The Forum of Complex Injury Solicitors (FOCIS)

Response to

Future of Transport Regulatory Review: Call for evidence on micromobility vehicles, flexible bus services and mobility as a service

About Us

FOCIS members act for seriously injured Claimants with complex personal injury and clinical negligence claims, including group actions. The objectives of FOCIS are to:-

1. Promote high standards of representation of Claimant personal injury and medical negligence clients;

2. Share knowledge and information among members of the Forum;

3. Further better understanding in the wider community of issues which arise for those who suffer serious injury;

4. Use members' expertise to promote improvements to the legal process and to inform debate;

5. Develop fellowship among members.

See further www.focis.org.uk

Membership of FOCIS is intended to be at the most senior level of the profession, currently standing at 22 members. The only formal requirement for membership of FOCIS is that members should have achieved a pre-eminence in their personal injury field. Seven of the past presidents of APIL are members or Emeritus members of FOCIS. Firms represented by FOCIS members include:

Anthony Gold	Hugh James
Atherton Godfrey	JMW
Ashtons	Irwin Mitchell
Balfour + Manson	Kingsley Napley
Bolt Burdon Kemp	Leigh Day
Dean Wilson	Osbornes
Digby Brown	Potter Rees Dolan
Fieldfisher	Prince Evans
Fletchers	Rix & Kay
Freeths	Stewarts
Hodge Jones & Allen	Thompsons NI

FOCIS members act for seriously injured Claimants with complex personal injury and clinical negligence claims. In line with the remit of our organisation, we restrict our responses relating to our members' experience, practices and procedures relating to

complex injury claims only. We will defer to others to respond on the impact relating to other classes of case.

FOCIS welcomes the opportunity to comment in response to the Call for Evidence on the future of transport regulatory review.

It is important that micromobility vehicles are introduced to our roads backed by appropriate regulation and legislation. Insurance is essential as there remains a risk of injury to both users/drivers of the micromobility vehicle as well as other road users and pedestrians, which will increase as the use of these vehicles becomes more widespread. As this paper considers whether micromobility vehicles may go on pavements as well as roads, the challenges to pedestrian safety this produces are obvious. All victims of road accidents should be protected and enabled to claim appropriate compensation and any failure to legislate to require insurance for these new and rapidly developing forms of vehicle will impact negatively on those who are injured, potentially leaving them without access to compensation. Compulsory insurance and minimum safety requirements are needed.

The current regime in the UK is governed by the Road Traffic Act 1988 which requires insurance for vehicles used 'on a road or other public place' and thus includes pavements. The Motor Insurance Directive would cover any powered [motor] vehicle being used as a means of transport on any type of land, including private land. The case of *Lewis*[1] confirmed that the MIB should meet any claims where the RTA regime is not aligned with the MID, particularly since the Vnuk[2] case.

We consider it imperative that legislation is brought rapidly up to date with the development of new forms of powered vehicles. There is a clear gap in the law that requires legalisation of e-scooters being used on roads, pavements or other paths. At the present time, e-scooter trials are starting, and are regulated for use within the trial, with the trials having been brought forward by approximately one year[3]. As it appears likely that the government will legislate to allow e-scooters on to the roads, and possibly in cycle lanes/paths, our view is that they ought to also have insurance against the risk of harm they may cause to others. Without a compulsory insurance regime, victims of accidents will not be able to access compensation promptly. As for all other motorised vehicles, the MIB schemes should be available as a fund of last resort to compensate victims of accidents involving uninsured or untraced e-scooters (or other micromobility vehicles).

Our response is limited to the below questions.

Question 2.1: Do you think micromobility vehicles (such as those in Figure B) should be permitted on the road? Please explain why.

Yes, but only with appropriate insurance and ideally operated by users who have passed a driving proficiency test.

It is also vital for strict minimum safety and construction standards to be met by the vehicles. In addition, there should be careful consideration as to helmet use, which is detailed further at question 2.8 below.

Micromobility vehicles should only be permitted for road use if they can be appropriately regulated.

Question 2.2: If you can, please provide evidence to demonstrate the potential:

a) Benefits of micromobility vehicle use.

b) Risks of micromobility vehicle use.

[1] MIB V Lewis [2019] EWCA Civ 909
[2] Damijan Vnuk v Zavarovalnica [2014] EUECJ C-162/13
[3] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2020-06-01/52499

Whilst we are unable to provide evidence, the benefits of micromobility use would be as a more environmentally friendly, quicker journey, when taken instead of public transport, and also in the time of COVID-19, would give users the ability to travel alone and at distance from others.

