



Informing Progress - Shaping the Future

FOIL UPDATE 13 October 2022



E-Scooters – The Challenge for the Insurance Industry

This event was held on 29th September 2022 and was hosted by the FOIL Motor SFT.

Glyn Thompson, a member of the FOIL Motor SFT opened the session by observing that since the last Motor SFT in March 2020, e-scooters had moved on from being fresh and new to being a familiar sight. Some of those seen are being legitimately used but there are many that are not. This roundtable was to focus on the challenges insurers will face, as e-scooters come onto the roads.

Margaret Winchcomb (MW) of the **Parliamentary Advisory Council for Transport Safety (PACTS)**.

The speaker led the project which in March 2022 published a report looking at the issue of safety with privately owned e-scooters, rather than those used in the national trials. The group's research looked at:

1. Casualty data for the year 2021;
2. The safety of private e-scooters (including their construction);
3. Recommendations about the content of future regulations relating to the construction and use of e-scooters.

A balance is needed between sustainability and climate change issues on the one hand and safety on the roads on the other. About 1,700 people (or five a day) are killed or seriously injured on the roads in Great Britain each year. Transport is a major contributor to carbon dioxide emissions.

IN BRIEF

Two expert speakers looked at issues relating to the law and regulation of e-scooters in the context of both legal trials and illegal use; what further regulation is required; and how civil liability will be determined.

There has been little change to these in the last 10-years, but both now have zero targets: no deaths and zero emissions.

The speaker referred to the death on 12th July 2012 of Emily Hartridge (35), a TV presenter and YouTube influencer, who was killed in a collision with a lorry, while riding on an e-scooter given to her as a present a few days previously. The use of an e-scooter on a road was and remains illegal. They are defined as motor vehicles but while it is legal to purchase an e-scooter privately, it must not be used on a road or in a public place. It can only be used on private land with the owner's consent.

However, since July 2020, operator owned e-scooters have been available to use **legally** through regulated rental schemes in England. There are about 30 such trials running at present, with roughly 23,000 e-scooters in operation. Both the e-scooter operators and the riders must satisfy various criteria. The trials have been extended to 2024 but there will be no additional locations and so they remain available to a modest proportion of the population.

The speaker carried out a show-of-hands poll of delegates which revealed that ten had access in their areas to legal e-scooter trials. This compared with 31 who had seen an e-scooter on a road or public place. This represented about two-thirds of delegates.

A slide was shown illustrating the net import numbers from January 2018 to the beginning of 2022: it is legal to sell them. For various reasons, there has been a steady increase in the numbers imported, with most months since June 2020 seeing in excess of 20,000 units and February 2022 registering over 100,000. The total number imported in 2021 was nearly half a million.

Assessing the safety of e-scooters

As these numbers increase, so does the concern for the safety of riders and others. Activities can be defined as 'hazardous' (risking death/injury to the user) or 'dangerous' (risking danger to others).

[Most people who die on the roads are much more likely to be killed in a car, or by a car, than any other mode.](#) Cyclists or pedestrians rarely cause the death of another road user. Few are killed by incidents involving buses.

In 2020, 484 casualties from e-scooter incidents were recorded for the first time by the DfT. PACTS has continued to track fatalities and 27 have died on e-scooters: the youngest 14 and the oldest 74. All but four were riding private e-scooters; two while riding a rental e-scooter; and one pedestrian died in June 2022, when she was struck on a pavement by a private e-scooter.

In 2021, 1434 casualties involving an e-scooter were recorded. However, under-reporting is substantial, as collation of the information is very difficult. In addition, vulnerable road users may not report incidents, which in any event may occur away from a main road and invariably involve illegality.

In 2021, 250 patients were seen over one four-week period across 20 emergency departments in the UK, where an e-scooter was involved.

