Riding electric scooters in UK cities: a wheely bad idea?

And so it came to pass that I was considering an electric scooter for nipping around London. A modern — some might say "too modern" for a mid-thirties lawyer — and convenient mode of transport, which would eliminate the need for me to cram onto the underground as I go from mainline station to meeting.

However, to get from Paddington to a meeting, I'd need to go through public spaces, either on the road, or — the more popular option, from what I've seen — on the pavement. So, while an electric scooter might be convenient, would it be legal?

Riding on the pavement

Very little is left of the Highways Act 1835 — just an interpretation section, and two substantive provisions.

Section 72 sets out the offence of riding or driving on a footpath:

> *"If any person shall wilfully ride upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers; or shall wilfully lead or drive any … carriage of any description, or any truck or sledge, upon any such footpath or causeway …"*

Section 78 deals with a range of harms which could be broadly summarised as "poor driving":

> *"if any person riding any horse or beast, or driving any sort of carriage, shall ride or drive the same furiously so as to endanger the life or limb of any passenger" they are guilty of an offence.*

The key questions are whether the action of riding an electric scooter constitutes either "riding" or "driving", and whether an electric scooter is a "carriage".

Mathias

In 1861, in the case of *Mathias*,[1] a jury was asked to decide whether use of a pram "18 inches wide and 14 pounds weight, in which was an infant child" on a public footway was within the scope of s72.

Byles J, summing up, put the question to the jury in the following terms:

> *… suppose the case of a ferocious dog, or wheel carriage used by horses, or a steam carriage on a footway, as a jury would probably find these to be nuisances, any one of the public would have a right to remove them. …*
>
> *But to go a little further. There are what are called go-carts, consisting of three sticks, with very small wheels, the child's feet touching the ground, and propelling itself, or being propelled. Would this be a proper use of a footway? Or take the cases already put, of a toy-carriage, or horse on wheels. A man might probably carry another along a footway, but a woman might certainly carry a child. And, if so, may she not put it in a go-cart or perambulator? …*

Wisely, perhaps, Byles J concluded by saying:

[1] (1861) 2 Foster and Finlason 570

> *It is difficult to draw the line, and I don't intend to do so, as it is not necessary that I should. …*

He instructed the jury to decide on the issue before the court — the pram — but they could not, and were ultimately discharged through lack of agreement.

Taylor v Goodwin

Just under 20 years later,[2] in March 1879, the Queen's Bench Division of the High Court had to determine whether a bicycle was a "carriage" within the meaning of the Highways Act 1835.

The two justices in the case, Mellor J and Lush J, both considered that it was, with Mellor J ruling that the words "any sort of carriage", from s72, were "as wide as possible", and that

> *"the furious driving of a bicycle is clearly within the mischief of the section, and seems to me to be within the meaning of the words, giving them a reasonable construction".*

Selby v Director of Public Prosecutions

Fast forward over 100 years, and the court[3] was asked to decide whether someone sitting on a motorbike, propelling it with their feet, while it was on the pavement, was "riding" that bike for the purpose of s72.

Again, a wide interpretation was taken.

Taylor LJ decided that:

> *"'Riding' is being carried out if a person is being carried on a motor cycle as it moves on its wheels, whether propelled by the engine or by his feet or by gravity"*

In dismissing the appellant's argument that pushing a motorbike manually while sitting astride it was not "riding", Henry J concluded that that action

> *"clearly would be riding a bicycle and it would be a curious state of affairs if something that amounted to riding in the case of a bicycle was not riding in the case of a motor cycle simply because the motor cycle is power-assisted in a way that a bicycle is not."*

Coates v Crown Prosecution Service

In 2011, Mr Coates was prosecuted for riding a Segway — a self-balancing electric transporter — on a pavement in Barnsley. He was convicted and fined £75 and ordered to pay £250 costs and a £15 victim surcharge.

On appeal,[4] the court considered whether the Segway was a "carriage" for the purpose of s72.

There appears to have been no doubt in Munby LJ's mind that use of a Segway was "riding" in the sense in which that word is used in s72. Given the broad interpretation taken by previous cases, this was not surprising.

