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APPG Cycling Justice for Cyclists inquiry: RoadPeace response

RoadPeace, the national charity for road crash victims, was founded in 1992 on the principle of road danger reduction. Our Board has always included those bereaved by cyclist deaths. After her only child was killed cycling, Cynthia Barlow, RoadPeace chair, has dedicated her life to helping reduce the risk to other families. She has received many awards, including an OBE, for her work. And our work is needed, with cyclists facing much greater risk of injury and intimidation than motor vehicle occupants.

As requested, our brief response focuses on five key areas for cyclists: collision investigation, criminal prosecution, traffic law enforcement, civil justice, and victims' rights. Please note that our calls are supported by British Cycling, Cycling UK, LCC, Road Danger Reduction Forum and 20's Plenty for Us and have campaigned with RoadPeace on many of the issues summarized below.

Collision investigation

RoadPeace is [campaigning](#) for transparency, accountability and effectiveness in collision investigation. A good investigation is essential to achieving justice and reducing road danger - without this, law breaking escapes detection, fair compensation is hampered, prevention programmes are limited, victims suffer secondary victimisation, and public lack confidence in police interest in protecting them, thus deterring many from walking and cycling. It is the cornerstone for justice on our roads.

Improving collision investigation requires clear standards and public transparency and accountability on their use and impact.

Investigation standards

There is [national guidance](#) on collision investigation for road deaths and life changing injury, though this has been diluted¹. There is no such guidance for investigations where injuries are serious or slight. But guidance is advisory, there are no national standards. Each police service can set their own procedures.

- Best practice and minimum practice standards must be defined nationally for both fatal and injury collisions, including checks for drink and drugs driving, mobile phones, and event data recorders. The same toxicological tests conducted on victims should be also done on drivers.

Actions that would contribute to achieving clear best practice and minimum standards include:

- HMIC to conduct a performance inspection of collision investigation (all police areas inspected).
- DfT should reinstate their Justice for VRU Working Group (police, Home Office, MoJ, Sentencing Council, CPS, Cycling UK, British Cycling, and RoadPeace) and begin with a review of collision investigation procedures, resourcing and effectiveness.

¹ In 2013, [ACPO's Road Death Investigation Manual](#) (195 pages) was replaced by the much shorter College of Policing's Investigating Road Deaths (14 pages).

- Police services review injury investigation procedures, appoint leads on injury investigation and establish local working groups including police, campaigners and victims.

Of particular concern to cyclists is the need to avoid victim blaming, with:

- Victim blaming tackled in police collision investigation training.
- Specialist leads developed for investigating cyclist collisions.

Transparency and accountability

Transparency and accountability are lacking in collision investigation. Police do not report their investigation procedures (eg. checking mobile phone use in fatal crash varies), nor the outcomes of their investigations, so it is not possible to know how often a driver is prosecuted for killing or injuring a cyclist, or how often a hit and run driver is detected. Nor do police even report their investigation budgets or staffing so it is not possible to manage expectations. Changes needed include:

- Police publish investigation outcomes and reasons for no further action, as well as investigation resources and procedures.
- Collision and conviction data linked so outcomes can be traced and reported by road user mode.

Criminal prosecution

The right sentence depends on the right charge which in turn depends on a thorough investigation (see above). But there is much overlap in Careless Driving and Dangerous Driving, as highlighted in our [You say Careless, I say Dangerous](#) graphic. As a society committed to promoting active travel, we are overdue a debate on how we define bad driving and a review of the duty of care a driver owes a vulnerable road user. The 2012 [CPS consultation on driving offences](#) did not discuss this (or pose any questions, for that matter), and it has been glossed over in the [current MoJ consultation on driving offences](#).

In addition to investigation, the police are responsible for the vast majority of charging decisions, and also prosecuting at traffic courts. There is no system of checks and balances, no monitoring of the frequency or the reasons for deciding no prosecution, or even who makes the decision (police or CPS). A [right to review police charging decisions](#) was introduced quietly in April 2015 but it is more restricted than the [CPS' Victims Right to Review](#) and varies by police service.

Specialist road death prosecutors were recommended in the [2015 joint inspectorate review](#) of road death investigation and prosecution, as well as in the [2002](#) and [2008 HMCPSI thematic reviews](#). How this is being implemented has not been reported. RoadPeace submitted a list of topics to be covered in the training, including an annual review of acquittals, appeals, complaints and cases involving downgrading by CPS, judges and juries.

Whilst the [current MoJ consultation](#) focuses on tougher prison sentences, prison is used very rarely. DFT has described disqualifications as the key penalty. But the Sentencing Council and thus the courts classify driving bans as an ancillary penalty, along with rehabilitation orders. Bans are not seen as a core sentence option as custody, fines, [etc.](#)

Key calls to reform criminal prosecution and reduce road danger to cyclists include:

- CPS consult over the charging standards of careless and dangerous driving, including how presence of cyclists and pedestrians changes the seriousness of an offence.
- Police pass all fatal and life changing files to the CPS for the charging decision, if victim requests.
- Police monitor and report reasons for lack of prosecution, so it is possible to know how often it is due to lack of evidence or proof of driver's innocence.
- CPS publish the training curriculum and standards set for specialist road death prosecutors, including how they are trained to avoid victim blaming.
- The role of driving bans be reviewed and revised with the aim of much greater use, including for all careless and mobile phone offences that result in injury.

