

# **Cyclists and contributory negligence**

## **Whose fault is it anyway?**

# Contributory negligence: the basics

- ▶ Partial defence
- ▶ S1(1) Law Reform (Contributory Negligence) Act 1945:
  - ▶ *Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court things just and equitable having regard to the claimant's share in the responsibility for the damage [...].”*

# Contributory negligence: the basics

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- ▶ Two stages:
  - ▶ **Threshold:** damage is caused partly by D, and partly by C
  - ▶ **Assessment:** what is it just and equitable to reduce?
- ▶ Assessment consists of comparing:
  - ▶ Blameworthiness; and
  - ▶ Causative potency (*Stapley v Gypsum Mines Ltd* [1953] AC 663, 682)

# Blameworthiness: what is relevant?

- ▶ S38(7) Road Traffic Act 1988:
  - ▶ *A failure on the part of a person to observe a provision of the Highway Code shall not of itself render that person liable to criminal proceedings of any kind but any such failure may in any proceedings (whether civil or criminal, and including proceedings for an offence under the Traffic Acts, the Public Passenger Vehicles Act 1981 or sections 18 to 23 of the Transport Act 1985) be relied upon by any party to the proceedings as tending to establish or negative any liability which is in question in those proceedings.*

# HWC r59: clothing

## Rule 59

**Clothing.** You should wear

- a cycle helmet which conforms to current regulations, is the correct size and securely fastened
- appropriate clothes for cycling. Avoid clothes which may get tangled in the chain, or in a wheel or may obscure your lights
- light-coloured or fluorescent clothing which helps other road users to see you in daylight and poor light
- reflective clothing and/or accessories (belt, arm or ankle bands) in the dark.



# HWC r60: lights

## Rule 60

**At night** your cycle **MUST** have white front and red rear lights lit. It **MUST** also be fitted with a red rear reflector (and amber pedal reflectors, if manufactured after 1/10/85). White front reflectors and spoke reflectors will also help you to be seen. Flashing lights are permitted but it is recommended that cyclists who are riding in areas without street lighting use a steady front lamp.

Law [RVLR regs 13](#), [18](#) & [24](#)

# HWC rr66-67: good road practice

## Rule 66

You should

- keep both hands on the handlebars except when signalling or changing gear
- keep both feet on the pedals
- never ride more than two abreast, and ride in single file on narrow or busy roads and when riding round bends
- not ride close behind another vehicle
- not carry anything which will affect your balance or may get tangled up with your wheels or chain
- be considerate of other road users, particularly blind and partially sighted pedestrians. Let them know you are there when necessary, for example, by ringing your bell if you have one. It is recommended that a bell be fitted.

## Rule 67

You should

- look all around before moving away from the kerb, turning or manoeuvring, to make sure it is safe to do so. Give a clear signal to show other road users what you intend to do (see [‘Signals to other road users’](#))
- look well ahead for obstructions in the road, such as drains, pot-holes and parked vehicles so that you do not have to swerve suddenly to avoid them. Leave plenty of room when passing parked vehicles and watch out for doors being opened or pedestrians stepping into your path
- be aware of traffic coming up behind you
- take extra care near road humps, narrowings and other traffic calming features
- take care when overtaking (see [Rules 162 to 169](#)).

# HWC rr72-74: junctions

## Road junctions (rules 72 to 75)

Hide 

### Rule 72

**On the left.** When approaching a junction on the left, watch out for vehicles turning in front of you, out of or into the side road. Just before you turn, check for undertaking cyclists or motorcyclists. Do not ride on the inside of vehicles signalling or slowing down to turn left.

### Rule 73

Pay particular attention to long vehicles which need a lot of room to manoeuvre at corners. Be aware that drivers may not see you. They may have to move over to the right before turning left. Wait until they have completed the manoeuvre because the rear wheels come very close to the kerb while turning. Do not be tempted to ride in the space between them and the kerb.

### Rule 74

**On the right.** If you are turning right, check the traffic to ensure it is safe, then signal and move to the centre of the road. Wait until there is a safe gap in the oncoming traffic and give a final look before completing the turn. It may be safer to wait on the left until there is a safe gap or to dismount and push your cycle across the road.