The only question was whether a Segway was a "carriage":

> *"In my judgment there is no warrant for [a previous case's] assumption that a carriage is, of its nature, something that takes the weight off a person's feet. It may be of the essence*

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[2] *Taylor v Goodwin*
[3] [1994] RTR 157
[4] [2011] EWHC 2032 (Admin)

> *of a carriage that it avoids the need for locomotion – the need to walk along on one's own feet – but that is a different issue. A machine, a vehicle or conveyance, which carries you along in a way which obviates the need for walking, can be a carriage even if you have to stand in it because it has no seats.*
>
> *But is any wheeled contrivance a "carriage" for the purpose of section 72? And what is meant by the words "truck or sledge" in section 72? These are difficult questions on which it would be unwise to express any concluded views. If a bicycle or tricycle (whether motorised or not) is a carriage, then so too, it might be thought, are such things as a quad bike, a golf buggy, a sit-on lawnmower, a motorised wheelchair or an invalid's motorised mobility scooter. But what about such things as a non-motorised bath-chair or wheelchair, a child's perambulator, pushchair or buggy, a child's scooter or horse on wheels, a skateboard, roller skates, or a wheelbarrow or handcart? And would it make any difference if, for example, the buggy was big enough to carry three children?*
>
> *For present purposes I am prepared to assume, though I emphasise without deciding, that some, indeed possibly even many, of the wheeled devices which I have referred to are not carriages within the meaning of section 72. But that, in my judgment, does not assist the appellant. If a bicycle or tricycle is a carriage for the purposes of section 72 – and it is – then so too in my judgment, and by parity of reasoning, is a SEGWAY."*

Accordingly, Munby LJ held that the appellant's Segway was a "carriage" within the meaning of s72.

Langstaff J, also sitting in the case, said that

> *"[i]t will be for other cases, in which the answers may be determinative, to examine the width of the expression "riding" and the margins of the class of those things which are "carriages"."*

However, he went on to say that:

> *"… it is trite that regard must be had in determining these matters to the context of the Act as a whole, in which section 72 is directed towards eliminating nuisances from the footpath (and, included in that, ensuring pedestrian safety on it) … [I]t may be that this gives a clue to rationalising in principle the otherwise difficult dividing line between those which are obviously carriages, and which can be ridden, lead or driven, such as bicycles or SEGWAYS and (but for a statutory exemption) a wheelchair for the disabled, on the one hand, and such as roller-skates, and child's pushchairs on the other, which may (it will be for others to determine "will") fall into another category"*

Riding on the road

In the context of use of an electric scooter on the road, the key question is whether the scooter is a "motor vehicle". If it is, it would trigger a range of obligations, including those relating to manufacturing requirements such as a speedometer and reflectors, as well as a requirement for the operator to possess insurance.

The current definition of "motor vehicle" is set out in s185 Road Traffic Act 1988:

> *"a mechanically propelled vehicle intended or adapted for use on roads"*

There is a carve-out for invalid carriages, and for certain electrically assisted pedal cycles.

There is little room for argument that an electric scooter is "mechanically propelled", so any argument would need to come from whether it was "intended or adapted for use on roads".

Burns v Currell

In 1963,[5] the Queen's Bench Division was asked to consider whether a go-kart, with a maximum speed of approximately 40 miles an hour, constituted a "motor vehicle", for the purpose of a potential offence under the (then) Road Traffic Act 1960.

Although the court quashed the conviction, it held that the test as to whether a vehicle was "intended or adapted for use on roads" was whether use on the road was contemplated as one of the possible uses.

Chief Constable of Avon and Somerset Constabulary v F

Glidewell J restated the test in 1987,[6] holding that:

> *"I emphasise that that test is what would be the view of the reasonable man as to the general user of this particular vehicle; not what was the particular user to which this particular defendant put it, either at the time in question, or indeed, generally. In other words, if a reasonable man were to say: 'Yes, this vehicle might well be used on the road', then, applying the test, the vehicles is intended or adapted for such use. If that be the case, it is nothing to the point if the individual defendant says: 'I normally use it for scrambling and I am only pushing it along the road on this occasion because I have no other means of getting it home', or something of that sort."*

DPP v Saddington[7]

In considering whether a "Go-ped" — a device with "solid rubber resilient tyres", which was "powered by a single speed direct drive 22.5 cc air cooled two stroke engine attached to the rear of the vehicle" — was a motor vehicle, Pill LJ affirmed and applied Glidewell LJ's test, holding that general use of a Go-ped on a road was to be contemplated:

> *The test is not whether a reasonable person would use a Go-ped on a road, which in ordinary circumstances he probably would not because of the dangers involved. The test is whether a reasonable person would say that one of its uses would be use on the roads. That person must consider whether some general use on the roads must be contemplated and not merely isolated use or use by a man losing his senses. The design and capabilities of the Go-ped and the possibilities it offers will be considered and considered in the context of an assessment of peoples' wish to get quickly through traffic and the pressure of time upon many people.*

He noted that "considerable numbers of scooters of this and similar design are in circulation", and that

[5] [1963] 2 QB 433
[6] *Chief Constable of Avon and Somerset Constabulary v F* [1987] RTR 378
[7] [2001] R.T.R. 15

> *"[t]he temptation to use Go-peds on the roads is considerable, notwithstanding their limitations. They provide a ready means of getting through traffic on short journeys on busy urban roads and, for that matter, on less busy suburban roads."*

DPP v King[8]

A first instance decision from 2007 offered some hope, in considering the application of the test to a "City Mantis" electric scooter, which was driven by the defendant whilst disqualified and without insurance.

The judge at first instance suggested that a more lenient approach could be applied to electric scooters, stating that:

> *"Whilst I remain unaware of any direct authority on electric scooters, I was asked, by the appellant, to make comparisons with the Go-ped in DPP v Saddington. I did not find such comparisons helpful; the Go-ped being a far more powerful vehicle, capable of speeds of up to 20mph, better designed and equipped to keep up with and negotiate traffic in a busy urban environment. The design, and capabilities of this scooter, make it wholly unsuitable for road use…"*

On appeal, this position was not upheld. Walker J considered that "if this matter were to be remitted, the court would be impelled to find that the City Mantis scooter was a motor vehicle", holding that:

> *"It is obvious that it will be readily capable of use by teenagers. It can only be used on smooth and even surfaces. If one asks: "where is a teenager going to find space to use a scooter of this kind?", it seems to me to be inescapable that a reasonable person would answer: "This might well be used on the road"."*

Despite the hope offered by the judge at first instance, on the basis that electric scooters are — based simply on my own observations — used on roads (even if unwisely), it seems likely to me that a court would hold that a reasonable person would say that one of their uses would be on roads. This would make it challenging to argue that an electric scooter should not be regarded as a "motor vehicle", unless it fell within one of the statutory exceptions.

Winter v Director of Public Prosecutions[9]

One of those exceptions is for an electrically assisted pedal cycle, if it conforms to certain type regulations.[10]

In 2001, on appeal from the Crown Court, the High Court was asked to determine if a "City Bug" electrical trike could be treated as an electrically assisted pedal cycle.

The court noted findings of fact from the court below:

> *(i) The original City Bug vehicle was modified to add two pedals to the front wheel.*
>
> *(ii) The dimensions of the pedals were one inch wide, three quarters of an inch deep and mounted on cranks which measure one and a quarter inches.*
>
> *(iii) The pedals do not drive a chain but push the front wheel itself.*

[8] [2008] EWHC 447 (Admin)
[9] [2002] EWHC 2482 Admin
[10] s189(1)(c) Road Traffic Act 1988

(iv) The vehicle was intended primarily to be powered by an electric motor.

(v) The vehicle was capable of being propelled by the use of the pedals alone but it was a difficult and precarious exercise that would require much practice.

(vi) It would be impossible for anyone to use this machine safely on the roads if reliance was placed on the pedals alone.

Perhaps truthfully if unhelpfully, the appellant, Ms Winter, stated that, while she had used the pedals a few times, "it was "very hard work" and that if the battery expired then rather than attempt to ride the conveyance she would fold it up and go home by taxi".

Siding with a purposive construction, the court held that the requirement for pedals had to be interpreted as meaning that the pedals should be capable of propelling the vehicle in a safe manner in its normal day-to-day use. Since Ms Winter's City Bug could not be used in this manner, it fell outside the scope of the exemption.

Simply sticking some pedals on an electric scooter will not, it seems, do the trick.

Outcome

In terms of riding on the pavement, the issue of whether an electric scooter is a "carriage" for the purpose of s72 does not appear to have come before a court so far, so we are left waiting, as Langstaff J said, for "other cases" on this specific point.

