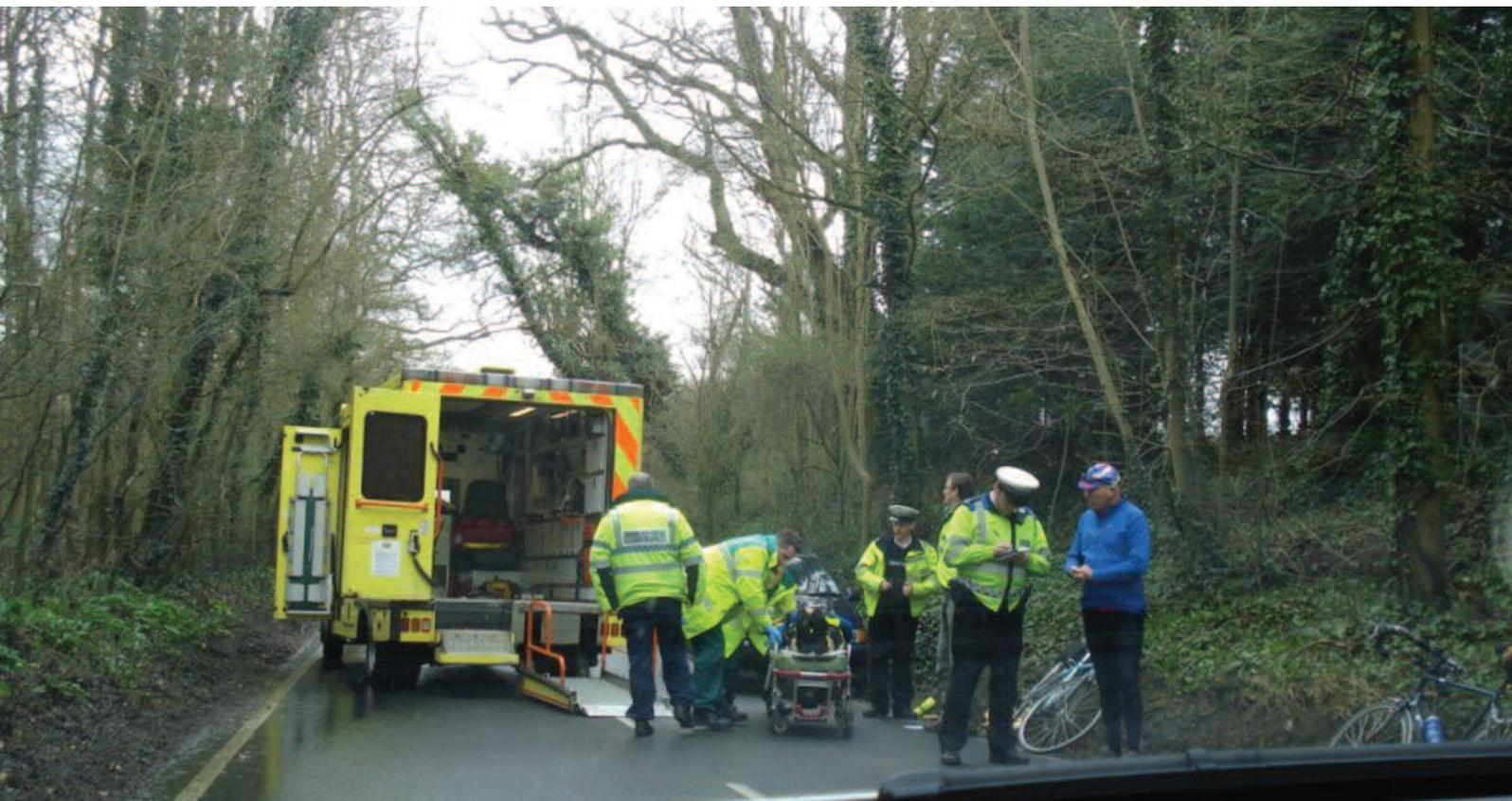


The role of the police



FOREWORD

Austere times bring many challenges and hard choices where public expenditure is involved. Active encouragement of cycling has been government policy for many years as it is recognised to be an activity that reduces demands on the public purse such as expensive motor-transport infrastructure, health care costs and costs related to environmental damage. The flip side to cycling as an essentially 'win-win' solution is that increasing numbers of cyclists are being killed by motor vehicles.

