

CLYDE&CO

Safety, Health and Environment Regulatory

Motor Crime Team's Transport & Logistics

May 2021 Update

Introduction

In our May motor crime update we provide market insight into the key developments over the last month and the current challenges faced, including:

- Smart motorways evidence shows worse safety record;
- Older drivers face greater restrictions;
- Government announces extra funding for zero-emission buses;
- Councils fail to resurface dangerous potholes;
- Death by dangerous driving conviction appealed as too lenient;
- Driving tests resume the UK;
- Hit and run driver's sentenced increased;
- E-scooters used in perpetrating crime; and
- New media guidelines for road collisions.



Smart motorways- the lowest level of safety?

*"We accept drivers want to know more about what driving on motorways without a hard shoulder means for their safety. They deserve to understand what we are doing to help keep them safe and what new technologies can be deployed to assist if things go wrong."*¹

We previously looked at the use and perceived benefits of smart motorways, criticisms of the system², as well as the Government's evidence stocktake and action plan³. The Government now faces fresh calls to scrap these roads as research claims that they have a worse safety record than conventional motorways⁴.

A recent study carried out by engineering consultants has found that the risk of breaking down in a live vehicle lane is 216% higher on a smart motorway without a hard shoulder and that when this happens "people are more likely to die or be seriously injured".

The study concluded that safety standards were compromised to cut costs. The report also said that Highways England should have made sure drivers were fully informed about a "material change to the transport network".

Sarah Simpson, a transport planner at consultants Royal Haskoning DHV, who wrote the report, said that motorways without hard shoulders had the "lowest level of intrinsic safety" when compared with other motorways. About 350 miles of motorway do not now have a permanent hard shoulder, including parts of the M1, M6 and M25.

In response to ongoing criticism, the Government has recently confirmed that no more smart motorways without hard shoulders will be able to open without additional safety measures in place⁵. This follows the publication of Highways England's smart motorways stocktake first year progress report 2021⁶. The report contains the latest safety data which updates analysis contained in the 2020 report.

In a written statement to Parliament, Transport Secretary Grant Shapps said that for every hundred million miles driven there were fewer deaths on all-lane motorways than conventional ones, but added, "We are determined to do all we can to help drivers feel safer and be safer on our roads - all our roads." He confirmed Highways England would now accelerate the introduction the safety measures set out last year.

1. Nick Harris, Acting Chief Executive, Highways England

2. <https://www.clydeco.com/en/insights/2019/11/smart-motorways-outstanding-roads-or-seriously-in>

3. <https://www.clydeco.com/es/insights/2020/04/putting-brake-smart-motorways-government-publish-e>

4. The Times, 31 March 2021

5. [No new smart motorways without additional safety measures - BBC News](#)

6. [Smart motorways stocktake, First year progress report 2021 \(highwaysengland.co.uk\)](#)

In particular:

Existing smart motorways

- By the end of September 2022, six months earlier than previously committed:
 - On existing ALR motorways Highways England will have completed the installation of radar technology which detects stopped vehicles (radar SVD technology)
 - Around 1,000 additional signs will be installed to better inform drivers of the distance to the next place to stop in an emergency
- By the end of September 2022, 10 months earlier than previously committed:
 - Highways England will have upgraded cameras that automatically detect vehicles passing illegally under a Red X or entering the lane beyond a Red X, so the police can take enforcement action.
 - A national programme of retrofitting additional emergency areas on existing smart motorways where places to stop in an emergency are more than one mile apart will be considered. This review will be complete by April 2022.

Smart motorways under construction

- Highways England will ensure that every new smart motorway will have radar SVD technology in place when it opens.

