

VULNERABLE ROAD USERS

WHERE DO THE LIABILITIES LIE?

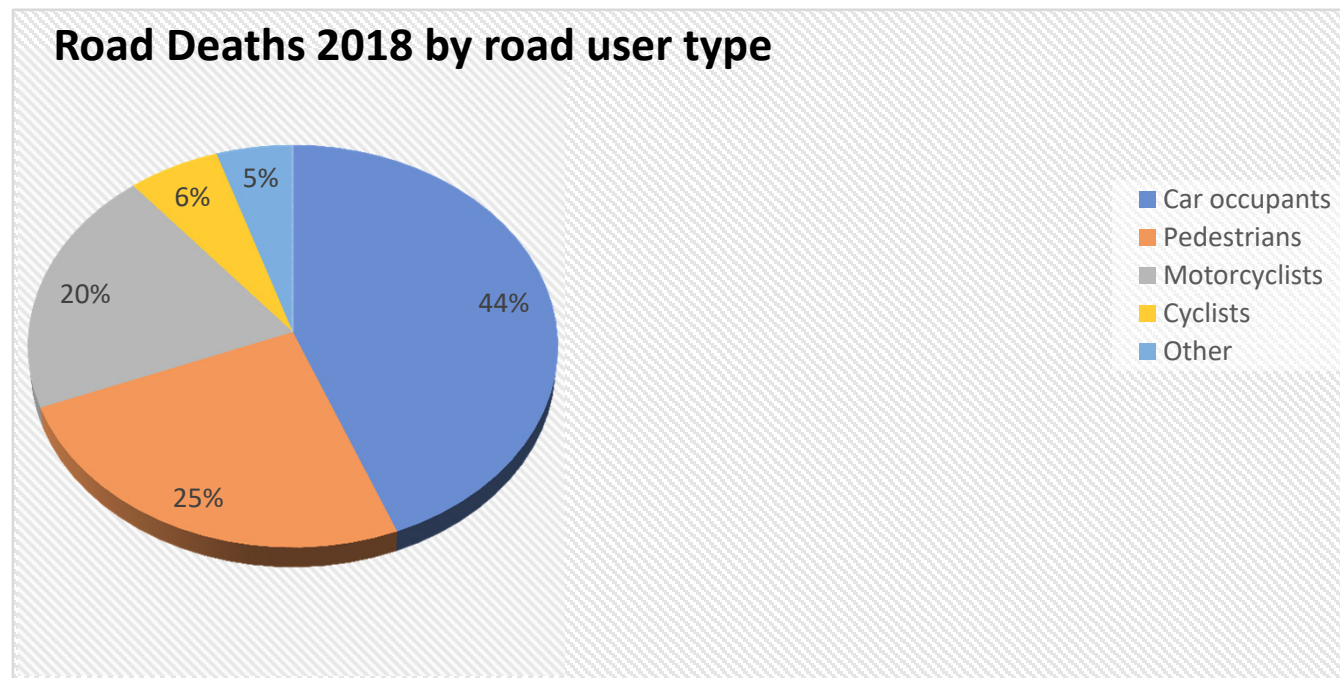
Jasmine Murphy, Barrister, Hardwicke

MASS Conference, 16 October 2019

Vulnerable road users

- Civil Liability Act 2018 excludes from reforms:
 - Cyclists
 - Motorcyclists
 - Pedestrians
 - Horse riders
- Increase in Small Claims Track limit to £5,000 for RTA related PI claims and £2,000 in other PI claims likely to exclude such vulnerable road users too
- Confirmation and rule change awaited - April 2020
- Focus on recent liability issues involving cyclists and particularly cyclist/pedestrian collisions

Road Deaths 2018



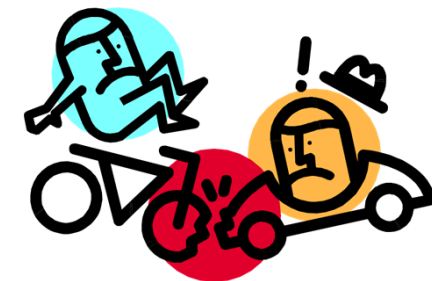
Liability of cyclists in the UK

- UK one of worst places in Europe to be a cyclist injured by a motorist.
- Presumed liability systems in other European countries.
- Difficulties facing cyclists in the UK:
 - Burden of proof;
 - Anti-cyclist bias;
 - Contributory negligence.