# HWC r239: car doors

## 2. Parking (239 to 247)

239

Use off-street parking areas, or bays marked out with white lines on the road as parking places, wherever possible. If you have to stop on the roadside

- do not park facing against the traffic flow
- stop as close as you can to the side
- do not stop too close to a vehicle displaying a Blue Badge: remember, the occupant may need more room to get in or out
- you **MUST** switch off the engine, headlights and fog lights
- you **MUST** apply the handbrake before leaving the vehicle
- you **MUST** ensure you do not hit anyone when you open your door. Check for cyclists or other traffic
- it is safer for your passengers (especially children) to get out of the vehicle on the side next to the kerb
- put all valuables out of sight and make sure your vehicle is secure
- lock your vehicle.

# Contributory negligence and...

- ▶ Observation
- ▶ Lights
- ▶ Road position
- ▶ Obstacles
- ▶ Car doors
- ▶ Side roads
- ▶ Left hooks

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# *Clenshaw v Turner* [2002] EWHC 184 (QB)



Go to [www.menti.com](http://www.menti.com) and use the code 1263 5556

# Clenshaw (head down)



## *Clenshaw v Turner* [2002] EWHC 184 (QB)

- ▶ Urban main road in Tunbridge Wells
- ▶ Cyclist on designated mandatory cycle lane
- ▶ 15-20mph (slightly faster than traffic)
- ▶ Left-hooked by lorry turning into petrol station
- ▶ Cyclist head-down in “racing position”
- ▶ Defendant lorry driver indicated but cyclist didn't see
- ▶ 50% contributory negligence

# Contributory negligence and...

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- ▶ **Lights**
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# Phethean-Hubble v Coles [2012] EWCA Civ 349



# Phethean-Hubble (lights)



## Phethean-Hubble v Coles [2012] EWCA Civ 349

- ▶ 16 year old rode bicycle off the nearside pavement into the road at an angle and into the path of the D's oncoming car
- ▶ Street lights
- ▶ No rear light on bicycle
- ▶ Cycle path ends
- ▶ C was seriously injured
- ▶ Trial judge did not find the absence of a rear light or failure to wear a helmet had contributed to the situation
- ▶ At trial C succeeded on liability subject to a reduction of one third for contributory negligence
- ▶ In the Court of Appeal, the one third reduction for contributory negligence was substituted for 50%

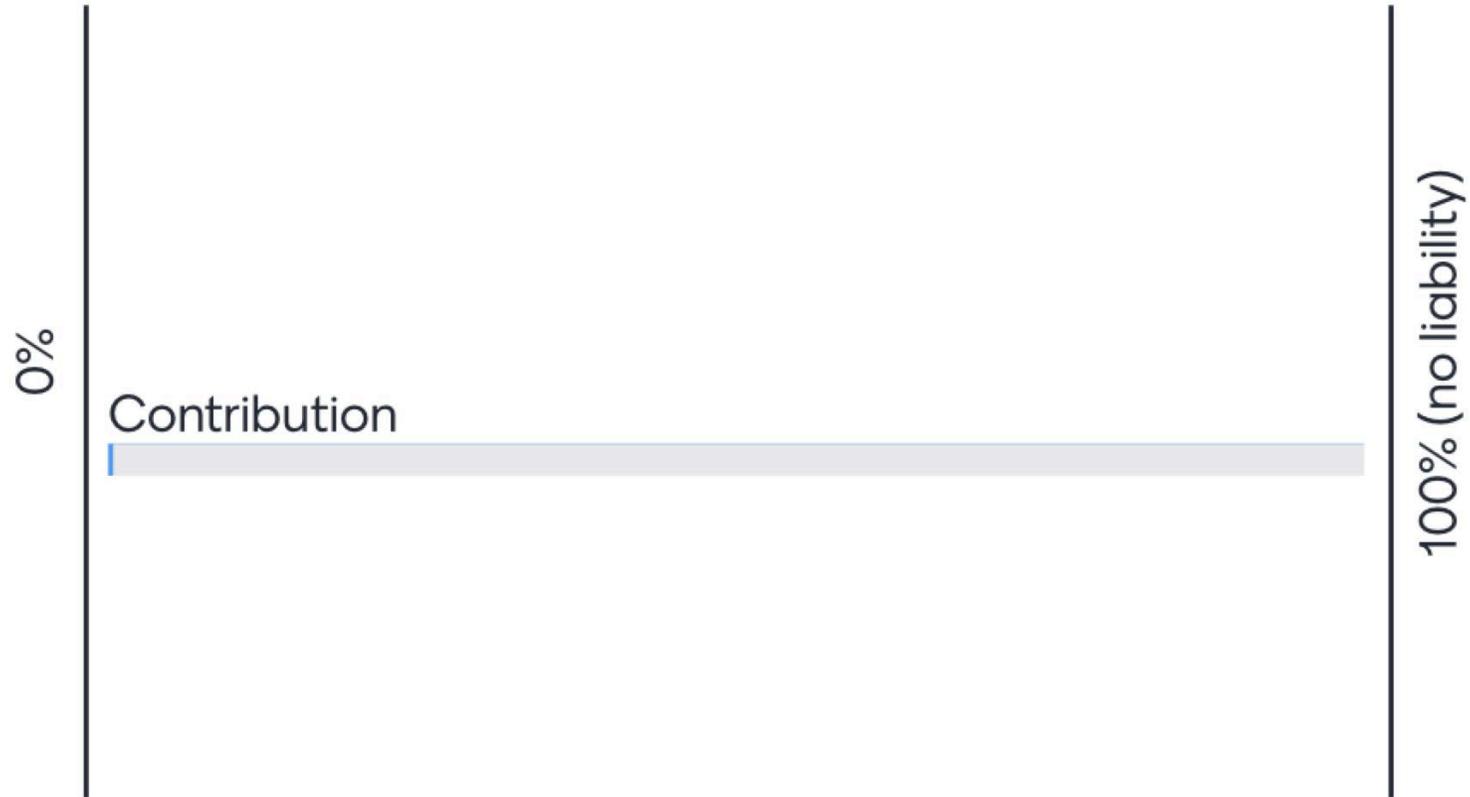
# Contributory negligence and...

