

# *Cowboy Motoring - Facts and Fallacies*

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Illegal off-road motoring – particularly motorcycling – is like a soft balloon. If you press hard to try and pop it, it moves away in response to your finger and simply bulges out somewhere else. It is also a big problem, particularly in and around the urban fringe of towns and cities, and is particularly noticeable in the Pennine industrial cities, where the habitation reaches right out into the countryside in ‘tongues’. Country parks and former railway lines – now often ‘rail trails’ – are blighted, and the evidence (which is often anecdotal, or at least uncollated) indicates that the problem is getting worse once again.



1. A sign on a remote footpath in County Durham. Actually, the sign is inaccurate and illegal – it is giving directions/information to highway users, but is not an authorised road sign.

What is ‘cowboy motoring’? In truth, the level of illegal use of public paths and land by 4x4 drivers is very small. It does happen, but 4x4s are expensive and have to be driven on the road to the place where the illegality will happen, and are therefore unlikely to be unregistered, uninsured, or driven by unlicensed drivers. 4x4 illegality is most likely to be a case of people in legal vehicles going, via the highway, on to

a particular piece of land (e.g. a disused quarry) to practise off-road driving, usually because the activity has become established over time. Motorcycle illegality is far worse in numbers, spread, noise, danger, annoyance, damage, and driver/machine illegality.

Hard statistics are not readily available. Most police forces do not enter reports of illegal motoring as ‘recorded incidents’ unless the complainant expressly requests this. In 2004, the Southern Division of Greater Manchester Police logged 208 incidents of ‘unauthorised motor bikes’ – by far the highest figure for any of the 44 categories of reportable incidents – and officers suggest that these recorded incidents only represent a fraction of the calls actually received. Anecdotally – not least from an episode of BBC Television’s ‘Traffic Cops’ series – illegal motorcycling is now one of the biggest types of complaints to the police, beating burglaries and vandalism. Anyone seeking information on the extent and impact of the problem can simply do a ‘Google search’ on illegal motorcycling – as a starting point, enter ‘Doncaster Council’, ‘West Yorkshire Police’, ‘South Yorkshire Police’, ‘Greater Manchester Police’, ‘Nottinghamshire Police’, and ‘Northumberland National Park’, and take it from there.

The lawful use of unsealed roads with public vehicular rights (call them ‘green lanes’, if you like) by licensed riders on road-legal machines is an issue discrete from ‘cowboy motorcycling’ although vehicular green lanes are sometimes used by unlicensed drivers and unlawful vehicles – the Ridgeway is an example. But the issues on ‘vehicular roads’ are reasonably clear-cut – if you have no insurance, vehicle excise licence, MoT certificate, driving licence, etc., then you are committing the same offences on a Byway Open to All Traffic (BOAT) as if you were on the tarmac road the BOAT leads on to. The only difference is the likelihood

of being apprehended, and the character of the police's way of dealing with the offences: officers tend to use warnings and cautions far more in off-tarmac situations, not least because most ordinary officers simply do not understand the intricacies of the law in this area.

The 'off-road' motorcycle (which term here includes: enduro bikes, moto-cross bikes, trials bikes, trail bikes, quads, and off-road mini-bikes) is a very difficult beast to catch or physically exclude. The 'horse stile', or 'box trap' is a joke when it comes to physical exclusion of off-road motorcycles – their only value lies in keeping out stolen cars and fly-tippers (motoring issues, but of another sort) and in imparting a message, "you should not be here" to illegal off-roaders, which strengthens the hand of the police when apprehending offenders who say "I didn't know I was wrong to be here." Fencing of sites can work if the fencing is made from hand-cutter-proof materials (e.g. rolled steel beam), but this is unsightly, expensive, and still leaves open the issue of access points for legitimate users – and site managers must now be conscious of the requirements of part 3 of the Disability Discrimination Act 1995. Where regularly used sites are fenced off with chain-link, experience shows that this will be cut (and not infrequently removed for reuse or resale elsewhere) within days.

There are places where physical exclusion methods have been found to work (e.g. country parks in Hampshire) but these sites tend to be ones that enjoy a significant level of staffing – combining 'active' enforcement by rangers with 'dumb' enforcement by barriers – and are well-used by the public. Again experience and reports from field officers suggest that once ordinary, lawful use by the public reaches a significant level, this itself operates as a deterrent to illegal motorcyclists. Sustrans now has a policy approach that eschews barriers on its cycle trails as being too negative for lawful users when balanced against the limited effect against illegal motorcyclists.

The organisations opposed to recreational vehicles on green lanes regularly speak of 'booming sales of 4x4s and off-road motorcycles' without quoting any figures.