More people die and are seriously injured because of inattentive motorists than because of terrorists; more misery is caused by road crime than electronic crime. Improved road safety has the potential to save many lives and road safety starts with proper investigation of road collisions and uniform adoption of the highest standards already exhibited by the best police officers.

This report can contribute to the fixing of a system that is not operating as effectively as it should in the area of road safety. There is no better, nor more authoritative, source for the representation of the cyclist's perspective than CTC, with its long history of promoting the cause of all types of cyclist. CTC's Road Justice campaign cries out to be taken seriously at every level of public service.

22nd June 2013

Martin Porter QC, Temple, London

INTRODUCTION

The police, prosecutors and courts all play a role in protecting us from road crime, but the police are the first link in the chain of causation that leads from an incident being investigated to an offender being sentenced. If that link is broken, the whole system fails. It is, therefore, absolutely crucial that the police investigate road crime to the highest standard so that prosecutions have the best chance of success. Much of the time the police are effective and many bad drivers are prosecuted and receive appropriate penalties. Yet some drivers go unpunished due to what CTC perceives as occasional failings of the justice system. This can send out the message that driving in a way that puts others at risk is acceptable.

This report outlines the problems with police investigations of road collisions that can lead to miscarriages of justice. Two further reports examine weak charging and prosecution decisions, and lenient sentencing. Ten recommendations are suggested here that, if put into practice by the police, have the potential to improve the quality of investigations and ultimately increase road safety. This report focuses on England and Wales; however, its principles are equally applicable in the rest of the UK. A separate report covers Scotland.

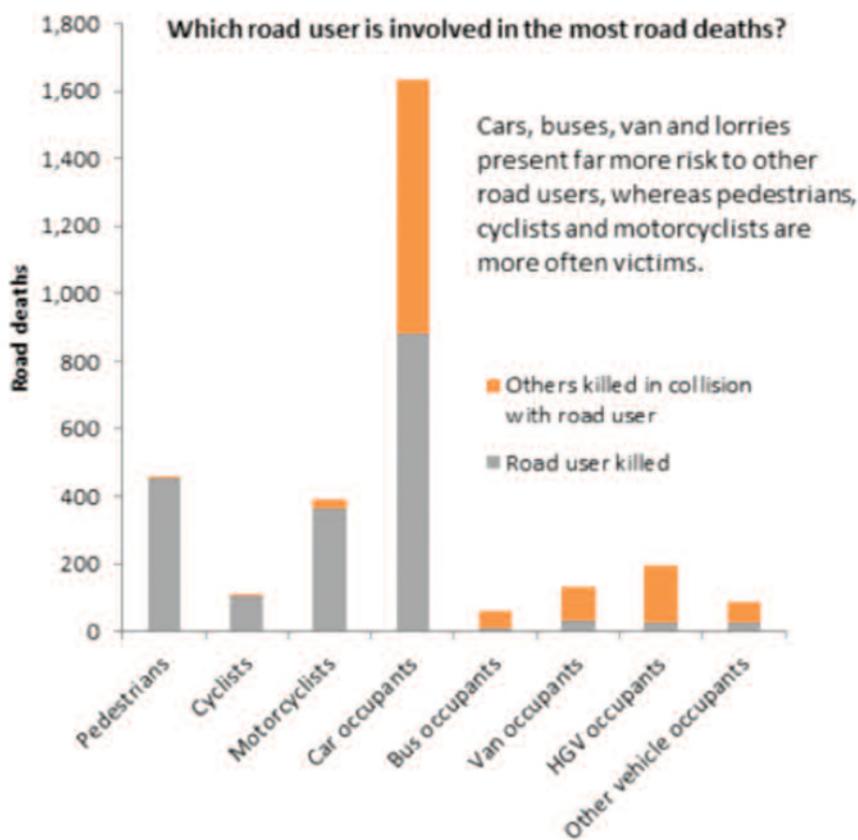
CTC recognises that many of the problems are due to lack of resources, rather than to poor performance, and that many road police officers do outstanding work. To acknowledge and share good practice road crash victims are invited to nominate a police officer for an award on the Road Justice website.