No liability of car driver to cyclist

- ***Elson v Stilgoe*** [2017] EWCA Civ 193
 - No liability of car driver when cyclist swerved to avoid puddle and collided with car coming the other way
 - Have to identify fault of driver
- ***Streeter v (1) Hughes (2) MIB*** [2013] EWHC 2841 (QB)
 - 14 year old cycled off pavement into path of car
 - Car driver not liable



Split liability situations: cyclist v car

- ***Sinclair v Joyner*** [2015] EWHC 1800 (QB)
 - Car driver liable for failing to stop when cyclist when cyclist deviated into driver's side of road when going round a bend.
Contributory negligence: 25%
- ***Phethan-Hubble v Coles*** [2012] EWCA Civ 349
 - Car driver liable when 16 year old cycled off pavement
 - On appeal C's contributory negligence increased to 50%
 - Exceeding speed limit not of itself breach duty

Turning vehicle v cyclist

- ***McGeer v Macintosh*** [2017] EWCA Civ 79
 - Left turning HGV collided with cyclist
 - Contributory negligence of cyclist 30%
 - Causative potency of HGV
- ***Rickson v Bhakar*** [2017] EWHC 264 (QB)
 - Failure to observe van turning ahead = 20% contributory negligence of cyclist



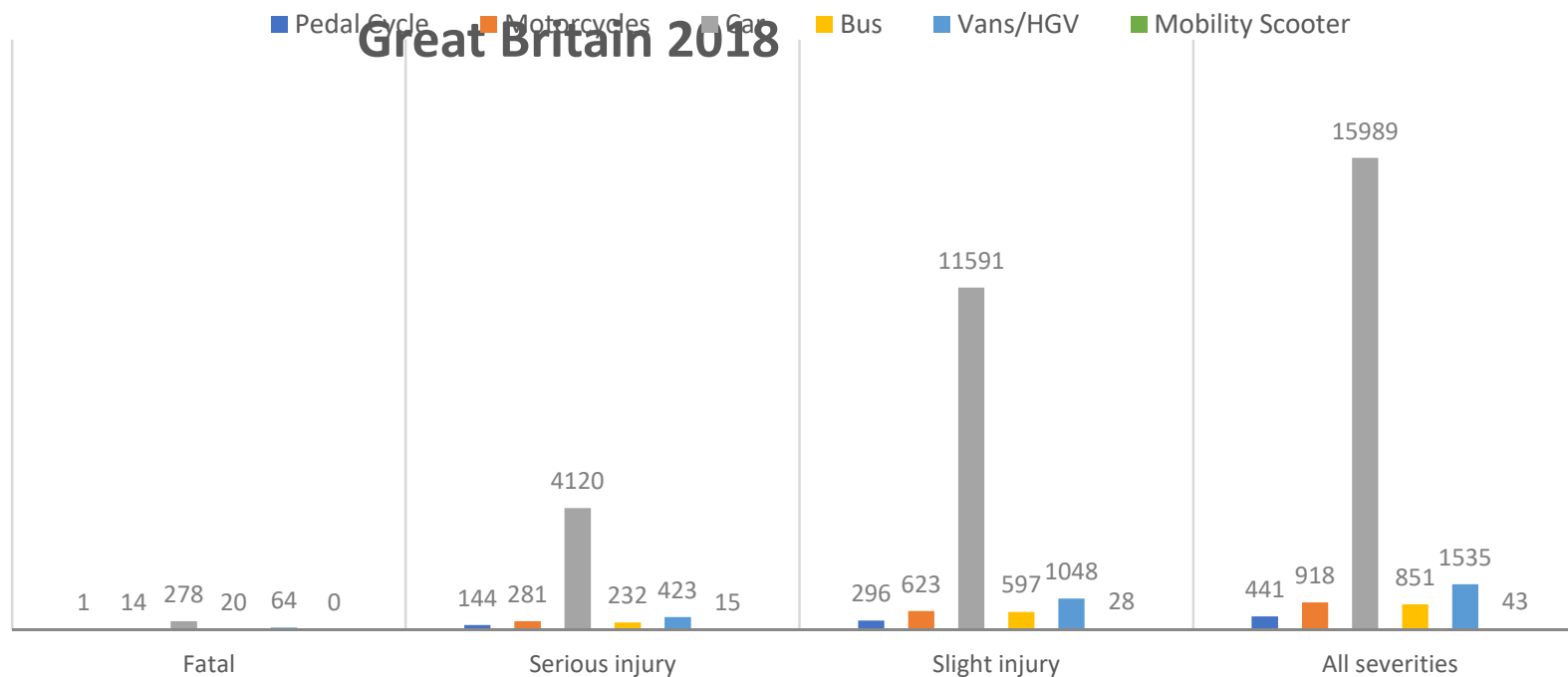
Contributory negligence points

- Causative potency relevant to contributory negligence
- Contributory negligence and “agony of the moment”
- Cycle helmets and contributory negligence:
 - ***Smith v Finch*** [2009] EWHC 53 (QB)
 - ***Reynolds v Strutt and Parker*** [2011] EWHC 2263 (QB)
 - ***Phethean-Hubble v Coles***
 - ***Sinclair v Joyner***
- Highway Code: cyclists should wear:
 - Cycle helmet
 - Appropriate clothes
 - Light-coloured or fluorescent clothing
 - Reflective clothing/accessories in the dark
- Lighting: mandatory at night: RVLR Regs 13, 18, 24

