

The Secret Insider

ISSUE 04

MARCH 2020



CONWAY

Accident Law Practice

www.accidentlawscotland.com

The Newsletter from
The Conway Accident Law Practice

INSIDE THIS ISSUE



WHOSE FAULT IS IT ANYWAY?

What the courts have to say about road traffic accidents

Get in touch

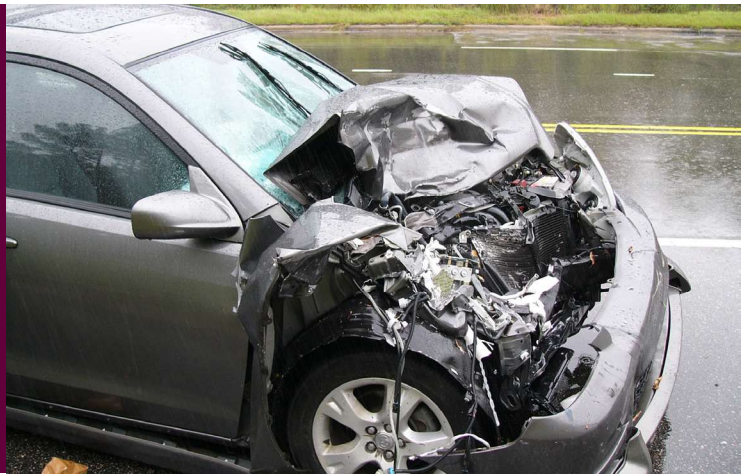
Tel: 0141 319 8240

email: info@accidentlawscotland.com



Whose Fault is it Anyway?

What the courts have to say about road traffic accidents



In 1896 there were four automobiles in the whole of the USA. Two of them ran into each other in St. Louis. In Great Britain that year, 44 year-old Bridget Driscoll was the first pedestrian to be knocked down and killed by a car. There are now over 29 million motor vehicles in the UK.

In Scotland in 2016, 191 people were killed, 1,693 were recorded as seriously injured and 10,881 suffered slight injury. Driver error is the cause of 95% of accidents. Almost everyone driving has some experience of at least a bump, and the speed and power of modern vehicles mean that damage and injury can range from the trivial to the catastrophic.

There are two main grounds of fault. The first is excessive speed, and the second is failing to keep a proper look-out. In most cases, there is almost certainly an element of negligence on

someone's part. This brief article looks at the kind of approach that the courts take towards drivers at fault.

Fault and negligence

If you are a non fault driver you should recover all your losses including excess and personal injury from the other driver's insurers. If you are the at fault driver you'll have to claim on your own insurance, you will lose your no claims discount and will see your premiums rise steeply.

Failure to keep a proper lookout

This isn't just about paying attention, it's about being aware of just how easy it is to miss something in the road. There's a quick ready reckoner for speed and distance travelled. If you take your speed in miles per hour, divide it by two and then add the figures together, you get approximately the distance travelled in feet per second. So 30 mph means $15 + 30 = 45$ feet per second. If travelling at 60 miles per hour, you are talking about

90 feet per second or 30 yards in the blink of an eye. Do the maths. If you are driving a car, the briefest element of inattention can spell disaster. Excessive speed means a speed which is inappropriate for the circumstances, not just breaking the speed limit.

Let's look at a few accident scenarios.

You hit the vehicle in front

This is the familiar "rear end shunt" typically caused by momentary inattention. If you run into the back of someone, you should expect to be held liable 9 times out of 10 – but there are occasions when you may not be at fault.

If the vehicle in front of you suddenly brakes for no apparent reason, there may be no liability on your part. For example, in the case of *Elizabeth -v- MIB*, a motorcyclist collided with the rear of a van which had braked violently. The court held the van driver had to show good reason for braking so suddenly and so heavily.

Welcome to the fourth newsletter of The Secret Insider

Ronnie Conway, Solicitor Advocate and Fellow of the Association of Personal Injury Lawyers (APIL), is the author of *The Secret Insider's Guide to Insuring Your Car*. He has specialised exclusively in accident and injury work for over 27 years.

If you've been injured in an accident you can email: info@accidentlawscotland.com visit: www.accidentlawscotland.com or freephone: 0800 009 6953



The driver in front suddenly brakes

Whose fault this is depends on the particular circumstances. If the driver performed an emergency stop to avoid something, like a dog suddenly running out into the road, it may not be that driver's legal fault.