The Road Justice campaign seeks to encourage the police, the Crown Prosecution Service and the courts to put policies and practices in place which demonstrate that bad driving is taken seriously and actively discouraged, thereby increasing road safety. CTC is campaigning for:

- 1. High quality and thorough police investigations of all road traffic collisions.**
- 2. Better charging and prosecution decisions.**
- 3. Sentences that reflect the severity of the offence and discourage bad driving.**

CYCLE SAFETY

Cycling is essentially a safe activity, posing little risk to cyclists or other road users, and the health benefits of cycling far outweigh the risks involved. Those who cycle regularly, even for short journeys at moderate paces, can substantially improve their health, fitness and life expectancy. However, when collisions with motor vehicles do occur, cyclists and other vulnerable road users (VRUs) are disproportionately victims – in 2011 42% of victims suffering serious injuries in road crashes between two or more vehicles were pedestrians or cyclists (CTC calculation from DfT, Table RAS40004). The chart above shows the low level of risk presented by cyclists to other road users and demonstrates that VRUs are more often the victims of collisions than the perpetrators.

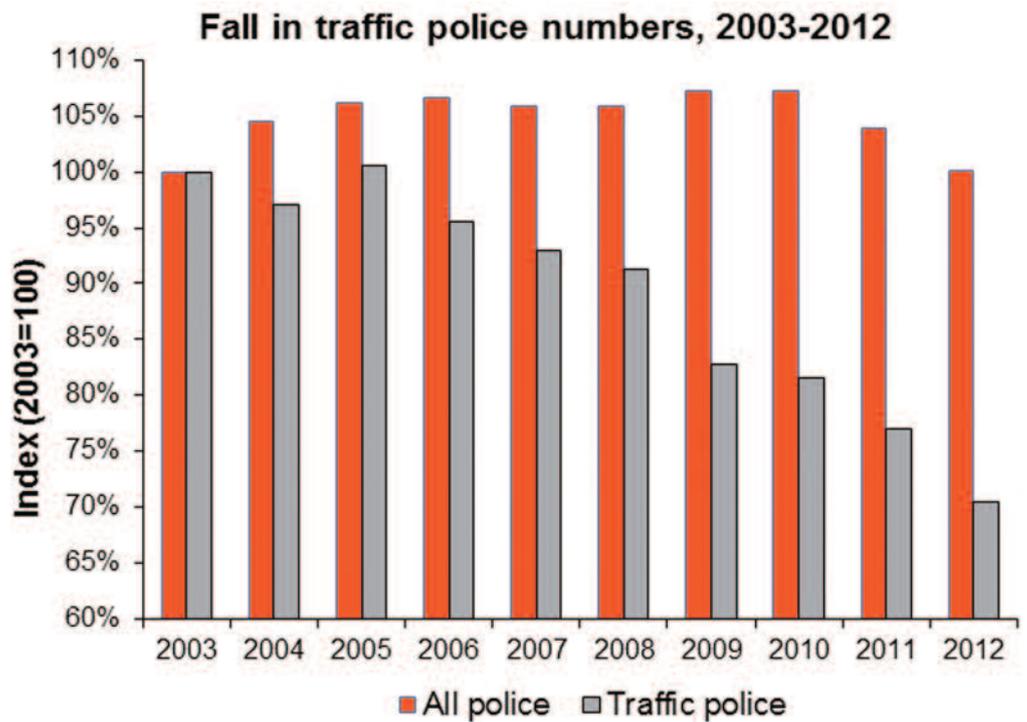


Despite cycling being a relatively safe activity - you are more likely to be injured during one hour of gardening than one hour of riding a bicycle - fear of road traffic is a major deterrent to cycling: in 2011 61% of people in the UK surveyed on their attitudes agreed or strongly agreed that 'it is too dangerous for me to cycle on the roads' (British Social Attitudes survey, 2011, Table ATT0322) and actual cycle safety in the UK lags behind many of our continental neighbours. This is because of poor infrastructure, high traffic volumes and speeds, irresponsible driving