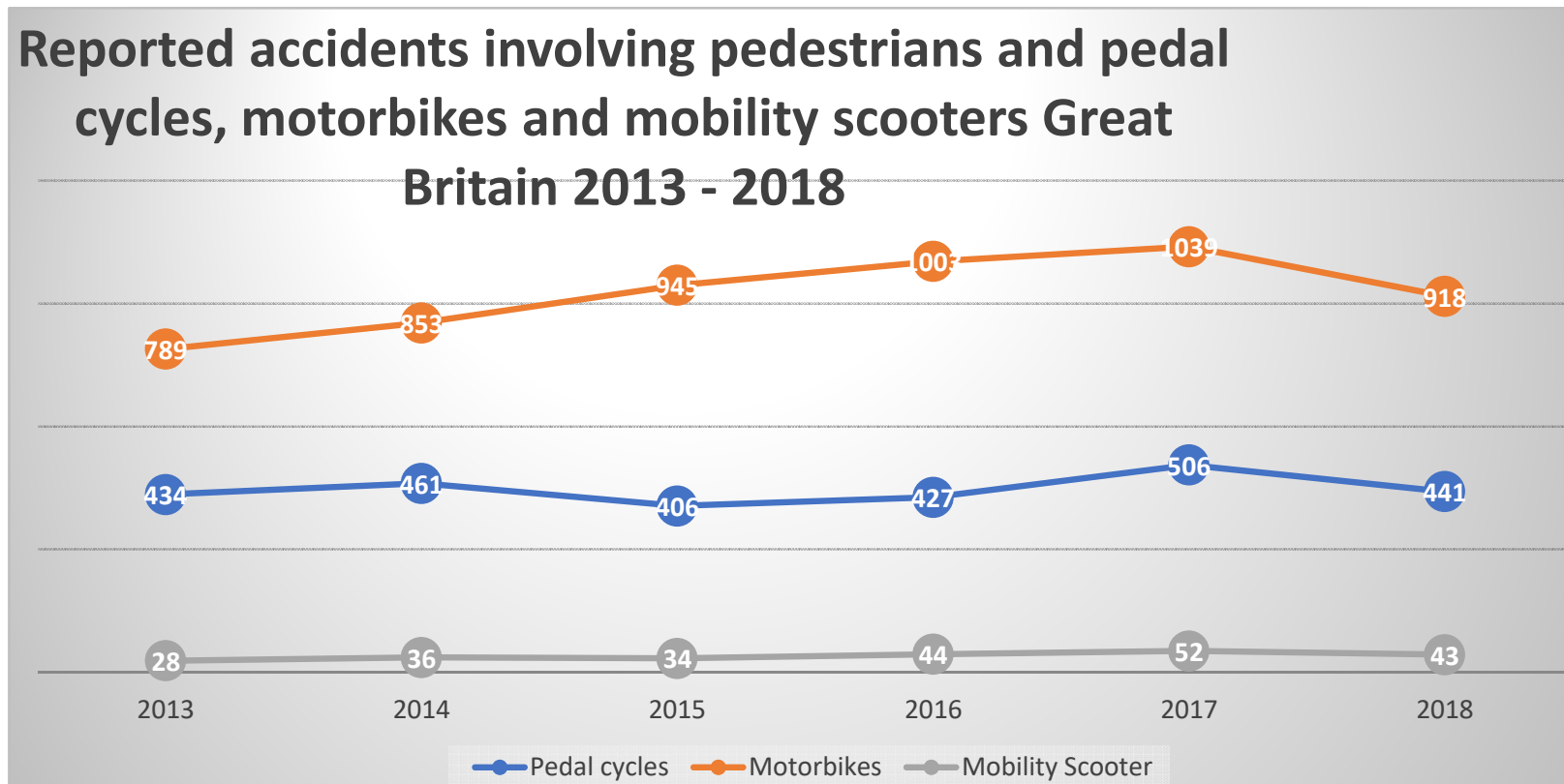


Accidents involving pedestrians

Reported Accidents involving pedestrians and one vehicle

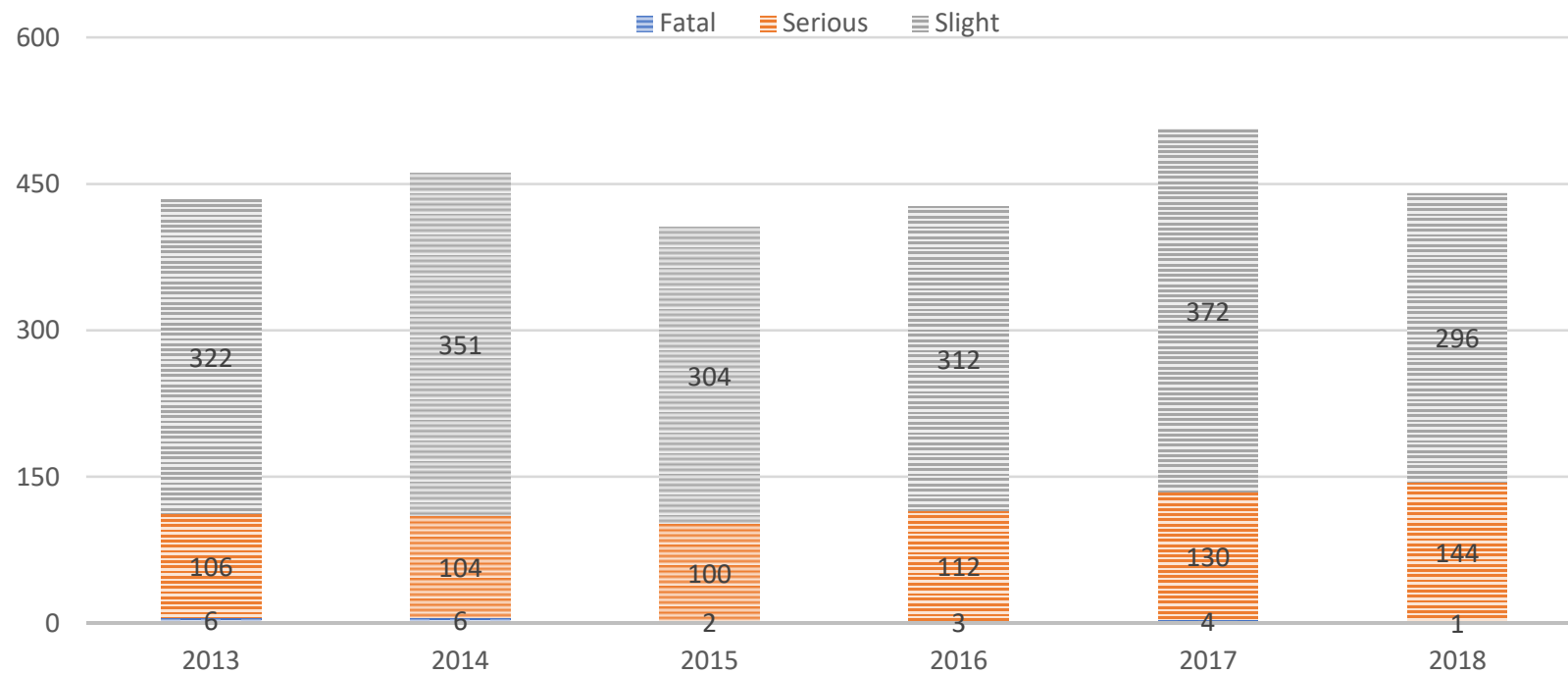


Pedestrians v bicycles, motorbikes and mobility scooters



Are pedestrian/cyclist collisions increasing?

Reported accidents involving pedestrians and pedal cycles by severity of injury to pedestrian
Great Britain 2013 - 2018



Cyclist liability **TO** Pedestrian

- Topical: ***R v Alliston***
- Low risk: 4 fatalities in 2017
- Liability to pedestrians:
 - Cyclist often uninsured
 - ***Smith v Criminal Injuries Compensation Authority***

Pedestrian Liability **TO** others

- Pedestrians owe duty of care to other road users
- Highway Code/Green Cross Code
- Cases where pedestrian is defendant:
 - ***Eames v Cunningham and Capps*** [1948] 82 Sol Jo 314
 - ***Barry v MacDonald*** [1966] 110 Sol Jo 56



***Brushett v Hazeldean* [2019]**

- The Headlines:
 - **“Cyclist who hit ‘phone zombie’ faces £100,000 bill”** *The Times*,
 - **“Cyclist forced to pay up to £100,000 to yoga teacher he mowed down when SHE stepped into road whilst on her phone”** *The Sun*
 - **“Why was a law-abiding cyclist who was passing through a green light ordered to pay compensation to a pedestrian who was staring at her phone?”** *The Independent*
- The Facts: www.clinicalnegligencebarrister.wordpress.com
- The Judge’s decision: Cyclist liable, pedestrian 50% contributorily negligent
- Discussion: No new principle?

Thank you! Any questions?

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