Trail Riders Fellowship – supplementary written evidence (NER0089)

Additional Evidence

Q144: The Chairman: Thank you both very much. As you know, we are here to examine the NERC Act and its suitability for today. Did the approach adopted in the NERC Act strike an appropriate balance between the needs of motor vehicle-users and those of other groups who use public rights of way?

1. The Trail Riders Fellowship (TRF) estimates that there is c.6000 miles of green road in England and Wales. The estimated mileage comprises green roads that are recorded as Byway Open to All Traffic and/or as part of the ordinary road network that is recorded on the List of Streets Maintainable at Public Expense, the latter being commonly known as Unclassified County Roads (UCR’s).

2. NERC has struck an appropriate balance in terms of the quantity of network available nationally. 6k miles is a sufficient mileage for the public interest to substantially realise the benefits of responsible, low-impact trailriding. However, the distribution of that mileage has not struck an appropriate balance in terms of the quality of the network. A significant number of areas of the country have inadequate provision whilst others are well-provided for.

3. In a minority of areas, usually aligned to County boundaries, NERC has failed to deliver an appropriate balance in terms of the quality of the network.

4. The needs of responsible motor-cyclists and the needs of non-motorised users are not incompatible or opposed. Non-motorised users are, in TRF members experience, generally cordial on the rare occasions that we meet on a green road. The good road-manners demonstrated by TRF members when meeting equestrians serve as an example for other forms of traffic, both on narrow tarmac roads and green roads. The TRF convention is to stop and pull over for equestrians on narrow roads, whether they are on tarmac or not.

5. During the immediate years following NERC, the balance struck was especially harsh on TRF members who were using relatively low powered motorcycles and navigating by means of paper maps. The balance has more recently become appropriate in some areas, because of technological advances in motorcycles and motorcycle navigation.

6. Navigating by paper map is very time consuming and carries a considerable risk of error – this is of especial concern where the penalties for inadvertently straying off legal roads are harsh. The common use of motorcycle specific sat-nav has had the effect of improving the quality of trailriding available. More time is spent trailriding as opposed to working out where you want to be trailriding.

7. Advances in motorcycle technology post-nerc have resulted in bikes being available that can more readily cope with the considerable increase in tarmac miles between the green roads, whilst still being low-impact and capable on green roads.

8. The result of those two technological advances is that the mileage of green road ridden during a typical days trailride is comparable to that ridden pre-NERC, albeit with a substantially increased mileage of tarmac roads in-between.
Baroness Byford: Both of you are here giving evidence on behalf of what I would call “responsible users”, hopefully, in your various capacities. What do you do about those who are not responsible—something that is challenging this Committee—to divide between what is acceptable behaviour of both your organisations and what is not, because clearly that is a huge problem?

9. TRF actively lobbies for and supports TRO’s which provide effective regulatory solutions to irresponsible behaviour.
10. An example of this would be the successful permit TRO’s used in Kent (appx1).
11. TRF also actively engages with the Motor Cycle Industries Association (MCIA) and encourages manufacturers to produce lower-impact motorcycles.
12. The industry is responding favourably to TRF’s and others requests for lower-impact motorcycles that are especially suitable for responsible trailriding. The available models this year are substantially lower impact than the models available around the time that NERC was being considered.

Q145 Lord Cavendish of Furness: That is interesting information about the culture of your two organisations. Going back to Part 6 of the NERC Act, some witnesses have told the Committee that Part 6 has had the unintended consequence of intensifying use by motor vehicles on these routes not covered by the provisions of the Act, leading to damage to such routes. Would you share this assessment? What has been the practical effect of Part 6 of the NERC Act on England’s green lanes since it came into force?

