blameworthiness.”

Legislative proposals

- The Queen's Speech 2022 announced:

"Her Majesty's government will improve transport across the United Kingdom, delivering safer, cleaner services and enabling more innovation."

- Following this statement, in the House of Lords on 11 May 2022, Baroness Vere shared:

"Safety is also at the heart of our plans, to create a regulatory framework for smaller, lighter, zero emission vehicles, sometimes known as e-scooters. My Lords, their popularity is clear, and new rules are needed to improve safety and crack down on illegal use, whilst unlocking innovation and growth in this emerging multi-billion pound industry."

HofC Transport Committee

- 27 April 2022: told by Transport Secretary that Government planned to introduce legislation in 2022 – 2023 session
 - Standardise speed, power and lighting
 - Technical standards for construction with regulatory framework
 - Remove from motor vehicle category to bespoke new category
- Jesse Norman on 22 November 2022 (Minister of State for DfT)
 - confirm intention of Govt to create Low Speed Zero Emission Vehicle (LZEV)
 - different and new category distinct from cycles and motor vehicles: first will be e-scooters
 - no final decisions about regulations have been made and Dept will consult publicly before new arrangements will be made. Full set of findings from evaluation of e-scooter trials will be published in due course

Government Plans

- **April 2022** Grant Shapps (then Minister for Transport) said once standards for privately owned e-scooters had been set then government can decide how they should be used...
- **Jan 2022** Lord Rosser in HofL debate said e-scooters have much to offer but need relevant and appropriate guidelines in place to address safety concerns
- **7 December 2022** Mark Harper, Secretary of State for Transport since 25 October used his maiden appearance in front of the Transport Select Committee to confirm that the Transport Bill, introduced in the Queen's Speech and then discussed by Baroness Vere in May, will not now be put before Parliament in this current session

Or lack of plans.....

Labour Jessica Morden first HofC debate at end of day Adjournment
Debate: 8 December 2022

- *“lack of regulation and control over the sale of untested and potentially unsafe privately owned e-scooters is a real problem”*
- Problem in Newport – her constituency – problems with e-scooters which are all illegally on road because no rental trial scheme at all
- *“we recognise the current lack of regulation is at odds with the increasing use of e-scooters”* – Minister from DfT (**Jesse Norman**)
- *It is essential to ensure that the right regulation, designed to create proper accountability and responsibility, is in place.”*
- Will be gathering data from the e-scooter trials soon

6 September 2022 ask (then) Home Secretary re support for police

Transport Committee

- Produce report on e-scooters in October 2020
- “E-scooters: pavement nuisance or transport innovation?”
 - Last major EU economy where e-scooters banned
 - Keen for their use, want extended to those without driving licence
 - Concerns about speed, shared use, impact on the vulnerable
- Broadly in favour of e-scooters
- Nothing has happened so Jan 2023 announced revisit topic
- “Catch up” on findings from ongoing trials
- Accepting evidence until Wednesday 22 February 2023

PACTS

- Parliamentary Advisory Council for Transport Safety – cross party charity
- Publish March 2022: over 300 injury collisions in UK – 27 fatalities since 1999 and 133 serious injuries including 47 head injuries –
- Two years before 3 fatalities
- Estimate 360,000 e-scooter sales 2020 and more in 2021

Injury statistics

- Most injuries single-vehicle (falls/ collisions)
- Data sparse and disconnected and likely to be under reported
- Federation of European Road Safety Institute 2020 show from hospital treatment in Norway e-scooter injuries 10x more than pedestrian/ cycles
- Factors such as helmet, alcohol and control loss common (TRL stats)
 - Control the public trials “hit the sign” or turn off
 - Difficult when private e-scooters are allowed

Safe Vehicles

PACTS recommends

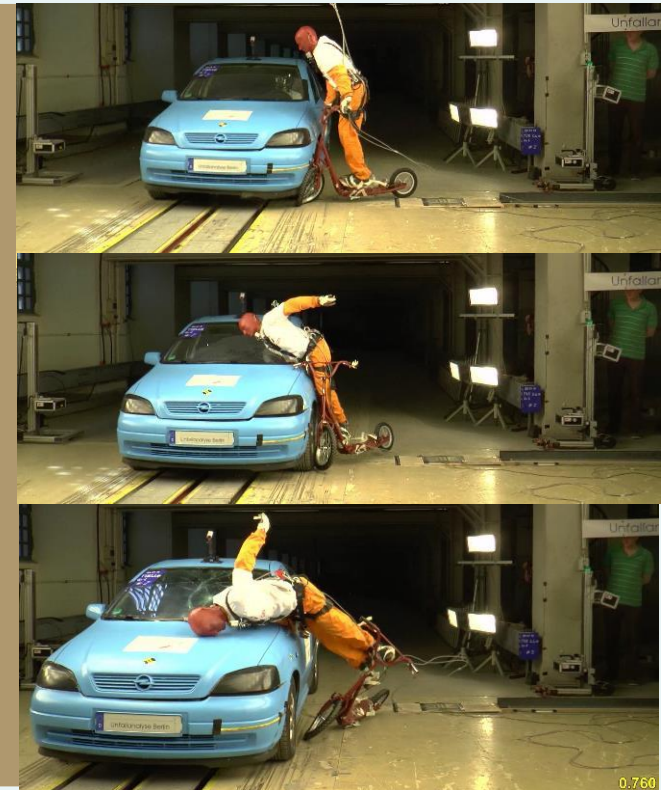
- Minimum front wheel size of 12” (30.5cm)
- Two independently controlled brakes
- Lighting to be mandatory at all times
- Maximum unladen weight of 20kg
- An audible warning device to be mandatory



