

Highways England

Review of The Highway Code to improve safety on motorways and high-speed roads

A response by the Association of Personal Injury Lawyers

March 2021



Introduction

APIL welcomes the opportunity to respond to Highways England's Review of The Highway Code to improve the safety on motorways and high-speed roads. Given the short time-frame we have only been able to provide our general comments.

APIL supports many of the proposed amendments to The Highway Code because they go some way in educating road users on how to improve safety for themselves and others. These amendments are particularly important due to the widespread implementation of smart motorways because they are different to the traditional motorways which drivers are familiar with and also as they present their own significant safety risks. However, Highways England has not gone far enough in educating road users of the risks and features of smart motorways to build confidence in their use and ensure that people are using them as safely as possible. Education should have taken place from the outset of the first smart motorway being introduced, however this did not happen and there have been serious delays in education through the Highway Code and other platforms.

There are a number of significant safety considerations with regard to the smart motorway systems which are being widely implemented. It is concerning that smart motorways have been introduced without crucial "stopped vehicle detection" technology to ensure that those who have been forced to stop in a live lane of motorway traffic are protected as far as possible. Such technology should have been implemented prior to the introduction of smart motorways in light of the lack of a hard shoulder and infrequent emergency refuge areas.

Proposed amendments

APIL supports many of the proposed amendments. In particular, APIL welcomes the amendment to Rule 97 to ensure that a driver has a charged mobile telephone to use in case of an emergency whilst using a motorway or high-speed road. This is especially important with regard to smart motorways because the lack of hard shoulder may result in a driver being forced to stop in a live lane. In light of this, APIL suggests that within Rule 97 it reiterates that emergency use of a telephone on a motorway or high-speed road is exempt from the hand-held mobile phone offence. This will reassure drivers that they are permitted to use their phone in an emergency. This could be lifted from the proposed amendment to Rule 149 from the Department for Transport's consultation on using a mobile phone while driving¹.

Further education

¹ Department for Transport 'Using a mobile phone while driving: consultation on changing the law' p 19

Although the proposed inclusion of additional information on safety advice and road signs on motorways and high-speed roads will go some way in further educating drivers on safety, simply amending The Highway Code does not go far enough. Only 18% of those who responded to the AA driver poll survey in January 2020 thought the Government and Highways England did enough to keep drivers informed about the different types of motorways². It is clear that Highways England has failed to educate road users of the risks and features of smart motorways from the outset of implementing them, which will impact driver confidence in using them. In light of this, initial and continual education is required to inform road users of how to use motorways and high-speed roads safely to reduce the number of collisions and injuries/deaths.

It is crucial that sufficient information is included within the theory tests for learner drivers to give grounding knowledge of the dangers of using a motorway or high-speed road. This is specifically crucial because most learner drivers will not experience driving on a motorway as part of their practical driving lessons. Motorways can be daunting to an inexperienced driver. Providing sufficient information is crucial to ensure that inexperienced drivers feel more confident when using a motorway for the first time and can ensure that they are driving in a safe manner for the benefit of themselves and to those around them.

Other platforms such as social media and radio channels should also be utilised to clarify The Highway Code amendments to a wide range of drivers. This can clarify points such as the requirement to use an emergency telephone prior to re-joining the traffic so that a lane can be closed if necessary, and what to do if a breakdown occurs and there are vulnerable passengers or pets in the car. These forms of education can also make drivers aware of what to do and how to react when others break down on a motorway.

Appropriate advertisements and campaigns can also be used. However, it is vital that these are both informative and sensitive. APIL is extremely concerned with Highways England's "Go Left!" campaign. The use of squashed flies on a car windscreen has been criticised by some as offensive and insensitive to those who have lost loved ones on smart motorways due to the lack of hard shoulder or inability to reach an emergency refuge area. APIL appreciates the aim to educate drivers to attempt to 'go left' to reach an emergency refuge area when using a smart motorway, however it is not always that simple. Unlike a traditional hard shoulder, emergency refuge areas are *at least* a mile apart. When a breakdown occurs, it may be impossible to reach one, forcing drivers to stop in a live lane of motorway traffic. They may also be in one of the right-hand lanes and be unable to make it to the left lane of the motorway. APIL suggests that Highways England re-thinks this campaign to ensure they are giving informative safety advice which drivers can actually use in practice, rather than simply advising 'go left'.