There are some older cases which say the driver should simply run the dog down, but no modern court is likely to take this line.

So not only will you as following driver have no liability to him, but the other driver may well not be liable to you. There will be no "at-fault" driver at all, and you'll each have to look at your own insurers for reimbursement of your losses.

You're in a concertina collision

What about the situation where one driver has run into the back of another driver, who has crashed into the vehicle in front, and so on, before finally the vehicle behind you hits the back of your car?

This is the kind of concertina scenario you sometimes see when there's stopped traffic on a motorway and one driver has failed to react in time.

It is almost certain this one driver will be liable to all the damaged vehicles and their occupants.

You lose control by skidding

In ordinary weather conditions if your vehicle skids out of control, it's almost inevitable you'll be found negligent.

When it's snowy or ice, especially on ungritted roads, things might be different. But even in bad weather you're expected to drive accordingly. If you don't reduce your speed well below the limit and take particular care you may still be found liable even in extreme conditions.

The Highway Code Rule 119 states:

"Skids: Skidding is usually caused by the driver braking, accelerating or steering too harshly or driving too fast for the road conditions."

You're in a collision when emerging from a minor road

There is a heavy onus of care on the emerging driver. It's your responsibility to wait for a gap in the traffic and enter the major road safely.

If it's difficult to see, perhaps because of parked cars, the general rule is you should "peep and creep". Or, as one of the leading cases put it, "nose poke". In other words, you should advance in stages, stopping at intervals when you can monitor traffic on the major road.

Particular difficulties can arise if there's a collision between an emerging car and an overtaking vehicle. Usually, but not always, the overtaking vehicle is a motorcyclist.

A common situation is the emerging driver intends to cross the major road and turn right. A vehicle on the main road stops to allow him out – but a motorcyclist is overtaking the traffic queue on the outside, often on the wrong side of the road, and collides with the emerging driver.

As long as the emerging driver is proceeding cautiously (in the leading case of *Powell -v- Moodie* at a speed of between 5 to 8 mph) the lion's share of liability rests with the overtaking vehicle driver or motorcyclist.

You have an accident when turning right

You must pay extra attention when turning right and wait for a safe gap. This is governed by Rules 179 and 180 of The Highway Code. Rule 180 states:

"Wait until there is a safe gap between you and any oncoming vehicle. Watch out for cyclists, motorcyclists, pedestrians and other road users. Check your mirrors and blind spot again to make sure you are not being overtaken, then make the turn. Do not cut the corner. Take great care when turning into a main road; you will need to watch for traffic in both directions and wait for a safe gap."

A typical situation is the vehicle turning right collides with an oncoming vehicle on the major road. Liability will depend on the facts.

The most common reasons for such a collision are:

The turning vehicle failed to keep a proper lookout, moved before there was a safe gap, or otherwise misjudged the approach of the other car.

The excessive speed of the oncoming vehicle is often a factor, meaning the oncoming driver is unable to slow down or take evasive action. In that situation it's important to establish both vehicles' line of sight.

You are in an accident whilst overtaking

Overtaking is a risky activity and The Highway Code sets out some absolute prohibitions on overtaking in Rule 165. In particular, you MUST NOT overtake:

- If you'd have to cross or straddle double white lines with a solid line nearest to you
- If you'd have to enter an area designed to divide traffic, if it's surrounded by a solid white line
- The nearest vehicle to a pedestrian crossing, especially if it's stopped to let pedestrians cross
- If you'd have to enter a lane reserved for buses, trams or cyclists during operational hours.
- After a "No Overtaking" sign, and until you pass a sign cancelling the restriction.

Apart from these specific MUST NOT rules, you'll find general guidance in Rule 162 and in particular, Rule 163 which states:

"Overtake only when it is safe and legal to do so. You should:

- *Not get too close to the vehicle you intend to overtake.*
- *Use your mirrors, signal when it is safe to do so, take a quick sideways glance if necessary into the blind spot area and then start to move out.*
- *Not assume that you can simply follow a vehicle ahead which is overtaking; there may only be enough room for one vehicle.*
- *Move quickly past the vehicle you are overtaking, once you have started to*

overtake. Allow plenty of room. Move back to the left as soon as you can but do not cut in.