Smart motorways in the design phase

- SVD technology will be in place before any scheme opens
- Going forward drivers will reach places to stop in an emergency every three-quarters of a mile where feasible, with a maximum spacing of one mile

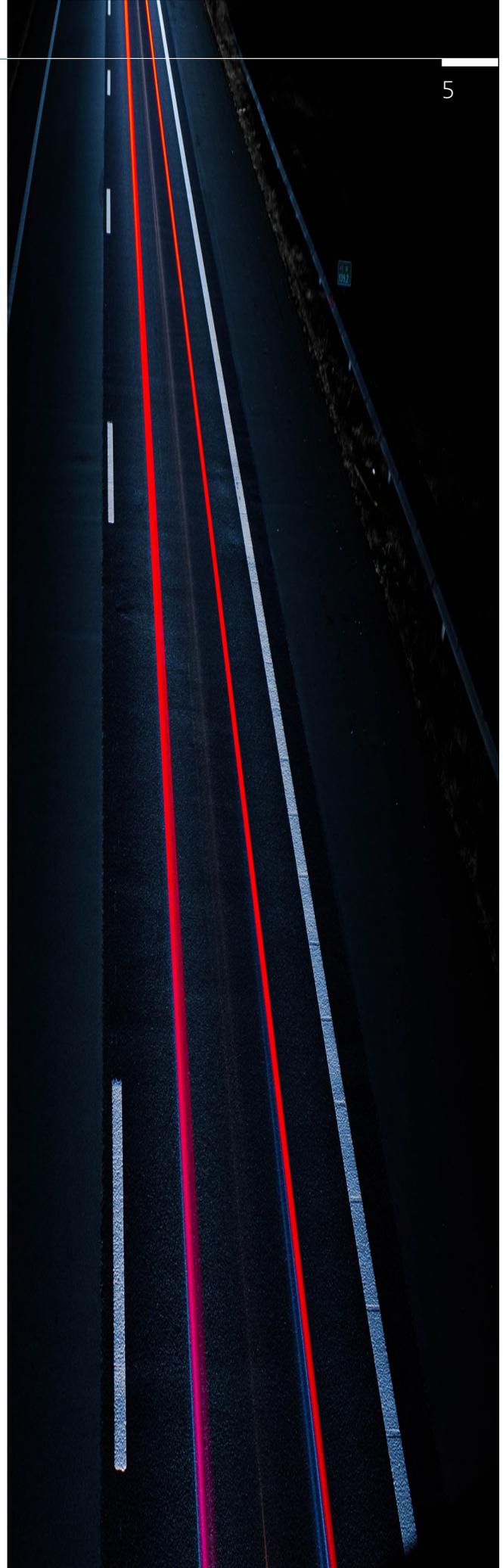
The Government has also engaged the Office of Rail and Road (ORR) to undertake an independent review of the available safety evidence to ensure the conclusions are robust.

AA president Edmund King said:

"It is encouraging that progress has been made on our demands to make 'smart' motorways safer. The objective should be to create the safest roads we can. The number one improvement advocated by the AA and our members is to increase the number of emergency refuge areas (ERAs) and retrofit them to older schemes to ensure they are placed at approximately 0.75 miles apart. More ERAs, together with improving the accuracy of stopped vehicle detection radar, should be the urgent priorities."

The RAC's head of road policy Nicholas Lyes said the progress was welcome but added the organisation remained concerned that it would take another 18 months before cameras enforcing red X lane closed signs were fully upgraded.

Whilst it is reassuring to see Highways England responding to some of the recommendations published in its previous report, as we have emphasised in previous articles, the safety of motorists must remain the Government's priority and the implementation of the action plan for smart motorways is required urgently. In the face of ongoing criticism and concern, the Government continues to maintain that, in terms of fatality rates, smart motorways are the safest roads in the country. We therefore question whether the above measures will go far enough to ensure that the risk that smart motorways have created is properly eliminated before another foreseeable and completely preventable death occurs.



Too old to drive? Elderly motorists face greater restrictions

“A lot of older drivers stick within their own locality — they go to the shop, the doctor’s surgery, go and see a granddaughter down the road, probably on minor roads with which they are familiar [the proposals] would regularise that, and make it legal for them to do so as long as they didn’t take a trip outside of an area or outside of a time restriction. That would mean that they were driving safely within their familiar environment.”⁷

The Driver and Vehicle Licensing Agency (DVLA) and the charity Driving Mobility have discussed whether drivers over the age of 70 with certain medical conditions should be subject to limits such as night-time curfews and restrictions on how far they could travel in return for keeping their licences .

