



# Contributory Negligence, What is it and How does it affect you?

**As we head towards the spring and summer, we understand many bikers who may have put their motorcycles away for the winter, will be looking forward to returning to the roads.**

Whether you live in the countryside, or city, most say riding a motorbike offers a freedom that driving doesn't, whether that be due to being able to filter past queuing traffic that you may otherwise be held up in, hitting an open road and surpassing many others.

With that comes temptation for some, temptation to push the speed limits and just do that little extra, to undertake risky filtering behaviours you wouldn't otherwise take, on just that one occasion, which unfortunately can lead to serious complications in the event of an unfortunate collision.

All of which can lead to a very common argument when it comes to presenting a personal injury claim to a Defendant Insurer - Contributory Negligence.

## What is Contributory Negligence?

Contributory Negligence is an allegation which a Defendant Insurer or Solicitor will commonly argue to say that you have done something, which contributes to your collision and/or injuries.

The success of this defence is sadly often brought about by certain biases against motorcyclists prevalent in the non-riding community.

However, if a Defendant is successful with this argument the consequence for you means this will reduce any compensation that you receive by a percentage % amount, as you will be deemed to be partly responsible for your collision, and injuries. It is a principle laid down by s.1 (1) Law Reform (Contributory Negligence) Act 1945 if you ever wanted to read it yourself.

Even though the other person involved in the collision might be largely to blame and you will still 'win' your case overall, they will often try and reduce the limit of their responsibility by alleging that you are partly responsible for what happened. Insurance companies acting for the

other party in your case are very likely going to do all they can to reduce the payout to an injured person. Reducing a significant claim by even a few small percent could potentially be a lot of money for them to avoid.

This is a situation as Claimant Solicitors we want to avoid as far as possible and why seeking advice from specialist solicitors is so vital. If you are in a position where you have suffered life changing, catastrophic injuries, every single percent lost to a contributory negligence argument could have a huge impact on the claim for your lifelong needs.

Our Serious Injury and two-wheel teams understand the far-reaching consequences and devastating impact of an accident on you. We see that a percentage deduction impacts both the present and future for you, so at Fletchers Solicitors we will always fight for that extra 1 or 2% knowing that it can make a significant difference to your long-term needs and quality of life.

## What does it mean for you when riding

Below are some examples of where contributory negligence may apply, it could be from one wrong action, or multiple and how it could affect you. These are the most common scenarios, and all can commonly be found together:

### Filtering and Overtaking

The most common situation with motorcyclists in traffic, is when they filter through the traffic. It is something that you are reasonably allowed to do as long as the rider proceeds with due care and attention, doesn't cross solid white lines, enter hatched marked areas, or pass when there's a right and left hand turning.

As an example one case from recent years in which a van had emerged from a gap in traffic intending to turn right at a junction whereby the view of approaching traffic had been blocked by the articulated lorry. Although the van driver should not have emerged from a junction onto a main carriageway when he did not have a clear view of approaching traffic. The court determined the motorcyclist bore considerable responsibility for the resulting accident because he had been significantly exceeding the speed limit and had overtaken a lorry in an improper way proceeding via a hatched marked area immediately before the collision. In this decision the motorcyclist was found to be 80% to blame. (*Ringe v Eden Springs (UK) Ltd 2012*)

### Speeding

In respect of speeding alone, the decisions have been varied however most decisions have been between in the region of 20% of blame attaching to the motorcyclist. Such as the following case where a court found as such albeit the accident was caused by the defendant undertaking a dangerous manoeuvre the motorcyclist was found to have contributed to the accident due to his speed having been unable to take available evasive action due to the same.

(*Grealis V Opuni 2003*)

Other cases in contrast have found that, where a car driver who pulled out to execute a turn in the path of a motorcyclist was liable for injuries sustained by the latter because he had failed to ensure that the way was clear before making his manoeuvre. Even though the motorcyclist was travelling too fast, he would not have had time to avoid a serious accident if he had been travelling at a lesser speed and was therefore not contributorily negligent.

(*Beasley v Alexander 2012*)

It's a complex area with rarely two cases being the same, but it just shows that motorcyclists do need to be very careful, as any compensation claim they make could be impacted, even though they are not necessarily to blame. So, it's always best to speak to a personal injury motorcycle claims specialist.



## Wearing the Incorrect Equipment and Contributory Negligence

Accidents involving a motorcycle will often bring about serious injuries and consequences. You might ask can you be held partially to blame for not wearing proper protective clothing and equipment?. The answer is yes. This will include items such as a helmet, protect leathers, or suits, trousers, jackets, gloves and boots. These rules can be found in Rules 83 to 88 of the Highway Code.

Defendant representatives/insurance companies/solicitors will often commonly argue that injuries themselves would have been much less severe in the case of protective clothing and equipment not being worn and may seek to allege contributory negligence on that basis.

A key example of this would be not wearing a helmet, which is compulsory to comply with the law, and incorrectly wearing a helmet not in accordance with its instructions and later due to an accident your helmet came off.

Should you then sustain a head/brain injury as a result of an accident, its highly likely that the Defendant's will raise contributory negligence with common ranges between 10-15% depending on how significant the impact of failing to do so is on the injury suffered. If you suffer no head injury then often no argument can be made in this respect, as you have not made your own injuries worse despite it being reckless not to have worn a helmet.

Another common allegation is where nothing reflective is worn by a rider, whom is consequently injured at nighttime, or in darkness. Whilst there are requirements

for headlights and lighting on a motorcycle, as a rider you be expected to do as much as you can to make yourself visible as a vulnerable road user.

If there is any which way a Defendant Insurer, or solicitor can make an argument to reduce compensation and place any portion of blame on you then they will do this. In simple terms it saves them money, it's important not to hand the otherside a get out of jail free card if you will for something as simple and ensuring your own safety with the necessary precautions.



## What does that mean for you?

The saying 'failure to prepare, prepare to fail' is a phrase that comes to mind. Always ensure that you have the very basics covered when it comes to safety and that the same are secured correctly.

Otherwise, it may result in an unwanted injury in the first instance and a deduction in your compensation secondly following an accident. Although we do know that almost all riders take their safety seriously and do in fact do all of the above.



## Benefits of Further Riding Qualifications

Advanced training helps you perfect your core riding abilities. Commitment to learn techniques to handle your motorcycle more effectively, anticipate and manage various road situations, and minimize risks and potential accidents. This translates to better control and safer riding for yourself in the event of an unexpected situation.

Having those further skills for those unexpected scenarios may be the difference between Catastrophic and Serious matters, other positives may include:

- ✓ Vital Life Saving Advanced Riding Skills to anticipate and control situations;
- ✓ Confidence Boosting allowing you to handle diverse situations, weather condition, traffic and unexpected scenarios more effectively;
- ✓ Potential for Cheaper Insurance Premiums. Insurance companies recognize these qualifications and having them may lower your costs. Albeit it is not the main goal of such training.

We encourage all riders to undertake for their safety and skill an Advanced Riding Qualification Course.

One of which you may be aware of is the British Motorcycling Federation - Blue Riband Advanced Rider Award. This particular course is commonly approved and used by Police Forces and other emergency services.

A copy of the course brochure and more information can be found at [www.britishmotorcyclists.co.uk](http://www.britishmotorcyclists.co.uk).



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