13. TRF’s experience is that responsible trailriding will, generally, have no greater impact on the road surface than that of a horse. In some circumstances the impact of a motorcycle will be less than that of a horse. Responsible trailriding does not cause greater impact on the road than that caused by a horse and cart – for which a substantial proportion of the available network has been historically engineered to sustain and accommodate.
14. A study in 1994 (appx 2) supports the TRF’s view. Further, the study found that walkers can have a higher impact than motorcycles in some circumstances.
15. Insofar as displacement of motorcycle traffic is concerned, the effects of the NERC act would not have resulted in an increase in damage any more than would arise from an increase in equestrian traffic.
16. The practical effect of NERC has been to extinguish motorcycle access on roads that were established carriageways. For example, the provisions of part 6 of the NERC Act bit on roads that were accepted by landowners to be carriageways under the provisions of the Rights of Way Act 1932 (and subsequent provisions to admit carriageways via deposition of maps under the Highways Act 1959 and 1980).
17. The NERC act has also bitten on tarmac roads that lead to public car parks and/or train stations. The engagement of exemptions is unclear and prone to becoming unavailable via the mechanisms of the 2026 cut-off date for CROW Act 2000.
18. The quantity of mileage of established carriageways was substantially reduced. Save for some exceptional examples, those carriageways affected by NERC were and are sustainable, suitable and appropriate for motorcycle traffic.
19. The quality of the remaining network was also substantially reduced as the blunt tool of NERC paid no regard to network logic or coherence.

20. Authorities that did not perform statutory duties to reclassify established carriageways to BOAT, were rewarded by NERC.

21. A practical effect of NERC has been to substantially increase the capacity of TRF to conserve the remaining network. TRF has significantly less burden arising from the need to deal with BOAT claims. That has freed up TRF resources to conserve the available network.

Lord Cavendish of Furness: I want to press you on the substance of the question. Would you share the assessment of those witnesses who told the Committee that Part 6 of the NERC Act has had the unintended consequence of this intensification?

22. The Faber – Maunsell report (appx 3) commissioned by DEFRA prior to NERC found that motorcycle traffic was substantially less than the volume of traffic associated with access and agriculture.

23. Access and agriculture traffic has intensified and has not been affected by NERC. For example, the weight of both agricultural vehicles and 4x4’s has increased in the ten years since NERC. The more intensive farming methods used require more agricultural traffic.

24. The displacement of the relatively small volumes of motorcycle traffic has not resulted in a substantial increase in the volume of traffic on the remaining network. If one were to assume that the volume of traffic had been doubled, that is no more than two times very little = very little.

25. This is illustrated by vehicle logging records obtained for some roads targeted for TRO’s. For example, a TRO is currently proposed in respect of a road called “Wetton” in the Peak District. The Authorities own vehicle logging figures (appx 4) show that it is used by an average of 1.17 motorcycles per day.

26. The objective evidence supports the TRF’s view that there was relatively little motorcycle traffic prior to NERC and that this remains the case post NERC.

27. On a point of history, TRF would point out that there were an estimated 20,000 motorcyclists in 1903 (appx 5). Those motorcyclists in 1903 would have travelled almost exclusively on unsealed roads, many of which are presently recorded as path and restricted byway. The TRF currently estimates there to be c.20,000 trailriders who regularly travel on unsealed carriageways. Trailriding numbers appear to be at historical baseline.

28. TRF suggests that it is reasonable to conclude that NERC has resulted in an intensification of illegal motoring, especially on restricted byways. Reducing provision has not resulted in the elimination of public motoring activity on such roads, many of which have been used by local populations for motoring for 3 generations or more.

Baroness Scott of Needham Market: Setting aside for a moment the question of potential conflict of use of routes and how we manage that and looking at the legislative framework for rights of way of all kinds, do you believe that it is possible to achieve certainty and clarity under the current legal framework, or is there a case for almost starting again with a blank sheet of paper?
29. The current framework has achieved a substantial degree of both conclusive and presumptive certainty, to the extent where the degree of uncertainty is bordering on the negligible.

30. Around half of the network available is conclusively available to motorcycles, being recorded as BOAT.

31. The remainder is recorded as UCR. Where those UCR’s are in use by the public with motorcycles, a legal presumption is engaged that the use is lawful (appx 6). In the absence of evidence to the contrary, the status of a UCR which has been historically used by motorcycles, can be presumed to be carriageway. This view is consistent with the published view of the Green Lanes Environmental Action Movement (appx. 7), which holds that evidence of vehicular use on a UCR will secure carriageway status, unless a negative can be proven.