and a legal system that fails to respond adequately to road danger. It is therefore vital that the legal system plays its part in tackling bad driving, to reduce the fears that deter people from cycling (or allowing their children to do so), in order to maximise cycling's health, economic, environmental and other benefits.

CTC launched the Road Justice campaign in collaboration with the Cyclists' Defence Fund to highlight the failings in the legal system's approach to bad driving. Since 2009, through its online reporting system, CTC has collected over 4000 reports of bad driving that has endangered VRUs (at www.roadjustice.org.uk) and has spoken directly to victims who were injured by bad driving but whose cases were not dealt with suitably by the legal system. The legal system needs to be reformed in a number of ways, beginning with better roads policing and collision investigations, to ensure that the law and its enforcement protect all road users more effectively from intimidation and injury through someone else's wrongdoing.

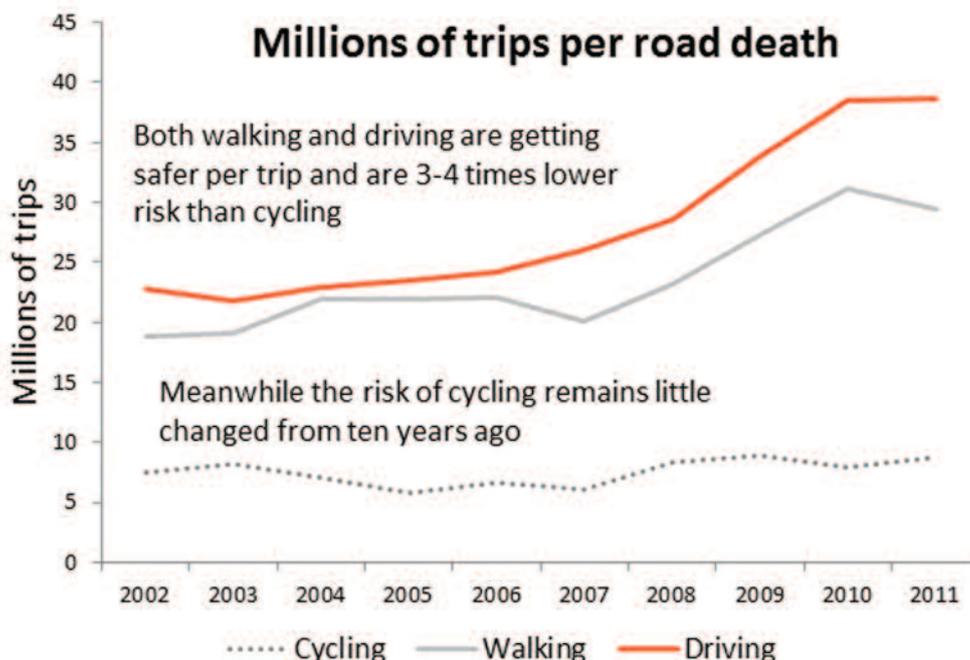
ROADS POLICING AND ROAD COLLISION INVESTIGATIONS

Between 2002/03 and 2011/12 roads police numbers in England and Wales were cut by 29% (HC Deb, 7 September 2012, c488W); Devon and Cornwall suffered the worst cut with roads police numbers slashed to zero. During this same period, total policing levels remained unchanged (see chart on right). As a result of these cuts, roads police in England and Wales now make up just 3% of the total police force.



During the 10 year period of cuts, walking and driving have become safer (although safer driving is largely due to improved safety of vehicles), yet cycle safety has not improved (see graph below). The risks to cycling increased in 2012, following a 5% rise in cycle serious injuries and deaths, which is not proportionate to the rise in cycle use (DfT, Table RAS30).