In truth, the level of sales of motorcycles in the traditional market sectors remains quite constant, whilst 4x4 sales have shifted markedly from the quite off-tarmac-capable vehicles like Vauxhall Fronteras and small Suzukis, towards the road-orientated 'SUVs' like BMW X5s and Toyota RAV-4s. People say 'there will be a boom in secondhand 4x4s being used off-road.' Well, it does not seem to have happened, and the big rise in 'proper' 4x4 sales was in the mid1990s, so one might expect the trickle-down to have happened by now. Certainly reports (such as they are) and anecdotal evidence indicate that 4x4 use of green lanes has dropped noticeably over the past five years and seems stable. Illegal off-road motorcycle use seems to have been on an upward trend for the past few years, and anecdotal and observational reports suggest that legal motorcycle green lane use has also risen in that time.

The 'conventional motorcycle marketplace' is centred around what is known as 'the big four' – Honda, Yamaha, Suzuki and Kawasaki – with BMW, KTM, and the Italian manufacturers also being significant players. The big companies generally work together via the Motor Cycle Industry Association, and are careful about selling only road-legal vehicles for road use, and competition / fun vehicles via specialist dealers. The level of sales is tallied – e.g. in 2004, 10,838 road legal trail/enduro bikes were sold, a figure down on 11,428 in 2003. Motorcycle sales are subject to fluctuating cycles and, at the moment, the trend seems to be steadily, but relatively gently, downwards. One might expect that to reflect in a decrease in illegal off-roading, but there are two factors that have changed the picture.

Factor one is based on reports and site surveys. Until now, the general view, backed up by observation, was that illegal motorcycling on 'sites', as distinct from ranging across wider areas of countryside via rights of way, very seldom involved people on road-registered machines (i.e. 'trail bikes'), not least because a very high percentage of trail riders were club-based (e.g. the Trail Riders Fellowship) where the club ethos operated against such activity. Over the last couple of years it has become clear that people who are 'road

'legal' – i.e. they have driving licences, insurance, their bikes are registered, etc. – are making illegal use of places where illegal riding is popular and long-term (one such site in North Tyneside reached such a peak of popularity in 2003 that a local burger van took to parking there at weekends). That these road-legal riders are law-compliant in some areas, yet law-breakers in others, possibly suggests that they are the people who, outside the established clubs, have increased the use of legal green lanes over the same period; legal riders, legal bikes, legal activity some of the time, but with a willingness to ride illegally when they choose.



2. A fence made to last! This fence has been effective in keeping out illegal motorcyclists who formerly used this bank to gain site access.

Factor two is an example of technology and marketplace economics causing changes that nobody saw coming: mini bikes. The established motorcycle companies and dealers have long sold 'children's bikes' – and there is an established and very popular 'schoolboy motorsport' club structure (no disrespect to the young ladies who participate, but that is the name that has stuck) – but now the marketplace for

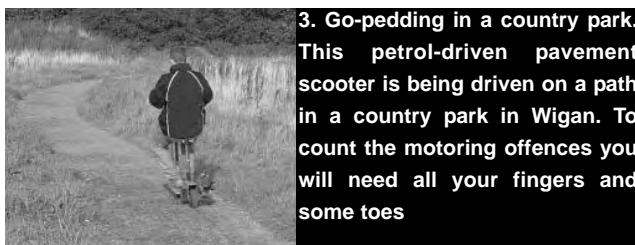
children's (and to a degree adults') off-road machines has rocketed in the space of three years, and has escaped far beyond the traditional dealer network. Essentially, mini bikes, 'mini motos', small quads, petrol and electric pavement scooters ('go-peds') and variants on the theme are being imported from China and other Pacific rim manufacturers, and being sold through garages, high street outlets, press advertisements (even quality newspapers are flogging powered scooters with little or no warning about limitations on use) and, of course, the internet.

Because the government does not regard these machines as motor vehicles for import and registration purposes, there is no record kept of the number of units sold. An industry insider estimates that over 2003/4 there may well have been 100,000 machines sold into the UK. The pedal bicycle trade is gearing up to take its share of business too, while reports of deaths and injuries to mini bike users (mainly children) appear on the BBC News website all too often. In the autumn of 2004 a typical local newspaper, The Harrogate Advertiser, was carrying an advert for the 'Dirt Rascal – Off Road Motorbikes for Kids' at £375. FHM (a huge-selling 'lads' mag') in December 2004 carried an advert for 'Miniature Motorised Mayhem – experience the rush of motorbike racing in the park or the garden, with no licence required'; yours for 600 quid. This new mini bike problem is something that Defra needs to take account of and should lead on raising the issue with the Department of Trade.