32. That situation of legal presumption is one that is reinforced by the regularity of those roads not being denied to motorcyclists by provisions of the Rights of Way Act 1932, and the subsequent mechanisms to record as path via the definitive maps legislations. Further, the Road Traffic Act 1930 has been available to secure criminal convictions in respect of motorcyclists that use UCR’s which are not carriageways i.e. that they are bridlepath or footpath.

33. A high-profile example of a prosecution for motorcycling on a UCR related to Grimsell Lane in Derbyshire. This case was relied upon by those lobbying for NERC/CROW to extinguish motorcycle rights, who argued that TRF members were exploiting a loophole in the law to ride a bridlepath. Grimsell Lane has been found to be a carriageway and is now recorded on the definitive map as such. The loophole in the law was one which allowed for innocent responsible motorcyclists, all valued members of the wider responsible motorcycling community, to be subject of unjustified prosecution, and for Grimsell Lane carriageway to be misrepresented as a path on the definitive map for an unreasonable length of time (appx 8 and 9).

34. There are some very rare exceptions where UCR’s are not carriageways. TRF is open to supporting the correct recording of those paths on the definitive map. This is a position TRF has long maintained and continues to advance via the Motoring Stakeholder Working Group (MSWG).

Baroness Scott of Needham Market: I chaired the rights of way committee in Suffolk for a decade, and it was my life for 10 years. The local authorities were not in such a bad state financially then, but resource was a significant issue. If it were possible to streamline some of these procedures, how could that be achieved?

35. Case law holds that the definitive map was never intended to record metalled roads that are recorded on the List of Streets. The likelihood is that the vast majority of such roads would be recorded as BOAT.

36. Only two Authorities are actively pursuing the dual recording of UCR’s as both BOAT and UCR. TRF considers that this is a waste of public resources which conflicts with the intended purposes of the definitive map.

37. It would streamline the process if the CROW Act provision to prevent recording of BOAT’s on the definitive map were brought forward, with a view to halting the recording of carriageway UCR’s as BOAT.
38. Where roads that are currently recorded as restricted byway or path are found to have motorcycle rights, they should be taken off the definitive map and managed as UCR’s, sitting at the lower end of the spectrum of ordinary roads.

The Countess of Mar: My question will do for this part as well. BOATs are, by their nature, byways open to all traffic. One of the unintended consequences of this, and you have described it, is that the activities of your members will sometimes make those roads unpassable to horse riders, pedestrians and cyclists. Is there any way in which you can come to a compromise by looking after a road that is perhaps sustainable but needs some repair, or stopping your members from going on unsustainable roads so that other users can use them as they will?

39. TRF has long understood that Byways Open to All Traffic are not “open to all traffic”. Byways, as with any highway, are only open to traffic that does not cause a common-law nuisance or other offence.

40. This foundation of highway law is the reason why the driver of a large lorry has no right to drive down a narrow tarmac road and get stuck. There is no entitlement for the lorry driver to inflict that nuisance on the public.

41. The term “Byway Open to All Traffic” is an inappropriate and misleading one that is the source of much confusion. It is possible for a BOAT to be open to low-impact motorcycle use but not for use by wider and heavier horse and carts or 4x4’s.

42. There are severe levels of damage on some green roads, but this is confined to a very small proportion of the green road network. Much of the severe damage is not associated with motorcycle use and it will frequently pose an obstruction to TRF’s members. TRF has repaired damage arising from natural causes and agricultural/4x4 traffic. This has resulted in the road becoming available for all users, including motorcyclists, who could not use it before the TRF’s intervention.

43. TRF undertakes a considerable amount of practical conservation work on green roads. We punch above our weight for a relatively small organisation and regularly employ heavy machinery (JCB’s etc) to repair roads.

44. TRF works with Authority to promote compliance with temporary TRO’s.

45. TRF is also at the cutting edge of developing innovative use of statutory regulation to facilitate sustainable use.

Q147 Baroness Whitaker: We seem to have moved on to traffic regulation orders. A number of witnesses have told the Committee that different local authorities and national park authorities have had very different attitudes towards the use of TROs. Why do you think this is? Do different authorities have different approaches to the needs of the groups that you represent?