- ▶ Observation
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*Sinclair v Joyner* [2015] EWHC 1800 (QB)



# Sinclair: cyclist's contribution?



## *Sinclair v Joyner* [2015] EWHC 1800 (QB)

- ▶ Rural lane near Tunbridge Wells
- ▶ Cyclist *just* on her own side of the road – near the middle – rounding a bend
- ▶ Standing on the pedals (in discomfort or difficulty?)
- ▶ D slowed, didn't stop
- ▶ Cyclist clipped the rear wheels of D's car with front bike wheel, and fell
- ▶ D contended for no liability
- ▶ Primary liability: enough time for D to observe, and stop: insufficient action
- ▶ Central position of cyclist was contributory negligence
- ▶ 25%

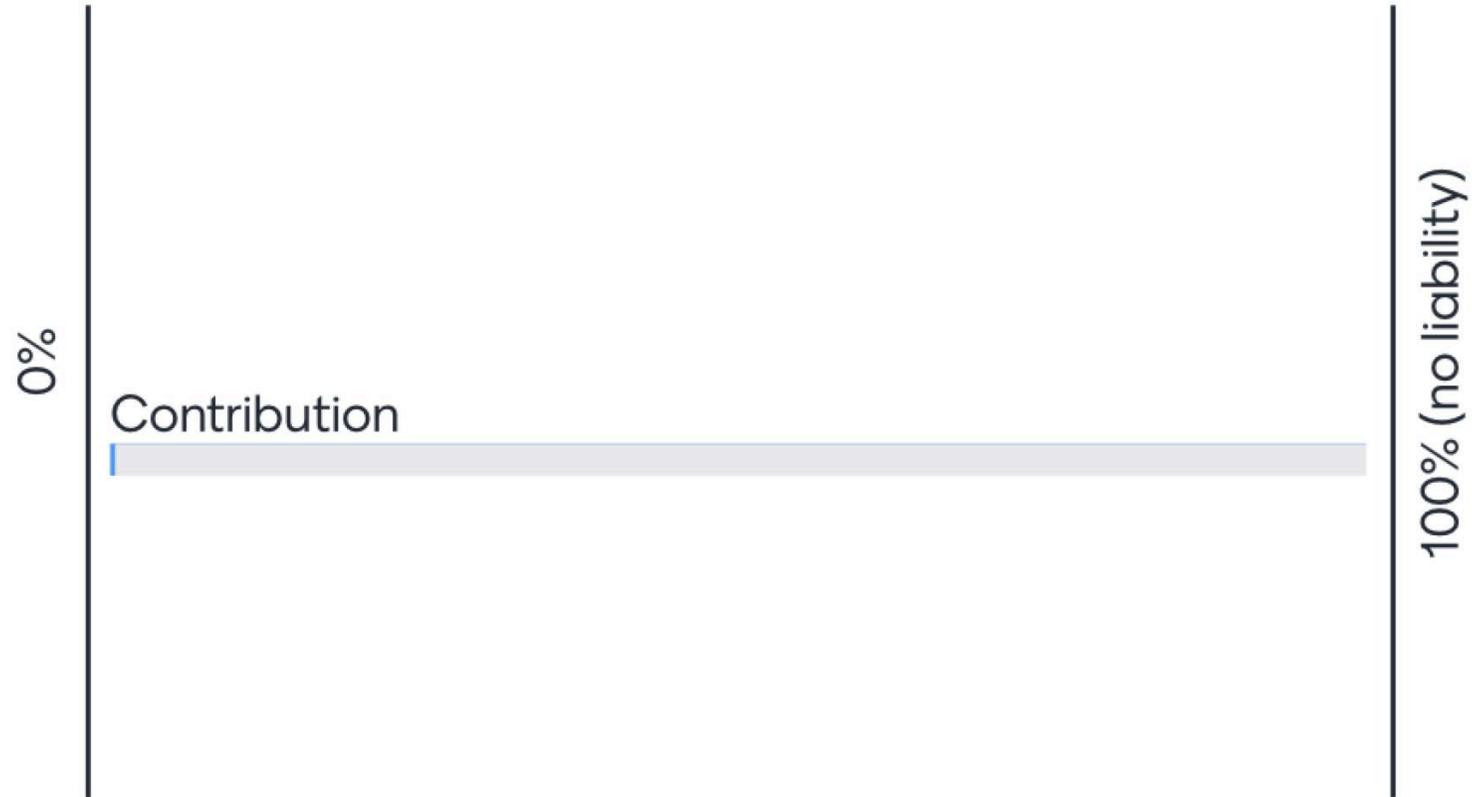
# Contributory negligence and...

