



Mrs Catherine E. Mason LL.B, BSc. Hons;
RGN
H.M. Coroner For Leicester City and South
Leicestershire
The Town Hall
Town Hall Square
Leicester
LE1 9BG

Date: 7 August 2015
My ref: HTWGEN202
Your ref:
Contact: [REDACTED]
Phone:
Email:

BY SPECIAL DELIVERY

Dear Mrs Mason

Re:- Kian Singh Gill

Thank you for your letter and enclosed report dated 22 June 2015.

I am the Director of Environment and Transport at Leicestershire County Council and I have had an opportunity to consider the matters raised in your letter and accompanying notice.

I would ask you please to treat this letter as the Council's response for the purposes of Regulation 29 of the Coroners (Investigations) Regulations 2013.

1. On behalf of the Council I will comment on the relevant circumstances pertaining to the fatal accident below. Before doing so, may I express my sincere sympathy to Kian Singh Gill's family for their tragic loss.
2. The Council acknowledges that the Court has not yet reached a conclusion in relation to the cause(s) leading to the fatal incident.

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However, it is apparent from the terms of the notice dated 22 June 2015 that the Coroner may wish to give consideration to the question of whether the state of the highway contributed to the fatal incident.

3. With this in mind, I propose, not simply to address the specific issues arising under Regulation 29(3) of the 2013 Regulations¹, but also to comment upon the relevant circumstances of this case.
4. The statutory report received by the Council, expressed particular concerns in respect of the following matters:-
 - a. *"The hedgerows by the side of both roads are overgrown and obscure a driver's view into the junction and the road leading up to it. This meant that neither the rider nor the driver had view of each other until the final moments prior to impact"*
 - b. *"There is no signage to indicate that there is a junction there and"*
 - c. *"The speed limit is not curtailed from the national speed limit despite there being a junction."*
5. These issues are addressed in turn below: -

Issue 1:- Hedgerow

6. The national standards for visibility splays on trunk roads are contained within the Design Manual for Roads and Bridges. That manual deals with a broad range of design considerations but, materially the chapter entitled "*Vehicular Access to All-purpose Trunk Roads*" covers the requirements for visibility splays at junctions. A relevant extract is enclosed at tab 1 of the exhibits with this document.
7. It should be appreciated that both Ullesthorpe Road and Bonehams Lane are properly classified as 'county roads' rather than 'trunk roads'. Typically, the design standards for trunk roads are higher than for county roads. As shall be

¹ Coroners (Investigations) Regulations 2013

detailed below, this junction meets the design standards applicable to larger trunk roads.

8. The section entitled "*Geometric Standards for Direct Access*" requires that roads be constructed to standards which enable drivers to see any potential hazards in sufficient time to slow down or stop before reaching it. The drawing at page "2/3" of Tab 1 (*page 8 of the document*) usefully illustrates how "X"² distances and minimum "Y"³ distances are to be interpreted.
9. Following the tragic accident, Leicestershire County Council undertook a site investigation to ascertain whether sight lines were restricted at the Ullesthorpe Road junction with Bonehams Lane. Site visits by an engineer was undertaken on 1 July 2015 and also on 22 July 2015.
10. On the site visits, visibility measurements were taken from both roads, and compared to the National Guidance referred to above.
11. For traffic positioned at a setback distance of 2.4 metres from the edge of the junction, the minimum visibility distance required for a 60 m.p.h. design speed is 215 metres (*please see the table at page "2/4" of Tab 1*). The measured visibility from Bonehams Lane was 270 metres looking west and 250m looking east. Relevant photographic evidence arising from the inspections is enclosed at tab 7 of the bundle.
12. In the circumstances, I regret the Council must take issue with the Police Constable [REDACTED] findings in respect of the time available to the participants to identify each other's presence on the approaches to the junction.
13. If the junction had been designed to accommodate faster moving traffic (*e.g. with a speed limit of say 70 mph*) then the Y distance would have needed to be significantly increased (*in the region of 295 metres*) to afford drivers sufficient time to react and to manoeuvre safely.