The financial argument made to support cuts to roads policing does not hold water when the economic cost of road death and injury is calculated – the annual cost to the economy of road death and injury has been calculated as £15.5 billion (DfT, Table RAS60003), but could exceed £30 billion if un-reported incidents are taken into consideration. What's more, central government's reluctance to prioritise road safety by failing to include casualty-related targets in its Road Safety Strategy discourages chief constables from prioritising resources for road crime reduction.



Investing in roads policing is highly effective, not only for promoting road safety, but also in tackling other forms of crime. The link between road traffic offences and other forms of crime is clearly recognised by ACPO's roads policing strategy (ACPO, 2011) and research supports this: a 2010 report found a clear link between offence history and being at fault in a road crash (University of Loughborough, 2010).

There is good evidence that fear of detection and prosecution is a highly effective deterrent to bad driving – more so than the severity of sanctions (La Prevention Routière, 2004). There is also evidence that, when police enforcement of road traffic law is relaxed, driving standards and adherence to the law deteriorate (DETR, 2000). Law enforcement through effective roads policing and high quality collision investigations would make a safer environment for all road users by reducing the danger created by sub-standard driving.

29%

Drop in roads policing numbers in the last decade

61%

People in the UK who think the roads are too dangerous to cycle on

42%

Victims suffering serious injuries in road collisions that were pedestrians or cyclists

3.6%

The total police force in England and Wales dedicated to roads policing

£15.5bn

Estimated cost to the economy of reported road death and injury

QUALITY OF ROAD COLLISION INVESTIGATIONS

Careful and thorough investigation by the police is the critical first step towards a fair response from the justice system to road crashes. High quality evidence, clearly presented, is vital if robust decisions are to be made on the handling of suspected driving offences, both by prosecutors and the courts.

Common problems with investigations include:

- Failure to attend the crash scene;
- Assuming that an injured cyclist is likely to be at fault, based on prejudiced views of cyclists' behaviour;
- Failure to take statements or witness contact details at the crash scene;
- Not following up victim (s), suspect (s) and witnesses for statements for several weeks, or neglecting them altogether;
- Failure to test the driver's eyesight or for possible mobile phone use;
- Failure to gather CCTV footage;
- Failure to keep victims informed of case progress and of key decisions relating to their case, including court dates.

The case studies on the following pages exemplify these and other common problems.

CASE STUDIES



Cait Hurley, Southwark, London, February 2012

Commuter cyclist Cait, who used to cycle 20 miles every day, was hit by a lorry driver who attempted to overtake 6 cyclists on one of London's blue-painted 'cycle superhighways'. The back end of the lorry entered the cycle lane as the driver completed the manoeuvre and clipped Cait. Cait was thrown from her bike and her leg was caught under the lorry's wheels.

Cait's leg was grazed so badly that she had to undergo a skin graft operation in which skin and a vein were removed from her thigh to cover the leg wound. She now has horrific scarring on both legs, which requires daily treatment. Cait no

longer cycles and now walks with a limp and the aid of a walking stick. She struggles to do everyday tasks - to climb stairs carrying a tray of drinks, to walk short distances, to stand for any length of time or to play with her two young children. Despite the collision occurring during rush hour on a busy London road, the police failed to find any witnesses. Cait struggled to search for witnesses using social media whilst she was recovering from her injuries. This unsuccessful process left her exhausted and dejected. She was even more disappointed by the police failure to look at CCTV footage, even though there were CCTV cameras along that stretch of road. The driver was not charged because there was not enough evidence.



Aiden Forster, Bradford, West Yorkshire, July 2012

Enthusiastic cyclist Aiden was cycling up a hill when he was hit from behind by a 4x4 driver. Aiden suffered multiple vertebral fractures as a result of the collision. He was in hospital for 5 days and off work for 4 months. He could not sit down for months, which made any form of travel very difficult. Due to his injuries he has not been able to take care of his two young children since the incident.