The European Experience

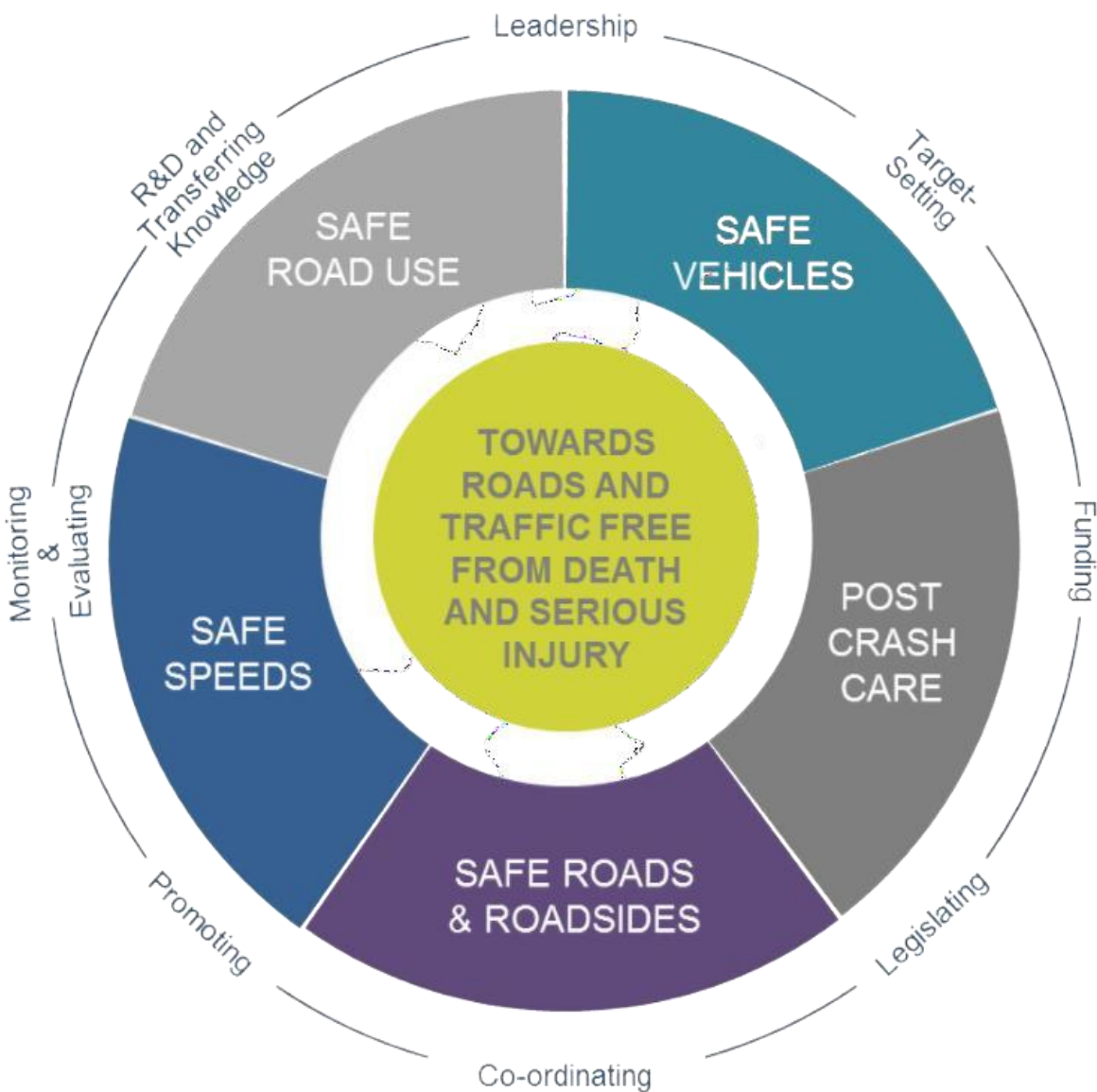
In looking at what regulation may be introduced in the UK, we can look at what has happened in Europe. In many countries private e-scooters are legal to use but are regulated for speed (some

15.5mph, many 12.5mph), power (250-1000W), and rider requirements (12-16 years, passengers forbidden) and no riding on pavements.

Helmet wearing is being made mandatory in more countries, as hospital data shows that head injuries make up 20-50% of those visiting casualty. Many of these casualties have fallen from their e-scooters.

E-scooter safety in the UK will involve shared responsibility. The speaker referred to Safe System, the implementation of best practice safety principles, to analyse the fatal incident involving Emily Hartridge.