- *Take extra care at night and in poor visibility when it is harder to judge speed and distance.*
- *Give way to oncoming vehicles before passing parked vehicles or other obstructions on your side of the road.*
- *Only overtake on the left if the vehicle in front is signalling to turn right and there is room to do so.*
- *Stay in your lane if traffic is moving slowly in queues. If the queue on your right is moving more slowly than you are, you may pass on the left*
- *Give motorists, cyclists and horse riders at least as much room as you would when overtaking a car (see Rules 211-215).*

Remember: Mirrors-Signal-Manoeuvre."

If you want to overtake a vehicle, all the general considerations of speed, lookout, and lines of sight apply – plus a good dose of extra care.

The reality is if you're overtaking and collide with an oncoming vehicle, you're likely to be held completely or substantially liable. As an overtaker you're not entitled to expect extraordinary vigilance or reaction from any oncoming vehicle driver.

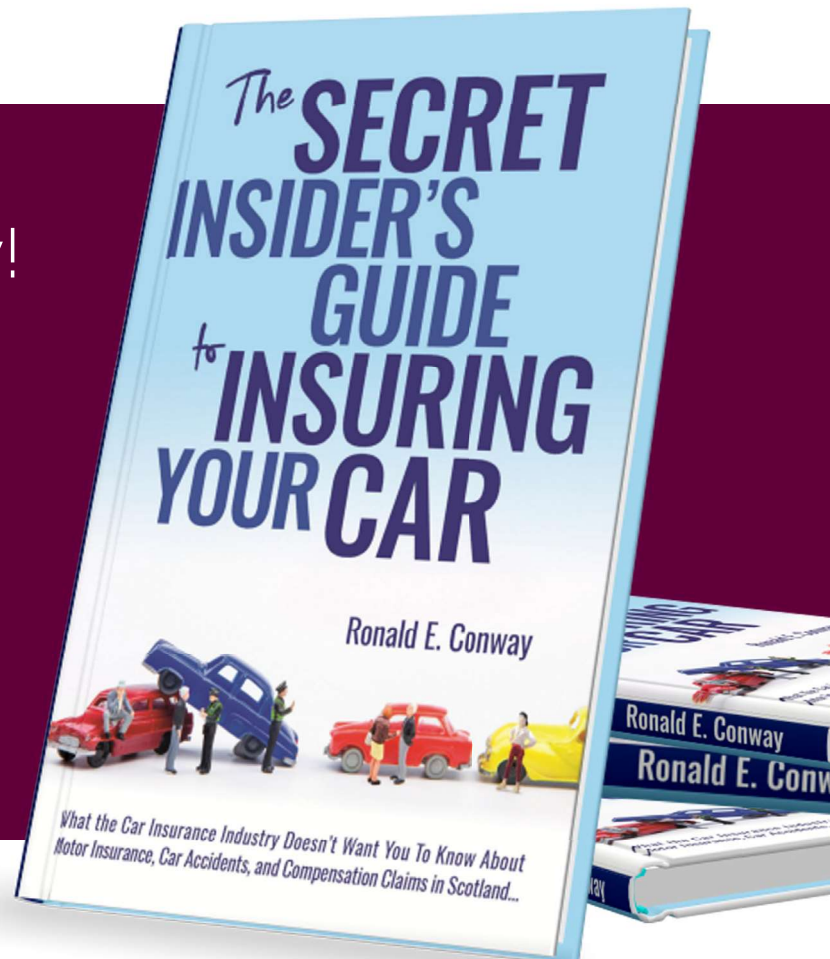
The oncoming driver will get the benefit of the so-called "agony rule" – where you're faced with an emergency situation not of your own making, your response will not be weighed too finely in the balance.

Similarly, if you're overtaking you're not entitled to rely on the vehicle you're passing to slow down and let you in. Whilst this is no doubt the proper response from the overtaken driver, a court is unlikely to find fault with them if they don't. ■

Get Your **Free** Copy!

Visit the website at www.accidentlawscotland.com for a free pdf download or send us an email to info@accidentlawscotland.com

"Ideally, you'll never have to make a claim on your motor insurance... but if you do, this book will make sure you're able to navigate the murky waters of the claims process, protect yourself and your family, and make sure you don't get ripped off."



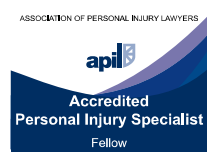
www.accidentlawscotland.com

This Newsletter is published by
The Conway Accident Law Practice

71 Oxford Street
Glasgow G5 9EP

t **0141 319 8240**

e info@accidentlawscotland.com



Ronald Conway is a Fellow of the
Association of Personal Injury Lawyers