Traffic law enforcement

Enforcing traffic laws is not a priority for police. With the vast majority of driving offences not qualifying as notifiable offences, the police are not evaluated on their performance. The [HMIC's Police Efficiency, Effectiveness and Legitimacy \(PEEL\)](#) programme of evaluating police areas does not cover roads policing. But its core areas of crime prevention, investigation and management of offenders (i.e. prosecution), victim support could be easily extended to roads policing.

Most police and crime plans exclude any mention of traffic law enforcement (TLE). Avon and Somerset is a notifiable exception with a [Roads Policing Strategy](#) that includes an objective of improving injury investigation. [Merseyside PCC](#) is currently consulting on a road safety priority. [The London Assembly Police and Crime Committee](#) undertook a short review of the effectiveness of roads policing in early 2016. RoadPeace submitted a [joint response](#) on behalf of British Cycling, Cycling UK, LCC, Living Streets, Road Danger Reduction Forum, Sustrans and 20's Plenty for Us. And London's draft police and crime plan does refer to road safety and traffic law enforcement, with a partnership plan promised and the reporting of prosecution outcomes.

Our key calls to ensure TLE reduces danger to cyclists include:

- HMIC extend the [PEEL programme](#) to cover roads policing and conduct a performance inspection of roads policing.
- PCCs and police and crime plans address TLE and collision investigation, and driving offence in their crime statistics and surveys, and are based on the harm reduction approach.
- Roads policing strategies and annual TLE reports are produced.
- Effectiveness based on activity or output, not reduction of KSI as that is not within police control.
- TLE plans should clarify activity and include perception of safety, with public confidence surveys conducted and analysed by road user mode.
- Police do not offer NDORS to drivers in serious injury crashes.
- Cycling patrols be introduced in all police services.

Civil Justice

Unlike most European countries, a driver's fault must be proven before an injured cyclist can claim compensation. This is despite the reality that victims will be hindered by their injury, and lack of legal protection, with the vast majority of cyclists uninsured. And the MoJ's recent proposals to increase the small claims court limit are grossly unfair to injured cyclists and will lead to many not claiming or accepting receiving unfair compensation. In our response to the [draft Cycling and Walking Investment Strategy](#), RoadPeace called for cycle proofing of civil compensation reforms.

Cycle friendly civil law reforms would include:

- Small claims court limit remaining at £1000 and whiplash reforms not extended to cyclists or pedestrians who rarely make whiplash claims.
- Presumed liability introduced
- Rehabilitation code extended to police so that rehabilitation and civil claims are expedited.
- England and Wales' bereavement damages be revised and made more fair, like Scotland.

Victims' rights

There is systemic discrimination of road traffic crime victims. Deaths caused by lawbreaking drivers do not qualify as homicide. Families bereaved by a dangerous/careless driver do not have access to a state funded homicide caseworker. They have fewer rights. Families (or the CPS) cannot appeal an unduly lenient sentence given in a Causing death by careless driving conviction.

Victims of road traffic crime go uncounted. The government does not monitor the number of people killed or injured by law breaking drivers. This would include not only those where a driver was convicted, but also those where the culpable driver died or absconded.

Despite the fact that most of the fund raised by the Victim Surcharge is from motoring offences,

victims of road traffic crime go unsupported. This should have changed with the [Moj's revised Code of Practice for Victims of Crime](#), which came into practice on 15 November 2015. Police and Crime Commissioners should be ensuring support and information offered to victims includes crash victims. But RoadPeace has seen no major change in practice. The national victims' information website includes no information for those injured in crashes, including those involving law breaking drivers.

Other crime victims are treated as victims from as soon as the police are notified. This has been the norm since 2002, including with mobile phone theft victims and domestic violence victims.

RoadPeace's key calls to improve the treatment of victims include:

- MoJ and Home Office extend their definition of homicide to include culpable road deaths.
- Crash victims are assumed to be victims of crime until the contrary is proven.
- Victims' Commissioner and the National Association of Police and Crime Commissioners review how PCCs are supporting road crime victims.
- Victim surcharge collected on NDORS (at least those involving injury crashes), if not FPNs.
- Crime Survey of England and Wales ask how often public feel intimidated or at risk by anti-social and criminal driving.
- Local guides on road death and injury investigation produced.
- Police extend victim level of satisfaction survey to road crash victims.
- Track my crime extended to track my crash and victims informed of which contributory factors police reported in their crash.
- Best practice Family Liaison Officer standards be agreed and monitored.