Safe System 'wheel' (Source: Loughborough University Design School Safe System Course, 2017)



Emily was riding an early generation of private e-scooter with a wheel diameter of about eight inches. Suspension was from pneumatic wheels but after the incident, it was found that the front tyre was under-inflated. (See the segment above – safe vehicles).

PACTS recommends:

- Minimum front wheel size of 12" (30.5cm). This impacts on stability and the ability to absorb features such as potholes;
- Two independently controlled brakes
- Lighting to be mandatory at all times
- Maximum unladen weight of 20kg
- An audible warning device to be mandatory (this could be intermittent but some manufacturers are looking at a constant emission of a noise).

Another of the segments is safe speed. PACTS recommends:

- Maximum possible speed of 12.5mph (20km/h). (Some private e-scooters can travel at in excess of 60mph and it is relatively easy to tamper with them to increase the speed). Emily was tracked as travelling at the maximum possible speed on her e-scooter of 15mph. Testing has shown that impacts at above 12.5mph produce significantly more serious injury than at lower speeds. This is the speed limit chosen by a number of local authorities involved in the trials and it does not seem to impact the popularity of e-scooters.
- Maximum continuous rated motor power of 250 W
- Anti-tampering mechanisms should be included in construction. Tampering should be prohibited by law.

Analysis of collisions between an e-scooter and a pedestrian show serious injury to the pedestrian is more likely than to the e-scooter rider.

A third segment in the wheel is safe use/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

Emily Hartridge was wearing a helmet, but her injuries were too severe for that to have made a difference. Trauma surgeons are likening the injuries suffered by e-scooter riders to those suffered by motorcyclists. Facial injuries are common, suggesting that standard cycling helmets do not afford adequate protection.

A fourth segment in the wheel is safe roads and roadsides.

Emily was approaching a roundabout, in a cycle lane, only marked by a white line. It was well used and there were cyclists travelling behind her. She lost her stability and fell when she rode over a

slightly recessed metal inspection cover. Covers like this, along with potholes are an everyday hazard. A National Statistics report on e-scooter casualties states:

“...e-scooter users are one of the vulnerable user groups. They are not protected by a vehicle body in the same way car users are and tend to be harder for drivers to see on the road.”

What can be done to improve safety for e-scooter riders and other light-weight zero emissions vehicles?

One option is segregated routes, separating e-scooters from pedestrians and also vehicles that are larger/heavier. This would also require consideration of how to deal with the differing types of vehicles using this space.

[The report](#) on the use of rental e-scooters within the trials should provide a mine of information about e-scooter safety.

Micro-mobility, E-scooters and the Future of Personal Injury Claims

Emily Formby (EF) KC of 39 Essex Chambers

Time will tell whether e-scooter claims will throw-up novel issues of law, or the application of existing law to novel situations. There are also issues of product liability (possibly including that of shops selling e-scooters).

Micro-Mobility - Pros

- Cheaper to run for short journeys
- Environmental impact / clean air
- Mental and physical health
- Integrated transport solutions
- Reduction of congestion in city centres etc
- The pandemic has accelerated the need to explore solutions
 - People switched to public transport, but cars are still being used. To what extent will there be compulsion to use more environmentally friendly ways to travel?
- Are bikes being left behind? They are the way forward/the best option, but the focus has switched away from them.

Micro-Mobility - Cons

- Rising cost of electricity: are they as cheap to run as was thought?
- The increasing evidence that there is a higher risk of accidents / injury. The way the e-scooters are designed and the way in which weight on them is distributed is leading to ‘tipping-forward’ accidents. Collisions with other objects, including vehicles see the rider

exposed at the front of the e-scooter. On a bike there is a better chance to absorb any fall by extending the arms.

- Lack of product and safety regulation. Regulations are about the vehicles, not about how they are used. Regulations may limit a top speed but that is irrelevant if that speed is overridden by the user.
- Driver inexperience / inebriation. E-scooters are quite tricky to use safely: there are problems with weight distribution; being set forward on the foot-plate; steering; and inevitably, users will invariably be carrying something.

Pick-up hire bikes always have a carrier on the front, or some means of carrying goods: e-scooters do not.

