

Devon & Cornwall Police wish to encourage all road users to use Op Snap and welcome submissions from cyclists. We celebrate cycling as a sustainable form of transport, identify cyclists as vulnerable road users and consider their safety as non-negotiable. We recognise and thank those that take time to upload their footage to Op Snap.

Devon & Cornwall's Op Snap is managed by CATS, the Collisions & Tickets Section which is part of the force Criminal Justice Department, soon to be renamed as Vulnerability Command. Within our team we have a group of Police Led Prosecutors who are civilians who also prosecute the other traffic related offences on behalf of the police.

My department also manages all the road collisions reports that have occurred within our two counties and therefore unfortunately well-placed to understand the catastrophic effects road traffic collisions can have to individuals, families and our communities. We are invested in road safety and celebrate Op Snap as a tactical option for Devon & Cornwall to bring offenders to justice, change driver and rider behaviour and help to improve road safety.

I have provided this advice and information in addition to the Operation Snap FAQ section on the Devon & Cornwall Police website <https://www.devon-cornwall.police.uk/opsnap> to explain what we do with the uploaded footage as sometimes we are unable to proceed with the cases you have taken time to submit. We recognise this is frustrating and I have ambition to reduce such occurrences and become better able to take positive action regarding all the cases you report.

When reviewing each case, the severity of the incident recorded and the danger the cyclist was avoidably placed is never doubted however the decision that is made and the outcome that is directed is strictly limited to the question of whether we can objectively bring a criminal prosecution. We cannot act if the information and evidence does not reach the high standard necessary for prosecution. This assessment is an entirely objective evaluation of the available evidence. Evidence for Op Snap cases include the uploaded media and the submitted statement. Decisions are made in consideration of the legislation that exists and of the Crown Prosecution Service charging standards. Both are necessary components to bring a successful prosecution at criminal court. This is also the standard that must be met before police can offer an out of court disposal option such as a fixed penalty or a driver education course.

We understand the frustration caused when we decide not to prosecute a case or provide an outcome the Op Snap user considers appropriate. We never doubt the feelings of danger or of the incident reported, but our decisions are objectively based in compliance to the strict evidential requirements of the criminal justice process.



The process

Each submission you upload is assessed by a PLP (Police Led Prosecutor). PLP's are accredited Evidential Gatekeepers within the force Criminal Justice Department who have specialist knowledge of Road Traffic Act offences and Crown Prosecution Service charging standards. Not all cases are prosecuted at court and out of court disposal options include an offer of a fixed penalty notice or an offer of a driver education course. Devon & Cornwall Police refer to 'Association of Chief Police Officers (ACPO) guidelines on Eligibility Criteria for National Driver Offender Retraining Scheme courses (NDORS)'. Police cannot offer a fixed penalty notice or driver education course unless the case could otherwise be prosecuted.

To justify the offer of any out of court disposal, each case must first be assessed by an Evidential Gatekeeper to ensure that the Evidential Test and Public Interest Test is met. This means that should an out of court disposal option be refused, then Devon & Cornwall Police are then able to prosecute the offence at court and justify that it is in the public interest to do so. The best way to describe the two tests is by example. In a case of parking on double yellow lines, the PLP would first consider the Evidential Test to ensure that all the elements of the offence are presented in evidence. Once satisfied the Evidential Test is passed, the PLP then considers the Public Interest Test. In this invented scenario,

it was later established that the driver had parked where double yellow lines existed and exited the car to attend a person who he'd seen collapsing and was suffering a medical episode on the path. Whilst the driver had still committed the offence of parking on double yellow lines, the driver's actions were clearly proportionate and that it would not be in the public interest to prosecute. In such a case, no further action would be taken.

Most submissions received by cyclists are about close pass incidents. We recognise that such incidents place the cyclist in avoidable danger, and we have no hesitation in prosecuting such cases. Devon & Cornwall Police has already had significant success in dealing with such incidents reported to Op Snap and wish to encourage future submissions. We are also aware of the frustrations from individuals when the decision is made in cases that do not meet the standards required to take positive action. Feelings of frustration are often heightened when the motorist has not observed the Highway Code (rules 162-167, 211 to 213 and 214-215).

Devon & Cornwall expects all drivers to adhere to the Highway Code. Rule 163 is clear, (in part) *'give motorcyclists, cyclists and horseriders at least as much room as you would when overtaking a car'*

UK legislation does not currently exist for close pass incidents and consideration of prosecution (or out of court disposal) usually relies on Section 2 (dangerous driving) or Section 3 Road Traffic Act 1988 (driving without due care and attention or driving without consideration of other road users.) Whilst the Highway Code provides rules and guidance, it is not legislated. Where legislation that supports the Highway Code rules does exist, it is stated e.g. Highway Code, Rule 171. *'You must stop behind the line at a junction with a 'Stop' sign and a solid white line across the road. Wait for a safe gap in the traffic before you move off. 'Laws RTA 1988 sect 36 & TSRGD regs 10 & 16'.*



To prosecute a close pass incident, The Highway Code can provide supportive context however Section 2 or Section 3 Road Traffic Act 1988 is the offence relied. There is often argument about the distance required to pass to satisfy the subjective question of safety. Even if the distance could be exactly measured to the satisfaction of a criminal court, (that standard being one of beyond all reasonable doubt), a prosecution under Section 2 or 3 of the Road Traffic Act would usually require additional information. For example, in the picture above, most would agree with the Highway Code that this is a safe distance for the vehicle to overtake the cyclist. I would disagree if the vehicle was travelling at 100 miles per hour as this would surely be dangerous. For this reason, the combination of speed, distance and circumstance must all be considerations for the question of prosecution. We do though celebrate technology such as dashcams that provides an additional method of bringing dangerous drivers to account. We have found extreme reluctance for offenders and their legal representatives to allow such evidence to be shown in high definition at court and matters referred tend to be very quickly resolved.