On the one hand, it appears from the authority stretching back over 150 years that the concepts of "riding" and of "carriage" will be interpreted broadly. On the other, both Munby LJ and Langstaff J provide some hope that there are indeed some things which are not so conclusively within the scope of s72.

If I had to place a bet, my money would be on a court looking at the motorised nature of an electric vehicle, and comparing it with a bicycle or a Segway, and finding that its use falls within s72, rather than looking to parallels in a set of roller skates or a child's (presumably non-motorised?) pushchair.

In respect of riding on the road, the position seems more concrete, with findings that a Go-ped, a City Mantis, and a City Bug were all "motor vehicles", and thus subject to the various rules and requirements which come along with that status. Adding viable, usable pedals may offer a route out, but it is questionable at that point as whether one has not a scooter but an electric bike.

Applying "old law" to new technologies

Is it appropriate to apply "old law" — 1835, in the context of riding on a pavement — to new technologies, such as electric scooters?

This is an issue which the courts in some of the cases described above have wrestled with.

In *Taylor v Goodwin*, both justices commented on the application of the 1835 Act to technology which was not commonplace when the Act was passed. Lush J stated that:

> *"Although bicycles were unknown at the time when the Act passed, it is clear that the intention was to use words large enough to comprehend any kind of vehicle which might be propelled at such a speed as to be dangerous."*

In the most recent of the cases here — the 2011 case of *Coates* — the court again considered whether it was appropriate to apply s72 to a machine clearly not in the direct contemplation of its drafters, and again concluded that it was. The court approved Lord Hoffmann's speech in *Birmingham City Council v Oakley,* that

> *"the concept of a vehicle has the same meaning today as it did in 1800, even though it includes methods of conveyance which would not have been imagined by a legislator of those days."*

Munby LJ refers to Lord Steyn's conceptualisation of (at least some) statutes as "always speaking" — that "[t]he only relevant enquiry is as to the sense of the words in the context in which they are used". To apply s72 today, the argument goes, we must look at the vehicles which are in use today, rather than those which existed in the early 19th century.

Different bases have been put forward as the rationale for s72, as part of purposive interpretation. The title, for example, is "Penalty on persons committing nuisances by riding on footpaths", although the test of nuisance does not appear with the provision itself. Interpreting the statute in this context, one would look to whether the impact of the device in question was such that it would cause nuisance, perhaps to others on the footpath, or those who are tasked with maintaining it. If a new machine — perhaps powered shoes which enabled the wearer to slide along the pavement effortlessly — was created, but caused such a noise that it adversely impacted other uses of the pavement, the test of nuisance might be applied, even though shoes do not fit neatly, in my view, into the description "carriage".

Others might look to potential harm as the motivating factor, and the impact on the safety of the most vulnerable group of users, pedestrians. More than mere nuisance, very quiet devices capable of being driven at speed much higher than walking pace could be seen as presenting a realistic threat, justifying continued proscription, notwithstanding the potential benefits.

The Department for Transport has stated that it has no plans to review the law in this area, so it looks as if the 1835 Act will be on the statute books for some time to come.

Debate as to whether old law is fit for new technologies is, fittingly enough, not a new debate. As technology lawyers, we often see pronouncements that "something must be done" to redress a perceived harm arising from a new or slightly modified technology, with the clear implication that existing legislation cannot possibly be suitable. At the same time, we see calls for technology neutrality, such that laws should deal with outcomes or harms, rather than particular technologies.

I am usually nervous when I hear demands for new regulation for new technology, for it is relatively uncommon, in my view, that an entirely new harm has arisen. By the same token, I am usually nervous when I hear clamouring for laws to be removed, to permit the development or use of new technologies. While there will clearly be exceptions to both of these rules, thus putting me at risk of massive over-generalisation, it seems to me that those demanding new laws rarely appreciate the existing legislative framework, and that those who want a law removed or weakened are generally prioritising their own gain over the protections afforded to others. Irrespective of the direction of travel being proposed, looking carefully at the purpose of the legislation and the harms against which it is designed to protect, is critical, in determining whether a change is necessary or desirable.

Most of all though, I am nervous about doing things which could entail the commission of criminal offences, so it looks like it's going to be the Underground for me for a while longer…

Neil Brown is a solicitor and managing director of law firm decoded:Legal, and specialises in advising tech, telecoms, and Internet companies. It does not look he'll be getting an electric scooter any time soon.