- ▶ Observation
- ▶ Lights
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# *Fairley v Edinburgh Trams Ltd [2019] CSOH 50*



# Fairley: cyclist's contribution?



## *Fairley v Edinburgh Trams Ltd* [2019] CSOH 50

- ▶ Scottish case
- ▶ Cyclists crossing tram tracks at an acute angle (approx. 30°); wheels getting trapped
- ▶ Evidence of numerous accidents
- ▶ Alternative: slowing, re-manoeuving left, to turn right at an angle closer to perpendicular
- ▶ Pursuers (claimants) aware of hazard
- ▶ 0% contributory negligence

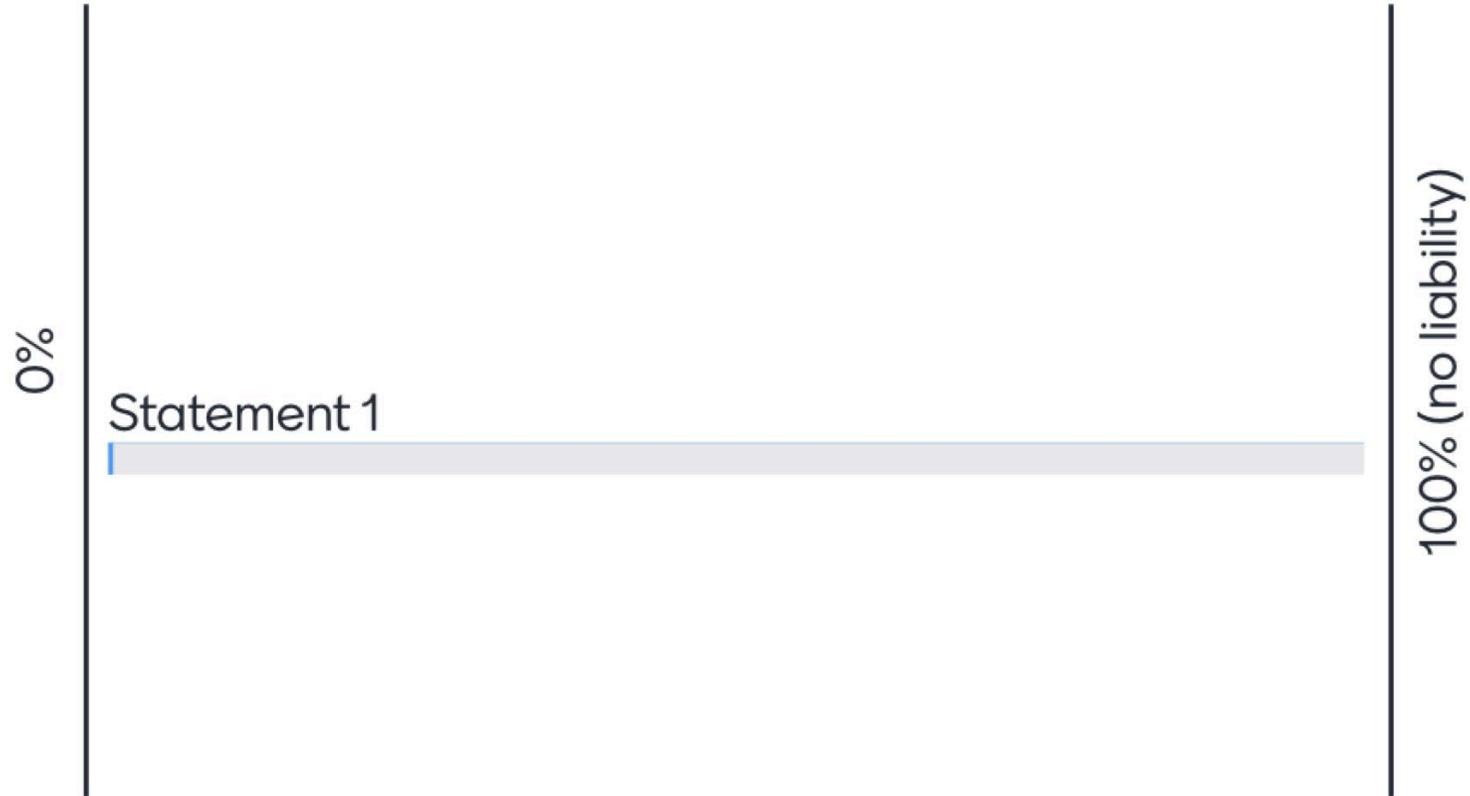
# Contributory negligence and...

- ▶ Observation
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*Burridge v Airwork* [2004] EWCA Civ 459



# Burridge (doooring)



## *Burridge v Airwork* [2004] EWCA Civ 459

- ▶ Minibus that pulled off carriageway and stopped
- ▶ Cyclist about to overtake minibus
- ▶ Minibus door opened
- ▶ Cyclist hits door, then struck and dragged along by another vehicle
- ▶ No contributory negligence for failure to allow space for the minibus driver to open their door
- ▶ What does that say about the standard of care?

# Contributory negligence and...

- ▶ Observation
- ▶ Lights
- ▶ Road position
- ▶ Obstacles
- ▶ Car doors
- ▶ **Side roads**
- ▶ Left hooks

*Rickson v Bhakar* [2017] EWHC 264 (QB)