² X distance is measured from the nearside edge of the carriageway back to the position of the driver's eye line.
³ the distance over which vision should be provided to enable the emerging driver to see approaching main road traffic and for that traffic to see the emerging vehicle

14. However, insofar as the visibility splays at the junction actually exceeded the National Guidance, it seems probable that factors other than visibility were relevant to the parties' failure to take evasive action until it was too late.
15. Indeed, the acknowledgement within the interim police report that the motor vehicle was travelling in excess of the national speed limit appears particularly pertinent in respect of the time available to the motorist to react to the oncoming cyclist.
16. Moreover, the Reporting Officer who prepared the Accident Statistics report (see tab 6 of the Bundle) identified that it was possible that the cyclist failed to judge the vehicles speed or path⁴ and failed to look properly.⁵

Hedgerows

17. Hedgerows are generally owned by the owners of neighbouring land and not therefore the property of the Council. I acknowledge that the Council may enforce restrictions on the expansion of hedgerows under Section 152 of the Highways Act 1980.
18. That power allows the Council to serve a notice upon the owner of the trees or vegetation informing them that they are required to clear any obstructions from the highway.
19. The exercise of statutory powers was not necessary in this instance. The hedgerows at the junction on Ullesthorpe Road are situated 8 metres from the centre of the carriageway with a grass verge of 5 metres present before the road surface is present. On Bonehams lane the hedgerow is 6 metres back with a grass verge of 3.5 metres in total.
20. It should be appreciated, in this context, that the removal of hedgerows is actually closely regulated (*the removal of many hedgerows without lawful authority is a criminal offence – Regulation 7 of the Hedgerows Regulations 1997*).

⁴ See the reference to entry classified as "803"

⁵ Please see the entry classified as "405".

21. The distance between hedgerows and the road surface exceeds what is typically expected on rural roads.

Grass Cutting

22. National Guidance⁶ advises that the grass cutting should, as a minimum, take place twice per year on rural roads. The hedgerow and grass verges are within the County Highway Boundaries and are maintained in accordance with our Highway Maintenance Policy and Strategy adopted 1st November 2011.
23. In keeping with the national guidance, it is the Council's policy to ensure that rural roads have a minimum of two single swathe width cuts per year⁷.
24. Leicestershire hold records of the dates of the grass cutting and treatment to the grass verges of both roads within 500 metres of the referenced junction. According to the Council's records the grass verge was cut on Ullesthorpe Road on the week commencing 27/4/2015 and on the week commencing 8/6/2015.
25. An extract of the Council's grass cutting records is enclosed at tab 8 of the bundle.

Issue 2 Signage

26. I acknowledge that there is no give way sign on Boneham's Lane on the approach to the junction (*albeit there are other visible indicators of the presence of a junction*). That said, there is no general obligation, in law, to provide road signage or road markings at every junction.
27. The primary legislation which deals with the placement of signs and road markings (*Section 65 of the Road Traffic Regulations Act 1984*⁸) is permissive rather than mandatory in respect of laying road markings.

⁶ Well Maintained Highways www.ukroadsliaisongroup.org/download.cfm/docid/C7214A5B-66E1-4994-AA7FBAC360DC5CC7

⁷ See page 11 of the Highway Inspection Operation Manual.

⁸ Section 65(1) states as follows:- "*The traffic authority may cause or permit traffic signs to be placed on or near a road, subject to and in conformity with such general directions as may be given by the Ministers acting jointly or such other directions as may be given by the Secretary of State.*"

28. The existence of a statutory power under which a Council may exercise its discretion does not give rise to a common law duty of care for failing to proceed under that power.⁹
29. Likewise the Highway Authority has a duty to exercise its powers conferred under the act (RTRA 84) to secure the "*expeditious, convenient and safe movements of vehicular and other traffic*" s122 of the Road Traffic Regulation Act 1984.
30. In 2004 the House of Lords confirmed¹⁰ that signs and markings are not part of the fabric of the highway, and consequently not covered by the duties under the Highway Act 1980.¹¹
31. With the exception of Section 132 (*which relates to unauthorised markings on the highway*) the Highways Act 1980 does not generally deal with signage.
32. Lord Scott of Foscote stated as follows at paragraph 64 of the Judgment states as follows: -

"The duty to maintain the highway extends, it is argued, beyond the surface of the highway itself and applies also to all and any structures, ancillary to the use of the highway, which have been placed, or ought to be placed, on the verges or on pavements bordering the highway. So stated, the section 41(1) duty to maintain would cover the installation and maintenance of road signs, traffic lights, pedestrian crossing signs and perhaps, even street lights (but see Sheppard v Glossop Corporation [1921] 3 KB 132).

In my opinion, this argument cannot be accepted."

33. In *Lavis v Kent County Council* (1992) 90 LGR 416, 418 Steyn LJ, in response to a submission that section 41 of the Highways Act 1980 required an authority to erect a warning sign, said: -

⁹ *Stovin v Wise* House of Lords 1996.
¹⁰ *Gorringe v Calderdale* [2004] UKHL 15

"In my judgment it is perfectly clear that the duty imposed is not capable of covering the erection of traffic signs, and nothing more need be said about that particular provision".