46. Yes, the approaches are markedly different, with a significant variation in cost and effectiveness.

47. For example, East Sussex County Council imposed a package of TRO’s which provided proportional traffic regulation for almost (16 roads) the entire East Sussex Network, including the Old Coach Road which runs from Alfriston to Firle.

48. The East Sussex solution prohibits 4x4 use during the winter months and is effectively enforced with physical barriers. Motorcycles and Quadricycles are
exempted from the restriction, as they are considered not to be especially damaging to the road surface. The East Sussex solution has received broad support from the moderate majority of all concerned, including TRF.

49. East Sussex County Council has informed TRF that the cost of making a TRO is in the region of £2000, with the additional cost of barriers.

50. In contrast, TRF understands that the Peak District National Park Authority is imposing TRO’s at the rate of one per year (5 in 5 years) with an annual budget of at least c.£26k (apprx 10), this excludes the adverse costs awards arising from its making unlawful TRO’s.

51. National Park Authorities can exercise TRO powers subject of less statutory and democratic safeguards than by which Highways Authorities can exercise TRO powers.

52. Further, the Localism Act 2011 has operated to remove any meaningful safeguards against bias within the National Parks Authorities. The effect of this has been to elevate organisations with a peculiar ideological dislike of motorcycling to a special position within the National Park Authorities and its TRO process. This is proving to be a barrier to securing cheap, effective and proportional TRO’s that are successfully used in other National Parks and areas of the Country.

Baroness Scott of Needham Market: I would like you to help me to understand something. You have commented on your positive engagement with the TRO process. We have also had evidence that—I am paraphrasing—whenever a local authority tries to adopt a TRO the vehicular users look at every comma and produce a legal challenge. It is entirely at odds. How has that perception arisen, and how might that gap be bridged?

53. TRF works very hard with Authorities to try and avoid TRO litigation. This is in part because, even where TRF’s case is successful, we never recover the full amount of our costs. The Authority also wastes public money (i.e. the TRF members money) which can be better spent on performing statutory duties. TRO litigation results in TRF members losing out twice, once from the TRF membership purse and once from their public funds purse.

54. Comma’s and minor technicalities cannot defeat a TRO. It is legally impossible to defeat a TRO in such a manner. The legislation confines the options for legal challenge to an avenue prescribed by statute. The statute only allows for claims of procedural failings to defeat a TRO where this has put the TRF at a “substantial disadvantage” during the TRO process.

55. The other statutory avenue for challenge is where the TRO was not made within the powers of the Authority.

56. The key provision of the relevant legislation is within para 34-37, schedule 9 of the Road Traffic Regulation Act 1984. This provides that the Court only has the power to quash, or partially quash, a TRO where it is:

“...satisfied that the order, or any provision of the order, is not within the relevant powers, or that the interests of the applicant have been substantially prejudiced by failure to comply with any of the relevant requirements..”
57. In summary the TRF can only defeat a TRO where it can prove that it was put at a substantial disadvantage during the process or where the TRO is unreasonable in the Wednesbury sense. This framework allows considerable scope for Authority to use unfair procedure to produce an unreasonable TRO, providing it does not stray into the distant realms of being Wednesbury unreasonable or putting TRF at a substantial disadvantage.

58. The perception has arisen largely through some Authorities, and organisations which campaign against the interests of responsible motorcycling, making false representations as to the legislative framework.

59. TRF has, via the Motoring Stakeholder Working Group, provided a clear and reasoned explanation to members of that Group as to the operation of legislative mechanisms for challenging TRO’s, why TRO’s cannot be defeated on minor technicalities, and why the statutory framework allows considerable scope for use of an unfair process and/or imposition of an unreasonable TRO.

60. The incidence of legal challenge and the damage to public interests from over-restrictive TRO’s can be effectively addressed by introducing greater safeguards for proportionality into the TRO process for unsealed roads. TRF suggests that the safeguards for proportionality that are utilised in legislation for Public Space Protection Orders would be a good place to start.