The attending police officer implicitly blamed Aiden for the incident stating: "you cyclists take your lives into your own hands". Despite a number of vehicles present at the scene, the police did not take any witness statements. The police accepted the driver's explanation that he had been 'dazzled by sunlight' and therefore hadn't seen Aiden on the hill, but the police did not analyse the sun's position in the sky at the time of the collision to verify this claim or comment that the driver should have adjusted their speed if they could not see the road ahead of them.

CASE STUDIES



Dan Black, Chepstow, Monmouthshire, Wales, December 2009

On a December morning in 2009, Dan was cycling his normal route to work when he was knocked off his bike by a 73-year old driver. The moment the car collided with Dan, his back was broken resulting in a spinal cord injury. There was also damage to Dan's carotid artery, which meant the flow of blood to his brain was cut, causing a stroke. Dan had to be put into a drug-induced coma for 6 weeks. Dan was left tri-plegic, with no movement or feeling in his legs or right arm.

The police investigation following the accident had many faults, which resulted in the case being dropped by the CPS: the

driver's eyesight was not tested at the scene, even though Dan's family was told it had been; Dan's reflective clothing was cut off and bagged by paramedics at the scene, the clothing was later disposed of at the hospital because the police didn't go to collect it; Dan's reflective clothing was mentioned in witness statements and by an officer at the scene but was not mentioned in the official report sent to the CPS; Dan's bicycle lighting was described as inadequate in the police report, yet his lights met all British standards and complied with British law; the driver had made an illegal manoeuvre, putting him in the position that caused the collision, yet this was not mentioned in the police report; the driver claimed not to see Dan, yet a witness directly behind him had. The CPS decided to drop the case due to it 'not being in the public interest' and because of Dan's 'poor lighting'.



Peter Stone, Preston, Devon, September 2009

Peter was hit when a car overtook him then suddenly turned left into a side road. Peter braked hard to avoid a collision, but went over the handlebars and smashed his head against the car then fell hard onto his left shoulder on the road.

Peter suffered a grade 5 acromioclavicular injury (shoulder separation), a sprained wrist and skin abrasions and bruising. He underwent 2 operations to reattach his shoulder and had to endure 9 months of pain and discomfort before he could exercise again.

There was a witness who saw the whole incident but the police did not take a witness statement and later said they would take no further action against the driver. This type of collision is very common and entirely avoidable if drivers hold back from turning until the cyclist has negotiated the junction, yet failure to take action against drivers who commit such errors gives the impression that they will go unpunished.

CASE STUDIES



David Galle, Coolham, West Sussex, November 2009

David, an experienced cyclist and member of the CTC West Sussex group, was hit by a van driver who failed to see him as he negotiated a staggered crossroads. David's spinal cord was ruptured as a result of the crash, leaving him immobile and without any sensation in his limbs for 4 weeks. David spent 4 months in a specialist spinal injuries hospital.

David's life was completely changed by this tragedy; he went from being extremely active to only being able to walk a hundred yards before having to sit down. Due to the limited mobility and sensation in his hands he needs carers four times a day to help him cook, wash and dress. He also needs long-term physiotherapy and has had to make adaptations to his house.

Three weeks after the incident, the police were asked why they still hadn't contacted David. They explained that they were waiting for him to come out of hospital to interview him. They had made no effort to find out the severity of David's injuries, had no idea he'd been moved to a different hospital and had no idea that he could have been paralysed for life. Sussex Police refused to send an officer to the spinal injury hospital because it was situated outside the county, so an officer from the Metropolitan Police was sent instead. The driver was charged with careless driving, fined £400 and given a 12-month driving ban.



Chris, South West England, March 2012

Chris came off his bike when he swerved to avoid a collision with a bus, despite having right of way. He hit the pavement as he came off.

Chris's collarbone and several ribs were broken; he also had a punctured lung and severe grazing and bruising. The broken collarbone seriously limited Chris's movement for seven months. Over a year on, he still only has 80% movement in his shoulder and cannot sleep on his side due to the pain.