Smart motorways

APIL is concerned that in the Department for Transport's Smart Motorway Safety – Evidence Stocktake and Action Plan last year, it stated that 'smart motorways are as safe as, or safer than, conventional motorways, but not in every way'³. There has been an increase in vehicles stopping in a live lane of motorway traffic, unsafe lane changing and serious

² AA Highlights from our 2020 Driver Poll surveys January 2020 <https://www.theaa.com/about-us/public-affairs/aa-populus-driver-poll-summaries-2020#december2020>

³ DfT Smart Motorway Safety – Evidence Stocktake and Action Plan 2020 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/936811/smart-motorway-safety-evidence-stocktake-and-action-plan.pdf p 58

casualties⁴. The DfT also admitted that there is clear confusion over the different types of smart motorways which are present in the UK and that road users do not know what smart motorways are or know when they are on one⁵. The fact that the Commons Transport Select Committee is investigating smart motorway safety and Highways England has been referred to the CPS for potential manslaughter charges as a result of a death on a smart motorway – both since the start of the year - demonstrates the significance of the safety issues relating to smart motorways. More should be done to make roads safer.

Due to the hard shoulder being used as a live lane on smart motorways, there is significant risk to the safety of road users when a breakdown or emergency occurs. Although smart motorways have emergency refuge areas, these are not frequent enough and therefore do not provide immediate opportunity to pull out of the fast-flowing motorway traffic. Therefore, there is serious risk of a collision occurring when a road user is forced to stop in a live lane of traffic which can result in serious injury and/or death. We appreciate that the Government has acknowledged this issue and plans to reduce the distance between the emergency refuge areas to a maximum of one mile⁶. However, the new distance needs to be implemented on the original smart motorways where they are less frequent to ensure all stretches of smart motorways are as safe as possible⁷.

In addition, those who do not often use motorways or are accustomed to traditional motorways may be confused and anxious when accessing a motorway and realising there is no hard shoulder. 79% of drivers said in a poll that the removal of the hard shoulder from motorways has made them feel that motorway driving is more dangerous now⁸. Only 12% of those surveyed in January 2020 felt that smart motorways were as safe as traditional motorways and almost half had concerns about their safety⁹. A driver's concern regarding their safety may have a knock-on effect to their behaviour when using a smart motorway due to the reduced ability to stop if/when necessary.

It is concerning that smart motorways seem to be implemented without critical "stopped vehicle detection" technology to ensure that stopped cars are detected and lanes closed accordingly, as soon as possible. The Government has recognised that this is a problem, however they should have ensured that such technology was available prior to introducing smart motorways¹⁰, this is something that must happen as a matter of course going forward. It currently takes 17 minutes on average to detect a car which has stopped in a live lane and another 17 minutes for recovery to reach the vehicle¹¹. Furthermore, the AA have stated that recovery vehicles will not stop to help a vehicle where the lane has not been closed by a physical barrier because 1 in 10 drivers may ignore a lane closure sign until they can see an obvious reason for the closure¹². This demonstrates both the risk of a broken-down car being hit on a smart motorway, despite the lane being closed. In addition to the risk posed by motorists simply ignoring the smart motorway signs when a lane closed. Over 30 minutes is a long time to wait for help in a live lane of traffic where there is significant risk of another

⁴ (n 3)

⁵ (n 3) p 71

⁶ (n 3) p 6

⁷ AA The All Party Parliamentary Group for Roadside Rescue and Recovery. First Inquiry: safety concerns within the roadside rescue and recovery industry March 2019 p 2

<https://www.csrrr.co.uk/wp/wp-content/uploads/2019/06/APPG-AA.pdf>

⁸ *ibid.* p 2

⁹ AA Highlights from our 2020 Driver Poll surveys January 2020 <https://www.theaa.com/about-us/public-affairs/aa-populus-driver-poll-summaries-2020#december2020>

¹⁰ (n 3) p 6

¹¹ BBC News '38 killed on smart motorways in last five years' 26 January 2020

<https://www.bbc.co.uk/news/uk-51236375>

¹² (n 7) p 3

vehicle failing to notice a stopped vehicle in sufficient time to change lanes or come to a stop. This is a particularly anxious wait where children, vulnerable passengers or pets are also in the car. In APIL's opinion, smart motorways should not be opened until sufficient "stopped vehicle detection" technology is implemented *first* to ensure that smart motorways are as safe as possible. Without this technology, more near misses, collisions, injuries and deaths will occur.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association's aims, and all are signed up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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