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Motorcycling Accident Compensation and the Law

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Posted by:
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As personal injury solicitors, Bolt Burdon Kemp has dealt with many successful motorcycle accident compensation claims. We believe it is important that our clients are aware of their claim's prospects of success. We have outlined below the law that can assist in determining how liability for a motorcycle accident may be decided. It is important to remember that each case will be judged on its own individual circumstances and although cases can be similar, judges can reach different opinions depending on the individual events surrounding the accident.

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Rule 211 of the Highway Code specifically requires car drivers to keep a look out for motorcycles and bicycles as they are often difficult to see.

Motorcycles have the ability to accelerate much faster than cars and they require a greater stopping distance. The combination of these two factors accounts for the high number of accidents involving motorcyclists. The most common reasons for motorcycle accidents to occur are:

- speed
- failing to keep a proper look out

The speed of a motorbike will often be considered to have contributed to an accident. In *Henderson v Cooke [2002]* a motorcyclist collided with a car which was emerging from a minor road. Liability was split between the parties on a 50/50 basis because the motorcyclist was judged to have ridden too fast on the unlit road at night.

Even when a motorcyclist is riding at less than the speed limit they can still be held liable for an accident. In *Thomas v Kostanjevec [2005]* a motorbike fatally collided with a pedestrian. Although the motorbike was travelling at 10 mph less than the speed limit the motorcyclist was held wholly liable for the accident on the basis that when driving a powerful machine and approaching a bend he should have slowed down to a speed whereby he could stop if an obstacle was in the way.

Another common accident is where a motorcyclist is overtaking slow moving traffic and collides with another vehicle emerging from a side road. Rule 88 of the Highway Code permits filtering into slow moving traffic but warns the motorcyclist to look out for other road users who may be crossing the road or emerging from a side road. The leading case is *Powell v Moody [1966]* in which a motorbike was overtaking a stationary line of traffic when it collided with a car 'inching his way out'. The court found the motorcyclist to be 80% to blame and the car driver only 20% responsible, on the basis that overtaking a line of traffic is a hazardous undertaking. Generally a motorcyclist who is

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involved in an accident with another vehicle while overtaking stationary traffic can expect to have their liability for the accident assessed at up to 80%.

In the relatively recent case of *Turner v Woodham [2012]*, the court apportioned liability between a motorcyclist (who was overtaking a queue of stationary traffic) and a coach (which was emerging from a side road). Liability was split on a 50/50 basis; despite the size of the coach compared to the motorcyclist. The court's decision was based on the motorcyclist's familiarity with the dangerous road layout and evidence from other motorcyclists that they had considered the overtaking of stationary traffic too risky.

Rules 84 and 88 of the Highway Code relate to the wearing of crash helmets. Motorcyclists must wear a crash helmet. Failure to do so may result in a finding of contributory negligence against the motorcyclist in the event of an accident and therefore a deduction in compensation.

In *O'Connell v Jackson [1971]*, if the claimant had worn a helmet, it would probably have reduced the extent of his head injuries, which included severe fractures of the skull. Accordingly, contributory negligence was assessed at 15% and compensation was reduced.

In *Capps v Miller [1989]* the claimant's crash helmet had not been securely fastened and came off before his head struck the road. There was a distinction in the degree of blameworthiness between not wearing a helmet at all and wearing a helmet that was not securely fastened. In the latter case, compensation would be reduced by 10%.

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