The 1.5m rule.



The Highway Code is a guide that is being constantly updated and consideration to mandate the 1.5 metre rule for the minimum distance required to overtake a cyclist is not yet legislated in the UK. Some of you may have seen the new road signs in our towns

supporting the requirement. Any improvements made to better safeguard cyclists is welcome and such an update will inform other road users of standards expected whilst overtaking cyclists. It will also provide weight to the question of prosecution for those that do not conform.

Providing the best evidence

We are able to prosecute Op Snap cases without needing a police officer's evidence because by completing all the sections in the Op Snap site, you will have submitted two forms of evidence that are currently considered effective as corroborative evidence.

The information you complete within the Op Snap website automates a statement which is considered effective as a Section 9 witness statement under the Magistrates Court Act 1980. This forms the primary evidence and the footage the user subsequently uploads provides corroboration. This means that in terms of the prosecutor's evidence, each is as important as the other. This is why we cannot prosecute a case if the submitter completes the section asking for a description of the incident as 'see footage'.

1. Capturing footage.

- It is important that the footage is captured as part of a natural journey and free from any suspicion or allegation it has been filmed by deliberately creating a situation that causes an event. Our goal is road safety and we absolutely do not support cyclists placing themselves in a position of danger.

This is why we ask for footage that captures before, during and after the incident as it must be clear we are able to prove in a court of law that we have the whole event and not just a one-sided view or a favourable part of the incident.

- The quality of the footage is important. Sometimes footage from helmet mounted cameras can suffer with the weave of the cyclist's head. Sometimes footage from cycle mounted cameras can suffer from the judder experienced due to the road surface or the weave of the handlebars. The quality of recorded footage can also be affected by poor or bright light or inclement weather. Some cyclists go to great lengths and have the latest cameras fitted to capture both forward facing and rear facing views.

Regardless of the limitations of the camera(s), to enable police to take positive action, the footage must be of sufficient quality to both capture the registration mark of the offending vehicle and adequately demonstrate the incident alleged. Unfortunately, recorded footage doesn't always capture the incident with enough detail. Please remember, the severity of the incident recorded and the danger the cyclist was avoidably placed is never doubted however our professional assessment and decision is strictly limited to the question of whether sufficient evidence exists to bring a criminal prosecution.

- Our plea to you is when you are the victim of an incident, please don't negatively react however tempting this may be. By shouting, swearing or even confronting the driver when stopped places you in a position of danger. This could also escalate to a post event road rage incident. Our goal is road safety and we absolutely do not support cyclists placing themselves in a position of danger. Such actions will also weaken a prosecution case and could even render you liable to a counter allegation of a public order offence. We are duty bound to investigate every allegation. Imagine a situation where we could not prove the primary incident but find ourselves in a position where we could prove the post event incident! Above all, we want to improve road safety and prevent road rage incidents.

1. Telling us about the incident

- Your account of the incident must be recorded. We cannot proceed if you state, 'please see footage', as your statement is the primary evidence and the footage is the corroboration. Both are as important as each other

and necessary for prosecution or to allow an out of court disposal option such as a fixed penalty or a driver education course.

- A brief account of the incident is all that is required.
- Include any consequences of the incident such as forcing you to brake or change direction to avoid a collision or causing you to fall off or put your foot down. NB If you have been injured or your cycle has been damaged as a result of the incident then Op Snap should not be used, and the incident should be reported to the police as a road traffic collision instead.
- Include a brief account of how you felt as a consequence of the incident e.g. whether it put you in fear.

2. Staying Safe

This is the most important factor. Please don't announce to the driver that you intend to report them to Op Snap or to the police as this may antagonise the situation and could place you in a position of danger.

If you find yourself involved in an incident that is ongoing and you are concerned for your personal safety, get to a safe place, call 999 and ask for the police.

Op Snap is an online tool for reporting suspected Road Traffic offences. If you are the victim of crime, please contact Devon & Cornwall Police to report it. If the incident is ongoing, please dial 999 and ask for the police.

3. We'll take it from here

We will serve a Notice of Intended Prosecution to the registered keeper of the offending vehicle in all cases where we are satisfied an offence can be prosecuted and it is within 14 days of the incident. We will prosecute the registered keeper if they fail to tell us who the driver is.

Once we have identified the driver, we will consider any account they give and review the case to direct a proportionate outcome.

We sometimes issue an official warning letter which informs the driver that should their driving come to notice again, referral will be made to the No Excuses Team where a visit by a police officer or targeted policing activity is considered. Prosecuting cases at court is directed for the most serious cases but Devon & Cornwall Police follow the Association of Chief Police Officers guidelines on Eligibility Criteria for National Driver Offender Retraining Scheme courses (NDORS). ACPO support appropriate and proportionate diversion from prosecution for relevant Road Traffic offences, as offered by the various courses available under the ACPO National driver Offender Retraining Scheme (NDORS). A key theme in the Government's Strategic Framework for Road Safety recommends driver education for suitable offending and Section 2 Road Traffic Act 1988, driving without due care & reasonable consideration offence is included. As an addition to driver education courses, Devon & Cornwall police also serve Fixed Penalty Notice as an alternative to court. This is another form of out of court disposal and depending on the offence considered can include a fine and licence endorsement. Police cannot offer a Fixed Penalty Notice or driver education course unless the case could otherwise be prosecuted.

Thank you for taking part in Devon & Cornwall's Operation Snap and cycling responsibly.

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