If driven well, then the risk of the rider of a micromobility scooter causing serious injury to other road users is less than if they had taken the same journey in a car or by motorbike. Driver training and testing is clearly required for owners and users of micromobility vehicles but risks of serious injuries remain, which is why insurance is essential to provide cover for third party injuries or even fatalities.

Similarly, without public education as to the regulation or requirements for such vehicles, it will be difficult to ensure the vehicles are used appropriately and in the correct manner, i.e. on roads or cycle lanes, without clear guidance to confirm what is required and/or permitted. Before legislation to allow these vehicles to be used widely on the roads, FOCIS considers that these issues must be resolved.

There is a risk that micromobility vehicle use might discourage some members of the public from walking, cycling or running, with a detriment to public health. However, this risk will in part be mitigated by maintaining distinctions between the requirements for micromobility vehicle use (e.g. insurance and driving test/licence), aligned with other users of motor vehicles and the limited regulation of self-propelled travel (e.g. walking, cycling or running).

A further risk is that the users of micromobility vehicles may be distracted by their active use of mobile phones (handlebar mounted use of GPS route planning would be an exception) and/or have their senses limited by the use of headphones. It is unlikely that most micromobility vehicles would have any mirrors to enable users to see what is happening around them. We would propose both uses be banned whilst riding micromobility vehicles.

Question 2.3 If micromobility vehicles were permitted on roads, would you expect them to be used instead of:

Vehicle type	**Often**	**Sometimes**	**Never**
Private vehicles		X	
Taxi or private hire vehicles		X	
Public transport	X		
Delivery vehicles	X		
Cycling		x	
Walking	X		
Other (please specify)			

Question 2.4:

a) **In your opinion, which of the following micromobility vehicles should be permitted, if any, on roads, lower speed roads, and/or cycle lanes and cycle tracks?**

- **All types**
- **Electric scooters**
- **Electric skateboard**
- **Self-balancing vehicles**
- **Electrically assisted cycle trailer**
- **Segway**
- **Other (please specify)**

b) **Please explain your choices for using micromobility vehicles (or not) on roads and/or only lower speed roads, providing evidence where possible.**

c) **Please explain your choices for using micromobility vehicles (or not) on cycle lanes and tracks, providing evidence where possible.**

d) **What impact do you think the use of micromobility vehicles on cycle lanes and cycle tracks would have on micromobility vehicle users or other road users?**

We defer to manufacturers and local authority stakeholders. All micromobility vehicles should adhere to the relevant safety and/or design standards and be insured, wherever they are used.

In order to consider which vehicles should be permitted on roads/lower speed roads/cycle lanes, research with stakeholders is required to assess the capability of such vehicles and whether their use in different areas would increase risks of accidents/injury for owners/drivers and other road users. In any event, to attempt to ensure safe use of micromobility vehicles, wherever they are to be used, a public education campaign must be instigated to ensure all road users are aware of the capabilities, speed and location (cycle lane or road) of the vehicles. Training on signalling turns, lane positioning and negotiating all types of junctions will be particularly important.

The increasing use of micromobility vehicles highlights the need for further investment in, and a rapid expansion of, the network of dedicated cycle paths that are separated from the road. The micromobility vehicles which should be permitted on cycle lanes will be a by-product of their size and the width of the cycle lanes. It is obvious that any vehicle that is more than ½ of the width of the cycle lane should not be permitted, as there must be sufficient space for other cycle-path users to pass safely. Fit and active cyclists will commonly be cycling at higher speeds than the proposed maximum speed for micromobility vehicles of 12.5 mph.

Question 2.5:

Mobility scooters and pedestrian operated street cleaning vehicles are already permitted on the footway. Should any other micromobility vehicles be permitted to use the pavement or pedestrian areas? If so, which types of devices should be permitted and in what circumstances?

There would be increased risks of harm to the vulnerable, such as pedestrians and the elderly, if other micromobility vehicles are permitted on pavements. It is worth considering whether pavements could be used by micromobility vehicles 'driven' by those with a disability, where the micromobility vehicle is a mobility aid and being used as an alternative to a traditional mobility scooter and driven at walking speed only.

Question 2.6:

a) **What do you think the minimum standards for micromobility vehicles should be?**

b) **Should different standards be set for different types of micromobility vehicle? Please provide evidence.**

The minimum specifications are noted[4] and we consider are sensible.