61. The majority of TRO’s imposed during 2016 were supported by TRF, this includes a TRO (Turbarry Road, North Yorks) that included a total prohibition of motorcycle traffic.

62. Three TRO’s were quashed in 2016 as a result of TRF legal challenge. Of those three, two were followed up with Experimental TRO’s (ETRO’s) to test the sustainability of motorcycles.

63. One of those ETRO’s (Hexham Lane) has now been made permanent, with the finding that motorcycle traffic caused substantially less impact than agricultural and access traffic. The TRO made prohibits recreational 4x4 use but allows for unrestricted motorcycle access.

64. The other ETRO is in place on Seggimire Lane North Yorks, the experiment allows for motorcycle use. The road remains in good condition – better than Hexham Lane.

65. The third quashed TRO affected various green roads in Hampshire. The Council is currently proposing motorcycle exempt TRO’s for the majority of the roads it previously sought motorcycle restrictions on.

66. The three cases were comprised by consent order. TRF maintained that all its grounds of challenge were well founded. The grounds were not tested because the Authorities chose to concede on grounds of procedural error.

67. However, the TRF’s argued grounds of irrationality were tested in the practical sense post litigation. Motorcycle exempt TRO’s were subsequently used and have proven successful for managing the roads concerned.
Baroness Scott of Needham Market: What proportion of TROs would you agree with, and how many would you lodge an objection against?

68. TRO’s are not a binary choice between access and no access for motorcycles.
69. TRF would generally object to a TRO that sought to ban all access for motorcycles, unless there were exceptional circumstances, such as the road being incapable of sustaining equestrian traffic and ergo motorcycle traffic.
70. TRF would generally support a TRO that sought a partial and proportional restriction on motorcycles, where there was a clearly evidenced need to impose a degree of restriction and the restriction proposed was proportionate.
71. Securing support for a motorcycle TRO is especially challenging for some Authorities, whose historic treatment of motorcyclists has resulted in a loss of public confidence that motorcyclists will be treated fairly.
72. Further, National Park Authorities tend to pursue TRO’s for reasons of “Natural Beauty”, a statutory TRO reason that is of outstanding obscurity.
73. Despite this, TRF regularly offers to support substantial restrictions on motorcycling for the purposes of advancing non-motorised users interests and “natural beauty” in National Parks.
74. Despite TRF’s very reasonable offers of compromise, some National Park Authorities appear compelled to imposing total bans at every opportunity.
75. For example, TRF supported the use of TRO’s on Washgate Lane and Derby Lane in the Peak District, that would have imposed substantial restriction on motorcycling. Trailriding would only have been permitted on a minority of off-peak days and only as part of a regulated event organised by TRF or the Auto Cycle Union (ACU). This mechanism would have confined use to responsible trailriders under the supervision of TRF/ACU. The vast majority of days would have been free of motor traffic. The Peak District National Park Authority rejected this solution. TRF remains unclear as to the reasons why, although the statutory response suggests that the decision is primarily founded in ideological reasoning as opposed to a tangible problem with regulated, responsible, trailriding.
76. National Park Authorities have never imposed a TRO that provides any degree of exemption for responsible trail motorcycling.
77. Further, National Park Authorities have never exempted electric mopeds from TRO’s, despite the TRF’s requests to do so. Electric mopeds commonly resemble mountain bicycles or electric mountain bicycles. They are virtually silent in use. TRF would, generally, object to TRO’s that banned electric mopeds for reasons of noise, damage, amenity, and/or natural beauty. There appears to be no rational argument to prohibit such traffic in respect of the National Park Authorities unsuccessful TRO’s imposed since NERC.

Q148 The Countess of Mar: You give the impression that there are a lot of TROs around, but evidence that we have had from local authorities has been that they have used them very rarely because they are so expensive. You have answered most of my question. Do you think TROs are the right approach for resolving these issues concerning green-laning or are new and different approaches required?