34. Although the Council is prepared to take further measures to enhance road safety, the Council does not believe that the presence of additional signage was necessary to alert a reasonably careful road user on Bonehams Lane of the existence of a junction.
35. There were number of visual cues which should have alerted road users using Bonehams Lane of the approach to the junction with Ullesthorpe Road. A photograph of the approach to the junction is enclosed at Tab 7 of the bundle. The following physical features, consistent with the presence of a junction, are apparent from this photograph:-
- a. Tarmac on the road is visible turning left and right;
 - b. The presence of facing hedges along Ullesthorpe Road demonstrates that Bonehams Lane must be coming to an end (*with the consequent necessity to turn left or right*).
 - c. Looking directly forward on Bonehams Lane (i.e. *it is apparent that there is a gateway*) preventing traffic carrying on straight on.
 - d. There is a sign directly opposite the junction indicating a right turn to travel towards a cycle route (this fact is acknowledged at paragraph 2 of PC [REDACTED] statement dated 15 June 2015).
36. I am not in a position to assess how familiar Kian Gill was with this particular junction. However, given the proximity of the junction to Kian Gill's home (*the junction is 2.9 miles his home address*) there is a real possibility that Kian knew of the presence junction.

Comments Regarding the Collision

37. It is apparent from Accident Statistics report that Kian was undertaking a right hand turn onto Ullesthorpe road when the collision occurred (see Tab 5 of the

Bundle). Cyclists are required under the Highways Code to carry out various checks on the approach to a junction and to wait before emerging from a junction (per Rule 74 of the Highway Code¹²).

38. PC █████ determined that Kian was moving at 17 miles per hour immediately prior to the collision¹³. Provided that PC █████ conclusions regarding the speed of the bicycle are correct, it suggests a scenario which is inconsistent with full compliance with Rule 74 of the Highway Code (*in the sense of a failure to stop at the junction*).
39. I cannot however exclude the possibility that Kian may have partially complied with Rule 74 of the Highway Code by undertaking some brief observations. He could have done this by glancing into the road ahead and / or relying on his auditory senses to alert him to the presence of an approaching vehicle.
40. However, from Kian's point of view, he may reasonably have expected oncoming traffic to be moving at a speed which was appropriate for the road conditions and, in any event, not to move at a speed in excess of the national speed limit. Such was the legal duty¹⁴ owed by the driver to Kian.
41. This expectation may conceivably have encouraged Kian to emerge from the junction, without stopping his bicycle, in the expectation that he could transition to a safe part of the road by the point he and the motorist passed one another by.
42. The tragic confluence of events meant that the approaching vehicle was being driven at an elevated speed¹⁵. It is reasonable therefore to conclude that the timeframe for many critical manoeuvres (*i.e. the intended transition across the road and / or breaking or manoeuvring*) was greatly compressed

POINT 3 Speed Limits

¹² The Rule states: - "If you are turning right, check the traffic to ensure it is safe, then signal and move to the centre of the road. Wait until there is a safe gap in the oncoming traffic and give a final look before completing the turn. It may be safer to wait on the left until there is a safe gap or to dismount and push your cycle across the road."

¹³ Please see Paragraph numbered 5 of Page 2 of PC Wilson's statement dated 15 June 2015

¹⁴ Drivers owe a duty of care to other road users – i.e. that of a reasonably skilful driver.

¹⁵ Please see Paragraph numbered 4 on Page 2 of PC Wilson's statement dated 15 June 2015.

43. I acknowledge that Leicestershire County Council has the power¹⁶ to vary speed limits on roads (*other than restricted roads*) by way of Traffic Regulation Orders (TROs).

44. Government Guidance (*Department for Transport Circular 01/2013*) explains the principles which should be applied in setting and reviewing speed limits. It explains that:-

"The underlying aim should be to achieve a 'safe' distribution of speeds. The key factors that should be taken into account in any decisions on local speed limits are: -

- *history of collisions;*
- *road geometry and engineering;*
- *road function;*
- *Composition of road users (including existing and potential levels of vulnerable road users);*
- *existing traffic speeds; and*
- *road environment"*

45. The decision on whether to implement a speed restriction should be evidence-led. It should also seek to reinforce people's assessment of what is a safe speed to travel. Speed limits should encourage self-compliance.