The proposals could see motorists with conditions such as dementia, epilepsy, Parkinson’s, and insulin-treated diabetes have trackers fitted to their cars, restricting both the times at which they were allowed to drive, and the distances away from home they could travel.

Under current rules, motorists must renew their licences with the DVLA when they reach 70, declaring if they have conditions and illnesses that affect their ability to drive. Those suffering from such conditions can see their licence renewals declined.

The proportion of over 70s with driving licences has doubled over the last 25 years. The current discussions suggest that instead of a total loss of their licences, older motorists could face certain restrictions, such as only being allowed to drive during daylight hours and being limited to travelling within 20 or 30 miles of their homes.

The discussions could result in greater freedom for older drivers with certain medical conditions, whose cars could be fitted with telematics devices. In addition to night-time and distance restrictions, older drivers would, like black-box policyholders, have their braking, acceleration and cornering forces measured by the devices, with authorities being alerted if they exhibit worrying driving behaviour. Such restrictions would amount to “graduated driving licences” an idea usually associated with younger drivers.

7. Edward Trehwella, chief executive of Driving Mobility

8. [Over 70s face driving curfews, trackers and distance limits | Auto Express](#)

It is also worth reflecting on the Driving (Persons with Dementia) Bill 2017-19, which went before Parliament in June 2019 but then made no further progress. This would have required doctors to inform the appropriate driver licensing agency of a diagnosis of dementia and ensure that drivers diagnosed with dementia undertake a supplementary driving assessment.

Driving provides a social and cultural lifeline for many people in this age group, particularly those living in rural areas, or who have conditions that make accessing public transport difficult. There are concerns, however, that while fatalities for most age groups have remained stable in recent years, the over 70s have witnessed a steep climb in this regard.

Driving is a complicated task that involves a combination of complex split-second thought processes as well as sensory and manual skills. Department for Transport Data analysed by the Sunday Times shows over 70s are more likely to be involved in collisions where the cause is listed as “driver failed to look properly”, “driver failed to judge other person’s path or speed”, “poor turn or manoeuvre”, and “driver illness or disability, mental or physical”.

Edmund King, president of the AA, said authorities should tread “very, very carefully before introducing

restrictions” as the loss of a driving licence can result in severe loneliness among older people, a privation that has been shown to be as damaging to health as smoking. King added that doctors and other medical professions should ensure they report notifiable medical conditions.

The Department for Transport has subsequently dismissed the idea of restrictions on over 70s with certain medical conditions, saying:

“It is the law that all drivers must tell the Driver and Vehicle Licensing Agency about any medical conditions which might affect their driving. There are no plans to introduce graduate driving licenses for drivers aged 70 or over.”

A breath of fresh air- extra funding announced for zero-emission buses

“Zero-emission buses are great news all round. As well as addressing climate change and air pollution, this funding will boost the bus manufacturing sector and give more passengers the best modern buses.”⁹

A new scheme has been launched to help local transport authorities introduce zero emission buses and reduce carbon emissions from local public transport across England¹⁰.

The support follows the Government’s National Bus Strategy announcement, which set out how buses will be greener, cheaper, more frequent and more reliable.

The major new strategy – the biggest shake-up to the standard of bus services in the country for a generation – will see passengers benefit from:

- lower, simpler flat fares
- more frequent services
- requirements that will see councils set yearly targets for improving the reliability of services

Up to £120 million is being made available through the Zero Emissions Buses Regional Area (ZEBRA) scheme, which will allow local transport authorities to bid for funding to purchase zero emission buses, which the Government says will deliver up to 500 zero-emission buses, as part of its wider commitment to introduce 4,000 zero-emission buses.

The Government is calling on a consortia of local transport authorities, energy companies, bus operators and manufacturers to come together to work up strong cases for funding. Bidders will have until 21 May this year to submit expressions of interest for a fast track process – which will allow local transport authorities with well-developed proposals to move quickly in their bid to secure funding.

