



# APPG Cycling & Walking: Justice inquiry

## Civil Compensation

### Key points

- The fault-based compensation system in the UK means road crash victims must prove they are not liable for causing the crash. This particularly affects people walking and cycling, who in the rest of Europe under a “presumed liability” system are able to access financial support without having to prove liability.
- Accessing compensation under a fault-based system is thus reliant on evidence of who caused the crash being gathered. No standards of investigation exist for serious injury collisions, and PI lawyers report that many injured peoples’ access to civil justice is scuppered by lacking police investigations.
- Criminal and civil cases run in parallel, and PI lawyers report that issues with disclosure of evidence from the police can delay and hamper civil claims.
- Whilst guidance such as the Rehabilitation Code and Serious Injury Guide exist to enable collaborative working between defendants and claimants, as well as early access to rehabilitation, these are often not adhered to.
- For the families of those killed, bereavement damages are insultingly low – only £15,120.

### Presumed liability vs. UK system

Unlike the rest of Europe which operates a presumed liability system, the UK has a fault-based compensation system. Meaning that whereas in countries such as Denmark, the Netherlands, France and Spain, people walking and cycling who are injured in collisions are entitled to compensation automatically, in the UK the victim must prove liability in order to access financial support. There are three main problems with a fault-based system vs. presumed liability:

1. Proving liability is often reliant on a comprehensive investigation being conducted by police, which as outlined in Action Vision Zero’s submission to this inquiry on collision investigation, does not always happen. Particularly amongst the c. 95% of serious injuries which are not investigated by Serious Collision Investigation Units. If evidence is not gathered at the scene or immediately after, then it is lost forever and liability becomes very difficult to prove.
2. The issue of liability means that cases take much longer and are more expensive to run, as lawyers on both sides will need to instruct experts in collision reconstruction to ascertain which party was at fault. The impact of this is that access to interim payments for early commencement of rehabilitation is often hampered, impacting victims’ long term recovery.
3. Even if a driver is found liable, the total damages awarded to a claimant is worked out on a percentage of liability, e.g. 60% the driver vs. 40% the victim, and the victim is then only entitled to 60% of their compensation. The ramifications of this system are that victims are therefore only able to afford X% of the money they need to help them cope and recover. The impact of this can be very severe on victims if they are not able to afford the care, medical devices, or housing needs they require.

In 2020 The Highway Code was updated and amongst several changes, included a ‘hierarchy of responsibility’, stating that *“In any interaction between road users, those who can cause the greatest harm have the greatest responsibility to reduce the danger or threat they pose to others”*. This change represents an ethos of presumed liability, but little is known as to whether it is improving vulnerable road users’ access to civil compensation.

## Issues accessing civil compensation

**Disclosure.** PI lawyers report that civil proceedings and therefore victims' access to rehabilitation are hindered by not having evidence disclosed early on by police. Insurance companies will not release access to interim payments unless there is evidence of liability, and thus early disclosure is vital. A [comprehensive policy](#) by the National Police Chiefs Council already exists on this issue, but in practice it is not always being adhered to.

**Uninsured or untraceable drivers.** In cases where the driver against whom the victim is claiming is uninsured or they left the scene of the collision, the victim must claim against the Motor Insurance Bureau (MIB). The MIB is funded by insurance companies and exists to ensure victims who have been bereaved or injured by hit-and-run or uninsured drivers are able to access civil compensation. Cases involving the MIB take much longer, sometimes 6 or 7 years, severely impacting victims' ability to cope and recover. And in cases where the driver was untraceable, victims are not able to instruct their own experts without incurring significant expenses. It is therefore just the MIB instructed collision reconstruction and medical experts which are used in these cases, inevitably translating to less favourable financial outcomes for victims.

**Adherence to Serious Injury Guide.** The Serious Injury Guide is an initiative managed by organisations representing claimants (APIL) and defendants (FOIL). The guide was developed for claims worth over £250,000 with the objective of parties working together, allocating tasks, and narrowing the issues throughout the claim. Not all cases will receive early admissions of liability but there is a common aim to attempt dispute resolution as early as practicable. Adherence to the guide results in cases being finalised sooner and victims getting access to interim payments to pay for much needed rehabilitation. Unfortunately there are many major insurers who are not signed up to the guide, and those that are do not always adhere to the guide.

**Bereavement Damages.** When someone is seriously injured, their claim is based on what financial support they need to get them as close as possible to their life before the collision. When someone is killed in a road crash, an insultingly low statutory sum is claimable by a very limited type of relative. In England, Northern Ireland and Wales, only spouses, parents of unmarried under-18s, and partners who have cohabited for at least two years are eligible to claim a paltry sum of £15,120. Parents of over-18s, sisters, brothers, grandparents and all types of relatives who would be seriously impacted by the wrongful death of a loved one are not able to make a claim to help them cope. By contrast the bereavement damages system in Scotland is decided on a case-by-case basis - allowing for more relatives to be awarded more appropriately sized damages.

## Action Vision Zero calls

1. **Monitoring the impact of the Highway Code Changes.** Research should be commissioned to understand the impact (if any) of the hierarchy of road users on people walking and cycling accessing civil compensation.
2. **Introduction of presumed liability.** Presumed liability system should be introduced in the UK, as it is in the rest of Europe.
3. **Working groups introduced.** Working groups with police, PI lawyers and victims should be introduced at a local level to address issues with serious injury investigation and encourage collaborative relationships between PI lawyers and police.
4. **Early disclosure encouraged.** The existing NPCC policy of early disclosure should be communicated regularly to all police investigating collisions.
5. **MIB claims should be conducted as insurer claims.** Victims of uninsured or untraceable drivers should be able to access compensation in the same way as victims of insured drivers.
6. **Bringing Bereavement Damages in line with Scotland's.** Legislation on bereavement damages in England, Wales and Northern Ireland to be brought in line with Scotland.

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