The police did not attend the scene of the crash so missed the opportunity to collect evidence and took nearly two months to take a statement from the bus driver. After being informed that the police were not going to proceed with a prosecution, Chris attempted to contact them to resolve their misunderstandings but failed to do so. The police seemed unable to give a reasonable and logical explanation for their failure to prosecute the bus driver.

CASE STUDIES



Alan Church, Reading, Berkshire, July 2011

Alan is a passionate cyclist and member of Thames Velo cycling club. He collided with the side of a car when the driver immediately turned left after overtaking him. The driver admitted fault to the police and admitted she had not checked her mirrors.

Alan was left with a fractured vertebra and still suffers from back pain 20 months after the incident.

In a phone conversation with Alan a police officer claimed that it was CPS policy not to prosecute collisions where there was no independent witness and that the police do not regard a collision as a crime where no serious injury is caused. The police then decided that the injuries Alan sustained were not serious enough for a thorough investigation.

The letter Alan received explaining the decision not to prosecute contradicted what he had been told on the phone – it stated that the police had made the decision not to prosecute, not the CPS, as there were no independent witnesses. This kind of contradictory information leaves victims unsure of why certain decisions are made regarding their case and makes it hard to challenge contentious decisions.



Michael Kininmonth, Hackney, London, February 2011

A taxi driver attempting to overtake Michael collided with the rear of his bike when he had to abandon the overtaking manoeuvre on approach to a pinch point. Michael slammed into the ground, hitting his head and shoulder as he went down. Michael suffered a head and shoulder injury. He has had 4 operations on his shoulder and nearly a year and a half later is still receiving medical treatment. He has suffered psychiatric trauma since the incident and is now undergoing cognitive behavioural therapy. Michael had to phone various police stations to find out where the incident had been registered, finally discovering that the attending officer had not registered the incident before going on holiday.

The police did not visit Michael to take his statement; instead they posted him a statement form, which he had to fill out by hand despite his shoulder injury, demonstrating disregard for the needs of injured victims. When the CPS decided to press charges, the case report was sent back to Stoke Newington police station and was lost. The report was eventually found, albeit minus witness statements - so these had to be retaken. The driver was charged with dangerous driving but convicted of careless driving. He received a £500 fine and 3 penalty points.

CTC's recommendations for improving the police response to road crime cover 3 areas:

- Investigation procedures
- Resourcing and training
- Victim support and accountability

Investigation procedures

The common problems highlighted on page 4 would be avoided if the police were consistently to use ACPO's Road Death Investigation Manual (RDIM). Despite its title, RDIM says it should also be applied in serious non-fatal cases. However, investigation failures are particularly common in cases where the victim happens not to be killed. Where these errors result in a failed prosecution, or none being brought (e.g. due to insufficient evidence), this leaves the task of proving the driver's negligence entirely to the victim before they can claim compensation, potentially causing many years of stress, legal costs and care expenses for which they have no funding. There are also cases where the police have failed to follow the procedures of RDIM, on the assumption that the victim's injuries are non-fatal, only for them to die afterwards.

- 1. To ensure that evidence is collected properly, the police should use ACPO's Road Death Investigation Manual in cases of serious injury, not just for fatalities.** This manual should be renamed *The Road Crash Investigation Manual* to make its wider application clear.
- 2. The police should attend all road crash scenes and collect as much evidence as possible at the scene, including contact details and, where possible, contemporaneous statements from independent witnesses.** Suspects should not simply be allowed to leave the crash scene because they are distressed – an initial statement should be taken if possible. Any statements that cannot be taken at the time (including from victim(s)) should be gathered promptly afterwards – not left for several weeks or neglected all together. In cases where there are no witnesses, particularly when serious injury has been caused, the police should collect auxiliary evidence such as CCTV and helmet camera footage.
- 3. The police should investigate reports of seriously bad or aggressive driving even when no injury occurs** – after all, such drivers are often involved in other criminal activity. All police forces and ambulance services should have a written protocol to ensure all RTCs are reported to police.
- 4. The police should facilitate collision and 'near miss' reporting** (e.g. via online systems) and follow up reports of bad driving made via these systems (e.g. by visiting the address of the vehicle's registered keeper). These systems would help compile information about bad drivers and dangerous locations that could benefit from remedial attention.
- 5. Potential ancillary offences should be investigated**, such as using a mobile phone whilst driving or having defective eyesight. Tests such as breath testing and eyesight testing should be carried out at the scene of a collision on both parties. Where this is not practicable, they should be carried out as soon as possible afterwards.