However, the Government has said it wants all local authorities to have the opportunity to submit bids and therefore those who need more time to develop their proposals will have until 25 June.

9. Silviya Barrett, Head of Policy, Research and Projects at Campaign for Better Transport

10. [Multi-million pound scheme for zero-emission buses across England launched - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Jane Gratton, Head of People Policy at the British Chamber of Commerce (BCC), said:

“The BCC very much welcomes investment in initiatives that boost public transport infrastructure and the UK’s drive towards net-zero.”

“This is a welcome injection of cash and confidence for businesses in this sector and for towns and cities across the country. Access to affordable, reliable and greener public transport will be a key to rebuilding local economies.”



A bumpy road ahead? Councils fail to resurface dangerous potholes

Many local roads are being left for more than a century before being fully resurfaced despite warnings about the risk of accidents from potholes¹¹.

A recent study by the Asphalt Industry Alliance has found that councils were prioritising a wasteful "patch and mend" approach rather than co-ordinated upgrades. Defective road surface was a contributory factor in 671 injuries and ten deaths in 2019, the latest year for which figures are available.

On average roads are resurfaced every 68 years, rising to 105 years on "unclassified" stretches outside London, which includes many country lanes and residential streets. It is recommended that they are resurfaced every ten to 20 years to keep them safe.

Almost 35,000 miles of local roads, 17 per cent of the total, were "poor" and may have to be closed within five years unless significant improvements are made. It said that spending on local roads had increased in the past 12 months. However, too much was spent on plugging potholes rather than taking a long-term approach. Motorists were "yet to see any significant improvements" to local roads' overall condition.

Councils are facing a one-off total bill of £10.2 billion to bring all local roads up to an acceptable level. The report found that 1.7 million potholes were filled in 2020-21, compared with 1.5 million a year earlier. It reflected a 15% rise in highways budgets, with £23.8 million being spent on average by local authorities.

11. The Times, 31 March 2021

Dangerous driving conviction appealed as too lenient

We consider a recent case involving a conviction for death by dangerous driving, in which the sentence imposed was increased from 4 years' imprisonment to 5 years' imprisonment.

The deceased was walking along the pavement, talking on the phone to his grandmother when he was struck by a car driven by the defendant and killed. At the time the defendant had not passed a driving test, his car had no MOT and he was uninsured. After the collision he fled the scene.

The defendant was charged with causing death by dangerous driving contrary to section 1 of the Road Traffic Act 1988. On 3 September 2020 the defendant was sentenced at Bolton Crown Court to 4 years' imprisonment and disqualified from driving for a period of 5 years and 10 months and until he had passed an extended driving test. The case was referred by the Attorney-General as being too lenient in respect of the sentence given.

The sentencing judge set out the salient facts of the offending and the aggravating and mitigating features of the case. First, the defendant deliberately drove in excess of the speed limit (58 miles) in a 20 mile per

hour zone. Secondly, he was aware of the poor weather conditions at the time. Thirdly, he was familiar with the road, knew that there was a blind bend, and that this was a residential area where there were likely to be pedestrians. Fourth, he failed to apply emergency braking which would have meant that the collision could have been avoided. Fifth, the quality of the driving in this case created a very substantial risk of danger which would have been known to the defendant because he only lived 2 miles away.

The following further aggravating features were present. First, the defendant had previous convictions recorded against him albeit not for motoring offences. Secondly, the offender did not hold a valid licence to drive and had never passed a driving test. Third, the vehicle was uninsured and had no MOT. Fourth, during a previous driving incident, the defendant put his younger brother at risk, in addition to himself and all other road users and pedestrians. Fifth, the deceased was a vulnerable road user. Finally, it was also relevant that the deceased made off without seeking to help the deceased and, in an effort to avoid apprehension, then made a determined effort to avoid capture.