78. TRO’s that restrict motorcycles are relatively rare in the national context.
79. The motorcycle TRO’s that are used tend to be found in clusters, or on especially important routes with strategic value.
80. Some TRO’s restrict motorcycles for illogical reasons e.g. to prevent fly-tipping.
81. Insofar as motorcycle access is concerned, responsible trailriding is rarely a problem – at least not in the tangible sense. The problem is generally one of irresponsible trailriding.
82. TRO’s are a flexible tool which can be used creatively to address irresponsible trailriding.
83. There is scope to make greater use of Public Space Protection Orders (PSPO’s) to regulate motorcycling, especially in National Parks.
84. PSPO’s can be used to e.g. limit groups sizes, motorcycle noise, prohibit recreational winching and towing by 4x4’s.
85. The rarity of TRO’s is proportional to the rarity of the network. There isn’t that much to impose TRO’s on. In East Sussex, one could draw a comparison between restrictions on CROW access land and motorcycle TRO’s. There are a handful of motorcycle TRO’s and there are a handful of CROW access land restrictions. In East Sussex there isn’t much CROW access land and there isn’t much of a green road network.
86. TRF estimates that current TRO’s in the Peak District National Park affect around 10% of the useful green road network. 5 National Park Authority TRO’s may not be perceived as a significant amount. In practical application those TRO’s have inflicted substantial detriment on trailriding interests and the Special Qualities of the park.
87. To appreciate the detriment experienced by trailriders in the Peak District National Park, consider that the pre-NERC trailriding network in the area was estimated to be around 200 miles, take away half the access through losses to NERC, then take away c.10% of the remainder. Compare that to the Pennine Bridleway National Trail which is some 200 miles long. Consider what it would be like if that was the only legal access available to ride your horse, cycle, or walk on. Try to appreciate what impact it would have on those interests if you lost half of that access, plus a further 10% of the remainder, with the Authorities threatening to take away more.
88. Responsible motorcyclists in the Peak District have had to contend with a continuing and relentless attack on their interests for over a century, there is hardly any more access to be taken away from them. Those with a strong ideological dislike of responsible motorcycling are 99% victorious in terms of the proportion of unsealed highway access. Yet they still seek to take the last remnants of network available for motorcycling.
89. To put this into context, the preliminary findings of a TRF survey of the green road network in the Peak District found that there are 101 green roads of interest to trailriders. That is to say the green roads are through routes with an unsealed surface. 11 of those roads are currently subject of TRO. The Peak District National Park Authorities TRO’s have denied responsible, low-impact motorcycle use of 5 green roads which provided important strategic links in a relatively miniscule proportion of access available to trailriding. That proportion amounts to some 85 miles or thereabouts. The public rights of way (PROW) network in Peak District National Park is around 2000 miles or thereabouts. Prior to the 5 TRO’s imposed by Peak District National Park Authority, non-motorised users had access to a network consisting of some 3,510 BOAT’s, restricted byways and paths of which a heady total
of 37 (1.05%) were BOAT. To put it another way, 98.95% of the PROW network was MPV free. The effect of 5 TRO’s in the Peak District is to reduce responsible, low-impact motorcycle access by 10% and increase the proportion of motorcycle free access by 0.14%, over 5 years and at substantially greater expense to the public purse than TRO’s made by Highways Authorities.

90. In respect of all 5 of those TRO’s, TRF supported alternatives that placed significant restrictions on motorcycle access, such that they would have substantially advanced non-motorised users interests without causing absolute detriment to responsible, low-impact motorcycling, or indeed, those who may wish to use an electric moped.

91. Had the Peak District National Park Authority accepted a TRF supported compromise, which provided for motorcycle free days at peak times, the motorcycle free access would still have been increased by some 0.12% or thereabouts.

92. The barrier to securing a successful compromise appears to TRF to be driven by ideological goals to inflict absolute detriment on trailriding interests where possible. TRF contends that efforts of advancing national park purposes, especially those relating to the cultural heritage of motorcycling, are being neglected in park.

The Earl of Caithness: You have talked about sustainable lanes and you have talked about proportionate TROs. Both those words can be argued about, and, doubtless, you are extremely good at doing that. You have also talked about your legal right. What about the legal right for those of us who would like to walk on green lanes, particularly the disabled who find it harder to walk, because, as Lady Mar said, there is considerable damage? I have faced this problem myself and was unable to proceed. Are you prepared to give up any of your so-called legal rights on the 3,200 miles of green lane?