Off-road mini-bikes (sometimes called 'paddock bikes') are becoming a big sport distinct from traditional motocross racing. The weekly paper *Trials and Motocross News* (which generally has a very responsible attitude to off-road motor use) carries pages of adverts for the machines (which sell for well under £1,000, ready to go) and the associated gear. In *Motor Cycle News*, 12<sup>th</sup> May 2004, in an article "Mini Bike Mayhem", the journalist reports how 'a dozen adults' rode off-road mini-bikes on A roads, in Sherwood Forest, and on land known as Mansfield Desert, a site notorious for illegal off-roading. Mini bikes have changed the face of off-road motorcycling,

both legitimate (through club-based events) and illegal. Even if the government tries to close the door (and there is no sign whatsoever that it will) mini bikes will cause a residual problem for years to come.

The law on off-road driving is now considerably clearer, more wide-ranging, and potentially more effective, than it has been at any time. The real issue lies in the police having the resources and/or inclination to do anything about the problem. For many years there was something of a legal grey area causing uncertainty as to whether or not a prosecution for illegal motorcycling would succeed. This was the arcane distinction between a 'motor vehicle' and a 'mechanically propelled vehicle' (MPV). Essentially, almost all road traffic law was applicable to motor vehicles, and these are defined as being 'intended or adapted for use on the highway.' A body of case law arose, notably *Burns v. Currell*, in which it was held to be a question of fact for the court in each case (a 'go kart' was held not to be a motor vehicle). In *Anderton v. O'Brien*, a schoolboy trials bike was held to be a motor vehicle, yet in other cases, motocross bikes were held not to be motor vehicles. One can understand the reluctance of the police and CPS to spend resources where the outcome is a lottery. Two cases have helped clarify the position: *Lang v. Hindhaugh* held that all Road Traffic Act offences can be committed on public paths, and more recently, *North Yorkshire Police v. Saddington* nailed down – and essentially removed – the distinction between motor vehicles and MPVs.



At the same time there has been a steady shift in the applicability of road traffic offences from motor vehicles to MPVs. S.34 of the Road Traffic Act 1988 (unlawful driving on public paths or open land) is one such, as are (for example) dangerous and careless driving, the requirement for a driving licence, and the

requirement for payment of vehicle excise duty ('road tax'), but not, curiously, Road Traffic Act insurance, although the *Saddington* case makes that a weak defence for off-road motorcyclists on 'scramblers' and mini bikes. Another recent change is the requirement (introduced by European Regulation) that Road Traffic Act insurance is mandatory not just on roads, but also in 'public places' (s.143 RTA88, as amended). 'Public place' is not defined in the statute, but case law and the right to roam regulations indicate that parks and much open countryside are 'public places'. At the moment the powers of the police to deal on the spot with uninsured vehicles are seriously constrained; the government intends to bolster these powers to include on-the-spot seizure of vehicles, but the Bill introducing this fell for lack of time before the General Election in May.

One very useful police power is in the Police Reform Act 2002. Essentially anyone using an MPV to cause 'alarm, distress or annoyance', or in contravention of s.34RTA88, may have their vehicle seized by a police constable if they either refuse to stop/leave, or are committing a repeat offence inside a year. Note that this is 'seizure', not confiscation (some councils are erecting notices threatening confiscation under PRA2002) and the vehicles must be returned on payment of a storage charge. If they are not claimed, the police must sell them off to defray expenses. There is a power for the police to confiscate illegally used vehicles if these are proved – or reasonably suspected – to have been stolen at some time. If the current owner cannot prove good title then the police can sell or destroy the machine.

What about 'alternatives to enforcement' such as the provision of off-road sites (generally known as 'trail parks')? In the mid-1980s to mid-1990s there was a spate of trail park development with considerable grant support. Many sites failed completely, and those that survived did so by evolving away from motorcycle-based activity to karts, quads and 4x4s; for two reasons. Apart from motocross practice tracks there is very little 'gate money' in motorcycling, and well-regulated karting, quadding and 4x4 driving is disciplined, safe and – crucially – insurable. The idea

that sites can be provided where current illegal off-road motorcyclists can replicate the type of riding they do now (like a giant skateboard park with motors) is simply untenable on risk and liability grounds. Yes, some such sites exist, but are they insured/insurable? If not, how can public bodies provide these places? There are potential solutions, but those are beyond the scope of this article.



4. A motocross practice track – a valuable, but rare, resource.

### **Further reading.**

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### **References**

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### **Biography**

*Alan Kind has been involved professionally with countryside access issues since 1986. He operates a consultancy and acts as editor of Byway and Bridleway for the Byways and Bridleways Trust, and as 'Motor Sport and Planning Officer' for the Motoring Organisations' Land Access and Recreation Association (LARA), as well as undertaking project work.*

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