The following mitigating features were present: plea of guilty at an early stage; the expression of remorse and the offender's relatively young age; his troubled background and his lack of education; all of which provides personal mitigation.

The appeal court concluded that the sentencing judge did take too low a starting point given the seriousness of this offending. He also failed to give sufficient weight to the aggravating features which we have outlined. The minimum sentence which should have been passed in this case was one of 5 years' imprisonment.

The court also dealt with the appropriate period of disqualification, confirming that if a period of disqualification is imposed, no penalty points in respect of the offence should be endorsed



On the road again- Driving tests resume across the UK

“I know the suspension of tests and lessons has been incredibly hard for learners and many are keen to take their test now, but it is important that candidates are properly prepared and don’t rush to take it.”¹²

Thousands of learner drivers will finally be able to progress to qualified drivers as practical tests resume in England, Wales and Northern Ireland¹³.

Many learners have been waiting months for the opportunity to obtain their license after lessons and tests were suspended because of the pandemic and it is estimated that nearly half a million practical tests alone have been cancelled in the last year.

The Driver and Vehicle Standards Agency (DVSA) has announced a backlog of 420,000 practical tests and 380,000 theory tests, warning that the national average waiting time for a test is 17 weeks. The DVSA said it is offering an additional 2,500 car tests per month by utilising weekends and bank holidays. Up to 300 new examiners are also being recruited to help reduce the backlog¹⁴.

Two of the nation’s biggest motoring schools, AA and Red Driving School, have been swamped with prospective students in recent weeks. Since 12 April, Red has experienced a 300% increase in demand from new students seeking lessons.

DVSA chief executive Loveday Ryder acknowledged the frustration many would-be motorists are experiencing but urged learners to take their time before booking a test. Only 46% of tests in the year to March 2020 were passed. The most common reasons for failing include not looking properly at a junction (22%), not using mirrors correctly when changing lane or direction (17%), and not moving off safely (8%).

Mr Ryder said, “With more than half of candidates failing, and demand currently extremely high for tests, learners should only take their test only when they are confident they can pass. This will help them to avoid a lengthy wait for a retest and help us by not adding to the backlog of tests”.

12. Loveday Ryder, DVSA Chief Executive

13. [Driving tests resume in England and Wales - with a backlog of 420,000 learners and a 17-week wait \(inews.co.uk\)](https://www.inews.co.uk/news/transport/driving-tests-resume-in-england-and-wales-with-a-backlog-of-420000-learners-and-a-17-week-wait/)

14. [Learners feel increasing pressure to pass as driving tests resume in England - Somerset Live](https://www.somersetlive.co.uk/news/transport/learners-feel-increasing-pressure-to-pass-as-driving-tests-resume-in-england-1428282)

Hit and run driver's sentence increased

A hit and run driver's sentence has been increased following an intervention by the Solicitor General¹⁵¹⁶.

In November 2017, Krishna Droch, 62, was killed when she was struck by Mohammed Ishfaq's speeding car that was travelling on the wrong side of the road in Birmingham.

The driver had consumed a cocktail of drugs including heroin and cocaine with his friend Daren Holness, before they drove to an address to sell drugs. When they arrived, they noticed two vehicles waiting for them, so they drove away, resulting in a car chase that lasted for approximately half a mile.

CCTV footage captured the defendant driving on the wrong side of the road, overtaking several vehicles by driving onto the oncoming lane and through a red light. The road had a speed limit of 30mph, however the defendant was driving between 50-56mph when he hit the deceased who was using a pedestrian crossing.

The defendant failed to stop at the scene and instead drove for another

two miles before stopping to consume more drugs. The driver and passenger then removed any evidence from the vehicle and left on foot.

On 4 March, the offender was convicted of causing death by dangerous driving at Birmingham Crown Court and sentenced to 6 years and 3 months' imprisonment. The Solicitor General referred the driver's original sentence to the Court of Appeal under the Unduly Lenient Sentence scheme. The scheme allows the Attorney General's Office to review very low sentences given by the Crown Court in England and Wales, if asked to do so¹⁷.