Safe Speed

PACTS recommends

- Maximum possible speed of 12.5mph (20km/h)
- Maximum continuous rated motor power of 250 W
- Anti-tampering mechanisms should be included in construction. Tampering should be prohibited by law



Safe User Behaviour

PACTS recommends

- Helmet wearing to be mandatory
- Riding on the pavement be prohibited
- Rider age limit of at least 16 years
- Carrying a passenger be prohibited
- Drink driving, dangerous or careless riding be prohibited
- In-person rider training and third-party insurance



Need for change: DfT figures

- 4,290 pedestrians and 4,700 cyclists killed or seriously injured in year end to June 2021
- 1,760 fatalities in reported road collisions to end June 2022
- 19,039 pedestrian road casualties (21,820 in 2019)
- 16,512 cyclist casualties (17,374 in 2019)

E-scooter use: DfT statistics

- Small data pool with many issues, provisional fact sheet to end June 2022
- 1,349 collisions involving e-scooters, compared to 978 in the year ending June 2021
- 346 involved only one e-scooter with no other vehicles, compared to 200 in the year ending June 2021
- 1,437 casualties in collisions involving e-scooters, compared to 1,033 in the year ending June 2021
- 1,095 of these casualties were e-scooter users, compared to 811 in the year ending June 2021
- 12 killed in collisions involving e-scooters (11 of whom were e-scooter riders) compared to 4 in the year ending June 2021
- our best estimate, after adjusting for changes in reporting by police, is that there were 429 seriously injured and 996 slightly injured casualties in collisions involving e-scooters, compared to 288 and 741 respectively in the year ending June 2021

In-depth investigation of E-Scooter performance

- TRL Academy publish Jan 2023
- Study aim to consider capability of privately owned devices and look at manufacturer published data
- Acceleration most affected by motor size
- Speed overstated
- Weight of rider has effect
- Maintenance is broadly woeful: 55% tyres flat and 40% mudguards missing and 50% poor/ unworking brakes and steering
- Can manage 40mm vertical obstructions
- First set of reference data for collision reconstruction

Illegality / *Ex turpi causa*

- Claimants shouldn't profit from their illegal acts
- Is civil defence of illegality available in claims arising out of e-scooter use?
- *Patel v Mirza* [2016] UKSC 42
- *Henderson v Dorset Healthcare* [2020] UKSC 43

Patel v Mirza Considerations

- Need to balance public policy considerations not reliance based approach
- The underlying purpose of the illegality and whether that purpose will be enhanced by a denial of the claim
- Any other relevant public policy on which the denial of a claim may have an impact
- Whether denial of the claim would be a proportionate response to the illegality, bearing in mind that punishment is a matter for the criminal courts
- Consider whether decision produces inconsistency and disharmony in the law and so challenge integrity of the legal system

Henderson

- Ms Henderson paranoid schizophrenia. Managed in community but during period of deterioration killed her mother. Convicted of manslaughter, diminished responsibility, hospital order
- Defendant admitted negligent breach of duty and that admission would have resulted in avoidance of the attack but denial on grounds of illegality
- Could case be distinguished from *Grey v Thames Trains*?

Henderson 2

- Held similar to *Grey* in that damages arose from sentence imposed by criminal court and/or own criminal act. Lack of personal responsibility not key – criminal responsibility was determinative
- Not incompatible with *Patel* – reasoning in *Grey* good law
- Not look at issue of degree of personal responsibility – decision of criminal court is sufficient and risk inconsistency potentially damaging legal system
- Consider the policy balance as suggested by *Patel* and still correct to deny claim

Evidence

- Gather in the usual way
- Dashcam / camera/ CCTV
- Witnesses
- Evidence on the bike
- Accident reconstruction
- Site visits
- Remember particular rules of “scheme”

New Evidence

- GPS
- Geocaching of e-scooters
- Evidence of parking
- Don't work at certain times
- Illegal adaptations/ limiters
- Double up use
- Carrying items

Drago v LB Barnet

- First private e-scooter trial – November 2022 CLCC HHJ Jan Luba KC
- Two day trial further argument March 2023
- E-scooter rider wearing safety helmet but no pads
- Drop into pot hole on public road - illegal use as private e-scooter
- Claim not known it was illegal at time
- Accident October 2020
- Challenge on Highway Act grounds
- Look at level of warning by supplier

E-cycle case

- High Court Manchester award damages to e-cyclist
- Trial 1 February 2022
- HHJ Sephton QC awarded claimant 25% of full value of claim – so 75% contributory negligence
- Making right hand turn across lane when hit by ongoing vehicle
- Wearing high-vis jacket struck by car as turn across lane
- Driver claim not see bike due to dazzling low-lying sun
- Driver just within speed limit, apply brakes but not enough (held only ABS)

Not just e-scooters

- DPP v Saddington [2000] EWHC Admin 409
 - Go-Ped – scooter with internal combustion engine – was motor vehicle
 - Confirm by High Court
- Winter v DPP [2002] EWHC 1524
 - “City Bug” electric scooter required compulsory insurance
 - High Court confirm bound by RTA
- Coates v CPS [2011] EWHC 2032
 - High Court confirm Segways could be “ridden” illegally on footway – under HA 1835: “driving or leading a carriage”

Questions?

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