Resourcing and training

Problems with road crash investigations frequently stem from a lack of either resources or training. Police cuts impact on the ability to attend all crash scenes and to deal with case work and communicate with victims and their families. A lack of resources can force the police to choose which cases are more worthy of investigation and which forms of evidence are collected. Insufficient training in road collision evidence collection and in assessment of the severity of injuries can lead to miscarriages of justice as vital pieces of evidence are not collected and injuries recorded as minor later prove to be serious.

6. **The police need to be adequately resourced** to: respond appropriately to road collisions; and to investigate them thoroughly; and to enforce traffic law to combat poor driving and poor cycling.
7. **National government and those who allocate resources locally should prioritise roads policing for investment**, and roads policing should be included in all overarching policing strategies and plans. This would strengthen the case for individual police forces and Police and Crime Commissioners (PCCs) to prioritise roads policing. Road safety should be amongst all PCCs' local priorities, given how important tackling speeding and anti-social driving are for a community's sense of safety and security.
8. **Better training should be provided for traffic police, investigation officers and family liaison officers** - principally about the practical and legal issues facing cyclists and other VRUs.

Victim support and accountability

Victims injured by road crime (except victims of dangerous driving) are excluded from the Code of Practice for Victims of Crime, meaning they are not entitled to the same support nor have the same rights as victims of other crimes (see RoadPeace's consultation response on the draft Code of Practice, 2013). Exclusion from the code means that many crash victims are not kept adequately informed of the progress of their case, such as not being advised of relevant court dates or being told about, or consulted on, key charging decisions. Consequently, it may be unclear whether it was the police or CPS which made key decisions, making it hard to challenge contentious decisions. Such discrimination against victims of road crime reinforces the misleading message that traffic crime is less serious than other crimes that cause injury and death.

9. **All road crash victims should be treated as victims of crime until the contrary is proven.** All road crash victims should be included in the Code of Practice for Victims of Crime so that victims receive support to the same standards as victims of other crimes with similarly severe consequences. They should also be consulted on key decisions and be kept well-informed of case progress.
10. **Police officers at any stage of a collision investigation should guard against a propensity to blame the victim automatically.**

The Road Justice campaign



The Road Justice campaign seeks to encourage the police, the prosecution services and the courts to put policies and practices in place which demonstrate that bad driving is both taken seriously and actively discouraged, thereby increasing road safety for all road users.

www.roadjustice.org.uk



CTC - the national cycling charity - works to inspire and help people to cycle. CTC campaigns to remove barriers to cycling, and believes that by creating a safer road environment through ensuring bad drivers are brought to justice so that more individuals will take up and continue cycling.

www.ctc.org.uk



The Cyclists' Defence Fund works to raise awareness of the law relating to cycling by fighting significant legal cases involving cycling and cyclists. CDF will support the Road Justice campaign by providing financial assistance to challenge apparent failings of the legal system.

www.cyclistsdefencefund.org.uk

Campaign supporters

RoadPeace, the national charity for road crash victims, has been campaigning for justice for road traffic victims since its start in 1992. RoadPeace has worked closely with CTC over the years and welcomes its Road Justice campaign.

www.roadpeace.org.uk

British Cycling, as well as being the national governing body for cycling, also represents cyclists' interests at all levels, such as campaigning on issues including cycle safety and keeping cycle racing on the road.

www.britishcycling.org.uk

Slater and Gordon Lawyers operate CTC's incident line and have extensive experience helping CTC members obtain compensation for injuries. Slater and Gordon provide financial backing to the Road Justice campaign.

www.slatergordon.co.uk