In this case, the Court found the driver's sentence to be unduly lenient and increased his sentence to 8 years' imprisonment.

Speaking after the hearing, the Solicitor General said:

"Ishfaq's actions stole the life of a much-loved woman and shattered a family. This was a senseless and avoidable crime. Crimes of this nature should be met with the full force of the law, and I am pleased the Court of Appeal increased the sentence today."

15. The Rt Hon Lucy Frazer QC MP

16. [Hit and run drug driver jailed for longer - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

17. [Unduly Lenient Sentence Scheme \(parliament.uk\)](https://parliament.uk)

E-scooters- a menace on the roads?

*"The restrictions are not tough enough on sale as there's no regulation at all."*¹⁸

We previously reported that electric scooters were to be trialled on the roads for the first time, with different areas reporting mixed results, as well as the police crackdown on illegal use¹⁹.

Recent reports now suggest that electric scooters have been used in hundreds of crimes including robberies, assaults and a drive-by shooting²⁰.

Electric scooters are classified as personal light electric vehicles so are treated as motor vehicles and require insurance and a valid driving licence. Although e-scooters are for sale legally, only those hired through approved rental companies can be ridden on public roads. The scooters have been linked to shoplifting, drug dealing and escaping arrest, according to figures released as several areas prepared for pilot schemes in which the scooters will be available to rent.

Freedom of information requests to 20 areas set for pilot schemes showed apparent links with crime. Cleveland

police recorded 81 incidents, Derbyshire recorded 27 and Staffordshire recorded 23. Norfolk police recorded more than 120 offences involving e-scooters, including one being used to tow a trailer along a road while "swerving from side to side". In London, where e-scooters will be trialled in the next few months, the Metropolitan Police recorded more than 200 incidents last year and seized more than 150 devices. In Merseyside, police recorded more than 100 incidents involving the scooters last year and have seized 94 this year alone. One report of a gun crime described it as an "allegation of discharge by person on scooter".

David Davies, director of the parliamentary advisory council for transport safety, said the group had written to Rachel Maclean, the roads minister, to call for tighter regulation such as age checks on private buyers.

He added, "We have an interim situation where the Department for Transport is monitoring trials; meanwhile, people are buying them hand over fist in shops and clearly using them and we don't feel retailers are necessarily being responsible."²¹

18. David Davies, Director of Parliamentary Advisory Council for Transport Safety

19. <https://www.clydeco.com/en/insights/2020/07/covid-19-uk-safety,-health-and-environment-regulat>

20. The Times, 27 April 2021

21. 'A bloody menace': Police reveal hundreds of incidents involving e-scooters - Teesside Live (gazettelive.co.uk)

A crash not an accident. New media guidelines for road collisions

“Language matters, as it helps shape how we see and treat others. Referring to drivers rather than only their vehicles helps remind us that behind every vehicle—be it a car, an HGV, a cycle or a motorcycle—is a person making decisions that affect the safety of others.”²²

The UK’s first media reporting guidelines for road collisions are being launched during UN Global Road Safety Week 2021, to help reinforce existing codes of conduct for the highest standards of reporting in broadcasting, online and in print²³. The Road Collision Reporting Guidelines seek to establish a standard for broadcasters and publishers reporting on collisions. The new set of guidelines have been produced in consultation with road safety, legal, media and policing organisations and individuals.

Every 20 minutes someone is killed or seriously injured on UK roads. Much of the reporting around these incidents

portrays collisions as unavoidable, obscures the presence of certain actors or omits crucial context as to why crashes happen and what we can do to prevent them²⁴.

Concern has long been raised that reporting of collisions often makes it sound like the car was automated, with no driver at the wheel to take responsibility. With pedestrians and cyclists the more vulnerable road users, it’s considered important to ensure that drivers are seen to be in charge of the vehicle. In addition, collisions are often reported as “accidents” before any investigation or judgement about the standard of driving can be determined. The new guidelines seek to address these concerns²⁵.