Question 2.8: In your opinion, what should the requirements be for micromobility users, with regard to:

User requirements	**Like EAPCs**	**Like mopeds**	**Other requirements (please provide details)**
Vehicle approval	X		
Vehicle registration and taxation			Registered, but not necessarily taxed
Periodic vehicle testing	X		Regular maintenance checks
User driving licence		X	
Insurance		X	
Helmet use	X		Encouraged pedal cycle helmets for those which are lower speed, i.e. cut off at 12.5-15.5mph by design
Minimum age		X	
Speed limits		X	

[4] Page 24 of the Consultation

Vehicle Approval

We agree that there that there should be a system in place to ensure that vehicles are safe and meet minimum standards[5].

Registration and Taxation

All micromobility vehicles should be registered to the owner and a register should be maintained. They should carry a visible irremovable registration mark to enable identification if involved in an accident. Taxation is a matter of fiscal policy on which we make no representation.

A registration mark could also assist with deterring theft of micromobility vehicles. A tracker chip could also be considered, as is currently possible for pedal cycles. Such devices would be an advantage of these types of vehicle and could increase consumer confidence in purchasing and using them on a wider basis. These systems would tie in with a compulsory insurance regime under which the owner will likely be paying some sort of tax in any event.

Periodic Vehicle Testing

User education is important; however a maintenance log should be kept in order to ensure the vehicle remains safe for use.

Insurance

Compulsory insurance is important to the successful wider introduction of micromobility vehicles into our towns and cities. It is imperative that these vehicles are insured, whether by way of an 'add on' to home or contents insurance, or as a standalone liability insurance. E-bikes and e-scooters should form part of the compulsory insurance regime covering motor vehicles in the UK & Europe.

A visible way of proving a micromobility vehicle is insured will be important for encouraging compliance, enforcement, and obtaining details of that insurance in the event of an accident. This might be achieved in conjunction with the proposal for an irremovable registration mark that might take a form of a barcode that could be photographed/scanned by a mobile phone app that would enable checking against the insurance database (naturally subject to data protection compliance).

Without relevant statistics, it is difficult to assume that e-bikes and e-scooters are more or less likely to be involved in road accidents. However, if insurance is in place, it will give consumers some comfort as to their safety and wider use on our roads. The consultation accepts that micromobility scooters are capable of causing accidents, injury or even death, and these risks should be insured against. It would be unacceptable to other road users, notably pedestrians and cyclists, to expose them to these risks without the ability to obtain compensation for any damages negligently caused by the riders of micromobility vehicles.

As stated above, users or owners of micromobility vehicles could have standalone insurance, or insurance linked to a motor vehicle, or another insurance policy as an 'add on'.

[5] As per p24-25 of the Consultation

Insurance requirements should be discussed closely with the insurance industry and the MIB and we suggest that any victims of accidents involving uninsured e-scooters or other micromobility vehicles should have recourse to the MIB scheme for compensation.

Helmet use

For many, helmet use is important to the wider implementation of micromobility vehicles and we received a range of views on this issue from our members. However, the majority of those who responded did not consider helmet use should be mandatory. Mandatory use could deter users and provide difficulties for hire schemes, and should reflect the current regimes around bicycle hire in cities (such as 'Boris bikes') which does not require helmets. A balance must be struck between reducing users' risks and promoting widespread use which a mandatory requirement might inhibit.

If the vehicle is capable of higher speeds, i.e. those similar to mopeds, then a motorbike style helmet should be required, but this requirement would cater for a distinct user group in any event; one where such helmets are tested to deal with higher speed impacts. It is notable that standard cycle helmets are crash tested to 12mph, and so cannot be relied upon to prevent brain injury in most collisions with motor vehicles where the combined impact speed it higher. Also most bicycle helmets do not stop rotational/axonal brain injuries or facial injuries.

Minimum age

We do not consider that the age for use of micromobility vehicles should be lower than 16. In addition, there should be compulsory training and a test on awareness as to safe use of the vehicle type.

Speed limits

Micromobility vehicles should be restricted to a maximum speed limit of 12.5-15.5 mph by design. However, FOCIS would be concerned about the ability to reach higher speeds. Any vehicle designed to have a higher limit should be regulated as if they were, mopeds (up to 28mph) or motorbikes (if higher).

If micromobility vehicles, such as e-scooters, are ultimately allowed on pavements (contrary to our representation against that), there should be a very low speed limit (close to walking speed) to attempt to protect pedestrians/ vulnerable road users.

If you believe regulating micromobility vehicles like EAPCs or like mopeds would be problematic, please explain why

Careful thought should take place as to the compatibility of our current legislation in the UK, with that of Europe and also with these new vehicle types which would not be deemed to be 'motor' vehicles but need to be covered by an insurance regime currently used for motor vehicles. This is a good opportunity for the government to align EAPC and micromobility regimes to ensure consistency, safety and effective redress for other road users.