- Other road user inexperience
- No compulsory insurance
- Environmental impact: e-scooters are not as environmentally friendly or sustainable as might at first appear to be the case.
- Storage and fire risks
- Vandalism, theft and parking

E-Scooter Trials

- Commenced August 2022: run to 30 November 2022 with LA option to extend to 31/5/2024
- Widespread across UK – approx. 40 trials taking place
- Only legal way to ride
- Different considerations in different areas
 - Differences in road layouts / congestion. Some LAs have required larger diameter wheels than with privately owned e-scooters, to enable riders to negotiate 'standard' potholes.
 - Misuse of vehicles
 - Parking / docking

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

Vulnerable Road Users

While micro-mobility is clearly the way forward, including the availability of pick-up bikes and e-scooters in city centres, thought needs to be given to how road-layouts can cater for other vulnerable road users. For example, during the pandemic, cafés were permitted to occupy pavements but that caused accessibility issues for disabled people trying to use footways.

There is also an issue with bike and e-scooter 'clutter', with vehicles left on the pavement. Some local authorities are creating spaces for vehicles to be left/parked. Some of the rental schemes have systems for ensuring that rented e-scooters are left in a responsible manner, e.g., not allowing the rental app to 'turn-off' unless the e-scooter is properly docked in a docking station. These schemes are good, as long as they work properly. Local authorities/rental companies need to consider what responsibility they should take.

Account needs to be taken of:

- Hazards for those with reduced mobility
- Hazards for people pushing push-chairs
- Hazards for those with visual impairment
 - Radio 4 – "In touch"
 - Royal National Institute of Blind People has raised concerns that they are small, quiet and difficult to see.

Privately-Owned E-Scooters

- Illegal except on private land
 - Facing crackdowns from some police forces
- But widespread anyway: they are nearly everywhere. Despite their illegality in public spaces, they are largely accepted. The police have limited resources. Any regulation needs to take into account that they *will* exist and must cater for them.
- Speed restrictions and visibility big hazards
- No current regulatory framework
- No current appropriate insurance policies
- Are they going to be legalised?
 - Currently £300 fine and 6 points on licence

Legislative proposals

- The Queen's Speech 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."

House of Commons Transport Committee

- 27th 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

Rider behaviour

- The regulation is currently concerned with the machine
- Regulation is not about the rider
- Highway Code is not determinative of liability but does not mention e-scooters. This is likely to change in the future.
- How to enforce without licence and insurance: there is no equivalent of the MIB.
- Nobody to claim against
- Similar to a bike?

Novel Claims

New categories of claims:

- E-scooter vs e-scooter
- E-scooter vs pedestrian: largely through misuse on pavements. But this may reflect how vulnerable e-scooter rider feel when on the road. Why is that the case? Where traffic is separated properly, with cycle lanes, this is less of a problem.
- E-scooter vs cyclist

- E-scooter vs no-one! At present, many e-scooter accidents do not involve a third party: it is simply the rider having an accident.
- Highways claims
- Product liability

Liability Considerations

New tech probably does not mean new questions;

- 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: should the e-scooter sit above a pedal cycle in the hierarchy?
 - Car vs e-scooter
 - Pedestrian vs e-scooter?

Evidence

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

New Evidence

- Geocaching of e-scooters – this applies to the rental trials. This might be disclosure by the rental company or by the rider, via their smart phone.
- Evidence of parking

- Some of the rental schemes do not work at certain times
- With private e-scooter, have there been illegal adaptations/ limiters?
- Double up use
- Carrying items: potentially of relevance to contributory negligence

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)

Illegality / Ex turpi causa

- Claimants shouldn't profit from their illegal acts but the fact that a private e-scooter was being used illegally on a road will probably not be sufficient in itself to defeat a claim.
- Is civil defence of illegality available in claims arising out of e-scooter use?
- Leading case: *Patel v Mirza* [2016] UKSC 42

Patel v Mirza – Considerations

- The underlying purpose of the prohibition which has been transgressed 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

Current Claim

- The speaker was aware of at least one claim that has been issued:
 - E-scooter rider vs bus
 - Struck by wing-mirror whilst being overtaken
 - Wearing high-vis and helmet
- Private e-scooter: may be a test case for illegality arguments