Clauses recommend journalists, among other things avoid use of the term ‘accident’, to say ‘driver’ instead of ‘car’ and provide context to road collisions, rather than presenting them as isolated incidents. The Guidelines also offer journalists some contacts in road safety, policing and law.

22. Rachel Aldred, director of the Active Travel Academy and a professor at the University of Westminster

23. [New media guidelines could make UK roads safer – RoadPeace](#)

24. [New guidance for reporting of road traffic collisions | ETA](#)

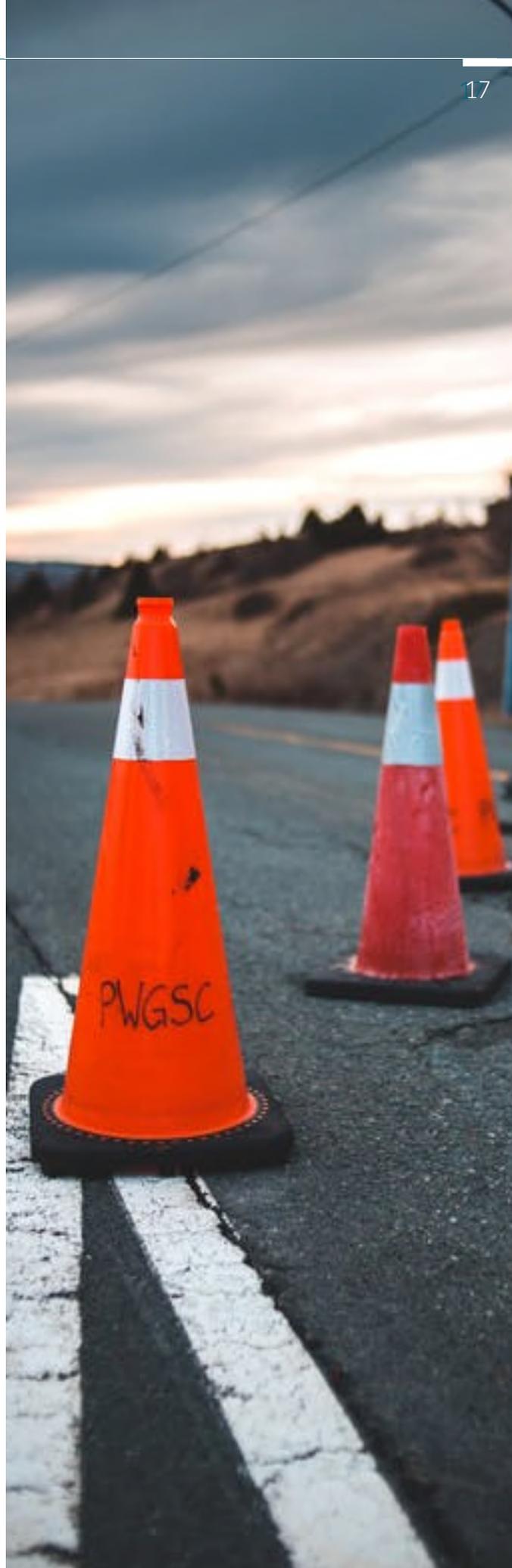
25. [Road Collision Reporting Guidelines Issued | Singletrack Magazine \(singletrackworld.com\)](#)

Guidelines already exist to help journalists report on suicides, domestic violence and refugees, allowing expertise and research to help inform a fair, accurate and balanced public debate on those topics.

The guidelines are supported by prominent road safety and road user organisations and professionals, including the AA, the FIA Foundation, RoadPeace, the Transport Research Laboratory, and Transport for London, British Cycling, Cycling UK and Living Streets.

Edmund King, AA president, said;

“The impact of five deaths per day across UK roads sadly tends to get diluted. Imagine the outcry if a report stated that all passengers in 56 full coaches had died. That is the annual equivalent of five people dying each day. There would be a national outcry, public inquiries, prime ministerial statements and action taken. Each death on the roads is a personal tragedy irrespective of mode of transport. Hence it is important that all road users are treated equally in the reporting of collisions.”



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