46. To help in this process the Accident Analysis on Rural Roads: A Technical Guide (TRL, 2004) has been developed, which provides information on typical collision rates and typical proportions of different collision types on different types of rural road.

47. It is relevant in this context, that the Council has checked its safety records dating back to 1 January 1979 and it has not identified any previous reported injury road traffic accidents (let alone fatalities) at the junction between Bonehams Road and Ullesthorpe Road.

¹⁶ Section 84 of the Road Traffic Regulation Act 1984

48. It was not considered therefore that the junction presented an elevated risk to road users and there was certainly nothing in the statistics available to the Council which might have alerted the Council that this was an area in need of attention for any reason.
49. This can be used to assess where there are above-average collision rates and provides help to traffic authorities in identifying the types of site or route specific intervention measures that might be appropriate to manage speeds and reduce collisions along the route.
50. The vast majority of the rural road network throughout the UK is subject to the national speed limit of 60 mph.
51. On many of these roads, the majority of drivers are travelling below – sometimes significantly below – the speed limit because of the characteristics of the roads. Indeed speed limits should be properly to be regarded as a maximum rather than a target speed.

The Roads in question

52. Ullesthorpe Road is comprised of a straight section of road carriageway of 270 metres in length on its approach to Bonehams Lane travelling westbound, with a road width of 4.25 metres.
53. During the engineer's inspection on 22nd July, it was noted that Bonehams Lane has the geometric characteristics of a narrow road width of 3.1 metres in advance of and at the junction of Ullesthorpe Road.
54. Motorists were avoiding the road edge when travelling along Ullesthorpe Road positioning the vehicle into the centre of the carriageway. High end speeds were observed eastbound on Ullesthorpe Road when a single vehicle had an environment when no traffic was present.
55. The state of the road carriageway on Ullesthorpe Road was one of a generally good road surface however along the section of Bonehams Lane; it had limited areas of grass growing through the road surface. During the site inspections it was observed that no motorist was travelling above 40mph.

56. The Department for Transport Circular 01/2013 advises that the minimum length of a speed limit should generally be not less than 600 metres to avoid too many changes of speed limit along the route (*please see paragraph 37 of the circular*).
57. The Guidance note also confirms that speed limits should not be used to attempt to solve the problem of isolated hazards, such as a single road junction or reduced forward visibility, e.g. at a bend.
58. Speed limit changes are therefore unlikely to fully address a problem of an isolated hazard and should therefore be considered only as one part of rural safety management.
59. Where collision and casualty rates are high, traffic authorities should first seek to understand the particular types of crashes taking place and their causes, to allow them to choose effective solutions to reduce the risk.

Related issues

60. Visibility splays, and grass cutting and speed management are simply parts of the approach to safety. Leicestershire County Council is the relevant highway authority for over 4,000 kilometres of roads in Leicestershire.
61. In keeping with all roads for which it has a responsibility, both Bonehams Lane and Ullesthorpe Road are respectively subject to routine safety inspections as is confirmed in the street history reports (*copies which are enclosed at tab 3*).
62. Ullesthorpe Road was subject to a highways inspection on 27 April 2015 and no actionable defects were found. Bonehams Lane was inspected on 19 March 2015 and again no defects were found.
63. Although Leicestershire County Council has little desire to attribute blame to any party, the Council would respectfully point out that it is settled law that motorists must adapt their driving style to the roads that they encounter:-

"But an overriding imperative is that those who drive on public highways do so in a manner and at a speed that is safe having regard

*to such matters as the nature of the road, the weather conditions and the traffic conditions. Drivers are first and foremost themselves responsible for their own safety.*¹⁷

Proposed actions

64. Although the Council does not accept that it breached its duties of care in this instance, in an abundance of caution the Council does intend to take a number of actions to further enhance safety at the relevant junction:-

- a) It is proposed to place give way road markings on Bonehams lane;
- b) It is proposed to place "Slow" markings on Ullesthorpe Road to advise drivers of the presence of a junction with a view to encouraging them to reduce their speed.
- c) It is not proposed to seek a traffic regulation order to reduce the speed limits on the approach to the junction for the reasons set out above. Likewise, it is not proposed to serve notices on owners of the hedgerows to compel them to cut back the hedgerows as they are already a safe distance from the carriageway.

The totality of the works should be complete within four weeks of the date of this letter.

We remain at the disposal of the Court for any further information or assistance.

Yours sincerely,


Leicestershire County Council

¹⁷ Paragraph 77 Gorringe v Calderdale.