Helmets 1

- Not required and in the speaker's view unlikely to be made compulsory
- Helmets significantly reduce risk of death or TBI from impact – not rotational acceleration
- Protection flat surface at 12mph, pointed 10mph with 250g impact energy

Helmets 2

Even where there is a claim involving a failure to wear a helmet, the case law is clear:

Smith v Finch [2009] 1 WLUK 371 Mr Justice Williams

- Cyclist of ordinary prudence would wear one
 - *Froom v. Butcher* should apply to the wearing of helmets by cyclists [theoretically a 15% reduction should thus apply].
 - Lack of legal compulsion irrelevant
 - Cyclist who does not wear a helmet runs the risk of contributing to his/her injuries...
 - Burden is on the Defendant to prove (i) Claimant failed to take ordinary care of himself (ii) that his failure was a contributory cause of the damage...
- Therefore, need medical evidence

Q&A

Q: If people will do what they want, will regulation, when it comes, make any difference?

A: EF Even if regulations improve design and safety, older models of e-scooters will remain in use for a long period. Misuse will continue and if third parties are going to be injured, there needs to be some system under which they can seek redress. Some form of levy, possibly at the point of purchase could provide the necessary fund. Offering membership of organisations that provide insurance does not attract much take-up.

MW Although PACTS was closely involved with the introduction of compulsory seatbelts, a quarter of fatalities in 2021 involved occupants in cars not wearing one. That illustrates the limits of regulation.

The regulation of the e-scooter is going to be important. One of the rental schemes is now on its sixth version, as safety improvements are made. With existing private models, the life of an e-scooter is probably only about three years and so there will be a cycle of replacement with better models. How users are monitored is a challenging question.

Q: Is it correct that any regulation of e-scooter usage is unlikely to solve the legality/illegality question?

A: EF Better regulation would bring greater certainty to what is currently a 'Wild West'. However, it can be seen that few have regard for the fact that private e-scooters may only be used legally on private land.

It remains the case in the UK that the burden of proof is on the claimant to prove liability and there is no assumption of liability in favour of cyclists, etc as in much of the EU. However, the hierarchy of road users is relevant to the issue of who was to blame.

Q: Can a number of small illegalities be ‘added up’? For example, two underage users are on a private e-scooter, riding on and off the pavement, travelling at an excessive speed. Is a following car driver not entitled to argue that this behaviour is more culpable than a single act by (say) cyclist?

A: EF However frustrating it may be, these individuals are far more vulnerable if they come into contact with the car. There could be a significant reduction for contributory negligence.

MW As the Safe System wheel illustrated, many parties have a part to play: all those involved in the design, management and use of vehicles and road space. With e-scooters, the rental scheme can monitor illegal behaviour but that does not apply to private e-scooters.

Q: 1. Can the regulation of private e-scooters possibly come before the results of the trials are known: almost two years from now: regulations would probably not follow for at least another year?

2. What can happen in the meantime?

A: MW The regulations for the e-scooter trials are unlikely to change. What the new government does, beyond reclassifying vehicles, only time will tell. The DfT is almost certainly working to make recommendations on private e-scooters, by the time the e-scooter trials end and with the minimum of delay thereafter. This also allows time to pick-up what other jurisdictions, such as the Netherlands, are doing.

Q: Given that the government must be aware of what is happening, what is its potential liability if it takes no action?

A: EF The government can have no liability for inaction, but it is nevertheless surprising that the Highway Code makes no mention of e-scooters. It has been made clear that the e-scooter trials are legal and the use of private e-scooters on the roads is not legal.

Q: Given the different construction and method of using e-scooters, is there any scope, when considering contributory negligence, for using novel arguments?

A: EF Arguments around contributory negligence will probably help flesh-out the approach to be adopted in relation to e-scooters. Speed, silence of operation, where and how it was being used will all be factors. Where an e-scooter is being used correctly, the fact that it is inherently difficult to use would probably not be material.

MW: It is important to remember that e-scooters are not like bikes. They are a new mode of motor vehicle. Existing frameworks can provide guidance but something new is required for e-scooters.

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