93. The NERC Act saw fit to provide exemption for electrically assisted pedal cycles but did not make any provision to protect the interests of users of mobility scooters (invalid carriages in law).

94. NERC extinguished all public mechanically propelled vehicle (MPV) rights on restricted byways. Mobility scooters are legally classed as mechanically propelled vehicles. The effect of NERC was to extinguish the disabled users’ entitlement to use restricted byways with mobility scooters.

95. Whilst such use continues, on the basis that it is decriminalised, it is not use by way of entitlement, but by leave or licence of the landowner. The Landowner can still pursue an action for trespass against such a user. The interests of such users have been eroded by NERC.

96. There is, in TRF’s understanding, an important exception to the use of mobility scooters on restricted byways being decriminalised. That is where a restricted byway forms part of a level crossing on a railway.

97. Use of a mobility scooter on a restricted byway level crossing may constitute trespass on a railway, which is a criminal offence.

98. The definition of disability was expanded by the Equality Act 2010. The definition encompasses those who might not have previously been protected by legislation.

99. Some TRF members are physically frail and suffer from conditions (e.g. arthritic knees) which makes walking, cycling and horseriding difficult, painful and/or
impossible. This is especially so in the context of travelling the full length of a green road so as to be enjoyable.

100. The availability of motorcycle access allows for those TRF members, who fall within the Equality Act definition of disabled, a unique facility for countryside access.

101. Just as the interests of users of mobility scooters were adversely affected by NERC, the interests of disabled users of motorcycles, 4x4’s, and ordinary cars, were adversely affected by NERC.

102. The relatively miniscule proportion of green road access available for motorcycling provides for diversity of opportunity to access the countryside. That diversity provides for unique opportunities for some with disability to access the countryside, where they otherwise would not be able to do so. A one size fits all approach to countryside access would have adverse consequences for those with disabilities.

103. TRF regularly encounters callous and insensitive treatment of disabled motorcyclists, particularly in relation to responses to TRO objections. “It’s ok, they (the disabled motorcyclist) can walk, cycle or horseride the road instead”. Such responses fail to comprehend that the disabled victims of both NERC and clumsy TRO’s may not be physically able to participate in extended walks, mount a horse, or ride a bicycle. Indeed, even where they are able to do so, a journey on the road concerned may result in the person experiencing pain as opposed to enjoyment.

104. Motorcycling is also a great leveller. A disabled person riding a motorcycle does not appear as disabled and can pursue the activity in the company of able-bodied companions.

105. TRF prefers the term “entitlement” to “rights” as this is a more accurate description of the legal mechanism that provides the foundation for all forms of public access.

106. Public users of the highway are only entitled to use it in such a way that does not commit a public nuisance or other offence.

107. The first use of the highway by a mechanically propelled vehicle (MPV) occurred in 1801, by way of entitlement. Subsequent statutory protection of that entitlement for the public to use MPV on the highway was introduced in 1861, before the modern pedal cycle was invented.

108. At every stage of the statutory protection of the fundamental entitlement to travel by motorvehicle, safeguards have been applied to preserve the common law position in respect of nuisance. Much of that common-law is now translated into statutory offence.

109. Responsible, low impact motorcycling has commonly taken place since the late 1890’s by virtue of the fact that it is not a public nuisance.

110. Had motorcycles (and other motor vehicles, in use since 1801) commonly presented the public nuisance of excessive damage to highways, such that others could not conveniently pass, their use could not have received statutory protection, as it has from the Locomotives Act of 1861 to the present day.

111. TRF contends that the quality of the green road network for all users can be improved. An improved awareness of entitlement and its limitations is key to that.

112. It is possible to reduce the mileage of green roads available to responsible motorcyclists whilst still improving the quality of green road network for motorcycling and other interests.

113. The barrier to achieving this is largely one of overcoming ideological goals to cause absolute detriment to responsible motorcycling.
John Vannuffel
Technical Director

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