# Rickson (side roads)



## *Rickson v Bhakar* [2017] EWHC 264 (QB)

- ▶ Experienced cyclist participating in time trial in “head down” position
- ▶ Collision with rear nearside wheel arch
- ▶ Spinal injuries left him paralysed
- ▶ If C hadn't dropped his head, he'd have seen D
- ▶ Blake J at [33]
  - ▶ *“the failure to either observe or react when the opportunity was there to do both was in all the particular circumstances of this case culpable and constituted contributory negligence.”*
- ▶ *20% contributory negligence*

# Contributory negligence and...

- ▶ Observation
- ▶ Lights
- ▶ Road position
- ▶ Obstacles
- ▶ Car doors
- ▶ Side roads
- ▶ **Left hooks**

# *McGreer v Macintosh* [2017] EWCA Civ 79



# McGreer (left hook)



## *McGreer v Macintosh* [2017] EWCA Civ 79

- ▶ D, lorry driver, stationary at lights:
  - ▶ Indicating left
  - ▶ Straddling both lanes (due to tightness of turn)
  - ▶ More in the right lane than the left
- ▶ C arrived fast from behind (downhill), on the left
- ▶ D executed turn and collided with C
- ▶ Primary liability: D failed to check left mirror; C visible for 3 seconds; bike v lorry left hooks sufficiently notorious
- ▶ C considerably at fault
- ▶ Considerable danger of the lorry meant D had to bear the greater share
- ▶ 30% contributory negligence

# Finally

- ▶ Changes to Highway Code?
- ▶ Questions:

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